



# Detention of Migrants and Asylum Seekers in Israel

## Annual Monitoring Report 2021

*Hotline for Refugees and Migrants*

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## Annual Monitoring Report for 2021

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**Writing and research:** Dr. Anda Barak Bianco and Tali Bromberg

**Editing and design:** Shira Abbo and Dr. Ayelet Oz

**Photograph of the cover:** Spokesperson's office of the Israeli Prison Services

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### About the Hotline for Refugees and Migrants

The Hotline for Refugees and Migrants is a non-partisan non-profit organization that aims to protect and promote the human rights of refugees and migrants and to prevent human trafficking in Israel through client services, detention monitoring, legal action and public policy initiatives.

Hatsfira 18, Tel Aviv–Yafo, 6515417 Israel

E-mail: [info@hotline.org.il](mailto:info@hotline.org.il)

Telephone: +972-(0)3-5602530

Website: [hotline.org.il](http://hotline.org.il)



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## Table of Contents

<b>INTRODUCTION .....</b>	<b>3</b>
<b>BACKGROUND .....</b>	<b>8</b>
<b>2021 IN NUMBERS .....</b>	<b>12</b>
Migrants Ineligible to Enter Under the Law of Return.....	12
Detained Migrants .....	16
Deported Migrants .....	17
Migrants Denied Entry .....	19
<b>IMMIGRATION DETENTION.....</b>	<b>23</b>
Conditions in Immigration Detention Facilities .....	23
Access to the Asylum System and Lingual Accessibility in Prisons.....	25
Detention for Prolonged Periods .....	29
Detention for Migrants who Can Not be Deported .....	31
Detention of Vulnerable Populations: Children, Human Trafficking and Modern Slavery Victims, and Those Affected by Mental Health Disorders .....	34
Extended Detention during the COVID-19 Pandemic .....	41
Fully Attaining Compensation Owed by Employers.....	48
Lapses in Translation of Hearings at the Detention Review Tribunal.....	51
<b>RIGHTS VIOLATIONS IN THE PROCESS OF THE ARREST .....</b>	<b>53</b>
Statistical Discrimination (Profiling) .....	54
<b>SUMMARY AND RECOMMENDATIONS .....</b>	<b>57</b>

## Introduction

Every day, tens of thousands of men, women and children worldwide are detained and deported from the country in which they reside due to their vulnerable legal status. These include asylum seekers, undocumented migrants, refugees, human trafficking victims, survivors of torture, people whose sin is seeking a safe place to live without a threat to their lives, liberty or well-being. Many of them are detained for months or even years, often in overcrowded and unhygienic conditions, unable to access services and professional assistance, isolated and deprived from their liberty and freedom of movement.

Detention also has severe consequences for the health of detainees, particularly their mental health which is negatively affected not only during the detention, but also leaves long-term scars for years to come. This can manifest as anxiety, depression, or post-traumatic stress disorder (PTSD).<sup>1</sup> It is unsurprising, therefore, that international law requires that detention of migrants be used only as a last resort, after all other options have been exhausted, and no other alternatives exist. Even then, detention must be proportionate to the goal the state seeks to achieve.<sup>2</sup>

Despite this, detention and deportation are used extensively in many countries, and physical removal of non-citizens, whether through deportation outside the

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<sup>1</sup> See for example a review of the World Health Organization (WHO) <https://apps.who.int/iris/handle/10665/353569>; as well as a review of academic writing on the matter Filges, T., Montgomery, E., & Kastrup, M. (2018). The impact of detention on the health of asylum seekers: a systematic review. *Research on Social Work Practice*, 28(4), 399-414

<sup>2</sup> The decision of the European Union General Assembly concerning protection of migrants calls on all countries to “adopt, to the extent possible, alternative means to detention (article 4.A). Additionally, see International Covenant on Civil and Political Rights (ICCPR) (Article 9) and UN working Group on arbitrary Detention (para. 53)



state's borders, or detention within the national territory, has become common and routine even in liberal countries. Detention and deportation are central tools in the international immigration regime toward unwanted migrants to the point where the current immigration policy trend earned the unflattering name of “the deportation turn,”<sup>3</sup> while the scholars Peutz and De Genova (2010) went a step further and labeled Western countries' policies as “deportation regimes.”<sup>4</sup>

Israel, too, routinely employs detention and deportation against foreign nationals who reside in the country without a valid stay permit. Article 13 of the Entry Into Israel Law (1952) states that “in respect of a person other than an Israel national or an *oleh* [Jewish immigrant] under the Law of the Return (1950), the Minister of the Interior may issue an order of deportation if such person is in Israel without a permit of residence.”<sup>5</sup> A person who violates the terms of his or her stay permit and illegally resides in Israel is liable for detention and following it, deportation from the country. This is not a detention for criminal offenses or to punish the migrant; rather it is an administrative hold to ensure the migrant's departure from Israel in the shortest time possible, even though this period may last for many weeks, and in extraordinary circumstances, even months and years.

For the seventh year in a row, the Hotline for Refugees and Migrants publishes a report monitoring the detention conditions of refugees and migrants in Israel, which examines whether Israeli authorities comply with laws and regulations pertaining to the arrest, detention and deportation processes. The monitoring

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<sup>3</sup> Gibney, M. J. (2008). Asylum and the expansion of deportation in the United Kingdom Government and Opposition, 43(2), 146-167

<sup>4</sup> Peutz, N., & De Genova, N. (2010). Introduction. In N. De Genova, & N. Peutz (Eds.), *The deportation regime: Sovereignty, space, and the freedom of movement* (pp. 1-29) Duke University Press.

<sup>5</sup> English translation of the [Entry into Israel Law](#) (1952), article 13.

report aims to ensure that the rights Israel's most vulnerable and powerless communities are not being violated. Transparency and independent monitoring are crucial in any system based on principles of democracy and rule of law. This is particularly true when monitoring the authority of the state to deprive a human being, let alone a vulnerable migrant lacking legal status, of their liberty. Over the years, our ongoing monitoring effort assisted in shedding light on phenomena that have not received sufficient attention from various government authorities, improving the protection of human rights in detention, and raising the awareness of detainees about their rights.

Among our major activities and accomplishments during 2021:

- **Raising awareness of Detention Review Tribunal adjudicators about detainees dealing with severe mental health disorders:** we sent an appeal to the chief adjudicator of the Detention Review Tribunal ruling on cases related to the Entry into Israel Law, asking her to instruct adjudicators concerning their responsibility to identify detainees suffering from psychiatric disorders who appear before them, and act to protect them.<sup>6</sup> **Following this appeal, the chief adjudicator decided to hold training sessions to all Detention Review Tribunal adjudicators conducted by the chief psychiatrist of the Israeli Prison Service (IPS).**
- **Drawing attention to detainees held for prolonged periods due to the COVID-19 pandemic:** we sent an appeal to the chief adjudicator of the Detention Review Tribunal asking to set regulations and procedures to put an end to the phenomenon of prolonged detention periods of migrants

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<sup>6</sup> See the [appeal](#) sent the Hotline in June 2021 (Hebrew)

seeking to return to their country and who fully cooperate with their deportation process, and yet cannot leave due to suspension of flights.<sup>7</sup> This phenomenon grew in folds since the outbreak of the COVID-19 pandemic in Israel. In response to the appeal, which received media attention,<sup>8</sup> the Detention Review Tribunal's chief adjudicator stated that it informed the adjudicators of the request to conduct tighter judicial oversight in cases of detainees held for long periods of time. The head of the Enforcement and Foreigners Administration at the Ministry of Interior did not respond to our appeal.

- **Raising awareness of the importance of professional translation services during hearings concerning administrative detention of migrants, and its role in ensuring a fair process:** we sent an appeal on this matter to the chief adjudicator of the Detention Review Tribunal. Following this appeal, in 2023, translators working for the companies that provide translation services to the Detention Review Tribunal will undergo training, and a glossary of important terms concerning the hearings and rights of the detainees will be distributed to them.
- **Raising public awareness about the rights of detainees held in immigration facilities:** following our public policy work, the Knesset's Special Committee on Foreign Workers, chaired by MK Ibtisam Mar'ana visited Givon Prison and the Yahalom Detention Facility at the Ben Gurion Airport.

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<sup>7</sup> See the [appeal](#) sent by the Hotline in August 21021 (Hebrew)

<sup>8</sup> Bar Peleg, [In Unusual Step, Israel Deported Ukrainians to Belarus During the Coronavirus Crisis](#), Haaretz, July 7, 2021.

The information in this report draws on the following secondary sources: analysis of protocols of hearings held at the Detention Review Tribunal during 2021 (2,862 protocols), responses to freedom of information requests (five), appeals of the Hotline to government ministries and responses of those ministries, documents filed to Knesset committees, and official publications.

These data indicate that the trend that began in 2020 with the outbreak of COVID-19 in Israel persisted into 2021: during most of the year, the limitations on the entry of foreigners into Israel remained in place, and the Population and Immigration Authority carried out few enforcement actions against undocumented migrants. The combination of these two factors led to a significant decrease in the number of migrants detained, as well as those deported from Israel.

The report unfolds as follows: in the next chapter, we will provide a brief overview of the legal and political background that serves as the foundation for the detention and deportation of migrants from Israel; the next chapter will present data concerning 2021 and describe the major trends. The fourth chapter, which constitutes the major contribution of the report, will discuss the protection of the rights of migrants held in detention: their detention conditions, specific populations of detainees, and the effect of COVID-19 on the duration of detention. The fifth chapter will present various aspects of procedural and substantial failures that occurred during hearings and legal proceedings related to the detention of migrants, and the final chapter will offer policy recommendations.



## Background

The removal of “foreigners” from the physical, legal, and social spheres of a country is perceived as the ultimate manifestation of the power of a sovereign nation state. International law recognizes that as a general rule, sovereignty contains the right to regulate who enters the country, stays, and departs. Through removal actions – detention and deportation – the ruling system crystallizes the difference between those who belong and those who do not,<sup>9</sup> guards and reifies the political and national borders, and in the Israeli case, also reinforces the idea of Israel as the homeland of the Jewish people only.

Israel defines itself as a country for Jewish immigration (aliya) and sees world Jewry and their offspring as potential citizens returning to their homeland. This immigration policy is based on the jus sanguinis (literally: “right of blood”) principle; according to it, only members of the Jewish nation can immigrate and immediately gain citizenship, without preconditions. The legal framework for this policy is the Law of Return (initially passed in 1950 and updated in 1970),<sup>10</sup> which determines that any Jew has the right to immigrate to Israel as long as one of their grandparents is a Jew, and the Law of Citizenship (1952),<sup>11</sup> which grants automatic citizenship to anyone who immigrated to Israel under the Law of Return.

The statuses of all other migrants entering Israel, who are ineligible to immigrate under the Law of Return, are governed by the Law of Entry into Israel, and the Anti-Infiltration Law with its various amendments.<sup>12</sup> In other words, Israel does not see

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<sup>9</sup> According to Anderson, Gibney and Paoletti (2011) 'every act of deportation might be seen as reaffirming the significance of the unconditional right of residence that citizenship provides'

<sup>10</sup> See the [text](#) of the Law of Return translated to English.

<sup>11</sup> See the [text](#) of the Israeli Citizenship Law translated to English.

<sup>12</sup> See the [Entry into Israel Law](#) (English translation), and the [Anti-Infiltration Law](#) (English translation)

itself as a destination country for non-Jewish immigration, except in rare humanitarian cases and family reunification. Therefore, migrants who are not covered by the Law of Return are granted a temporary stay permit, which does not lead to eventual permanent residency or citizenship. Migrants who violate the terms of their stay permit are detained under the Entry into Israel Law if they arrive through a regular border crossing, and under the Anti-Infiltration Law if they arrive through an unregulated border crossing.

Four groups of migrants may lose their temporary stay permit if they violate its conditions, and accordingly are liable to be detained and deported: (1) tourists; (2) migrant workers; (3) “infiltrators”; and (4) asylum seekers. Those individuals will be detained by a border control officer at the Ministry of Interior, and will remain there until their deportation, in most cases. The Detention Review Tribunal for Illegal Residents provides the judicial overview of the decisions of the border control officer. This report focuses on monitoring the work and hearings of this Tribunal.

The Detention Review Tribunal was formed in 2001 under amendment no. 9 to the Entry into Israel Law, which created an instance of judicial oversight for immigration detention.<sup>13</sup> Similar to immigration courts in other countries, the Detention Review Tribunal, in Israel is not subordinate to the Administration of Courts, but rather, an administrative legal instance, that alongside the Appeals Tribunal, constitutes a unit of the Ministry of Justice.

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<sup>13</sup> For more on the work of the Detention Review Tribunals, see the Hotline’s 2014 report “[The Detention Review Tribunals](#).”

The role of the Tribunal is to examine the legality of holding in detention migrants who are residing in Israel without legal status. The Detention Review Tribunal's authority is limited to examining the detention order alone: approving, altering or voiding it (thus releasing the migrant on bail and occasionally various restrictions), in accordance with the grounds stipulated in the law.<sup>14</sup> The adjudicators of the Detention Review Tribunal are not judges, and they are appointed by the minister of justice for a period of five years (which can be extended for another five-year term). In 2021, six adjudicators served at the Detention Review Tribunal: Raja' Marzouq, Yoav Bar Lev, Meirav Fleisher Levi, Assaf Noam, Rachel Sharm Paldor, and Dvir Peleg. By the law, the hearings are held within the detention facilities themselves. In 2021, only one detention facility for migrants operated in Israel – Givon Prison – in addition to the Yahalom Facility at Ben Gurion Airport, used mainly for those denied entry to Israel at the airport.

- **Givon Prison:** located in the city of Ramleh. The wards housing foreigners were opened in 2008 and constitute a part of the compound of prisons in the area, which includes Ayalon Prison, Maasiyau Prison, Neve Tirtza Prison, and Nitzan Prison. In Givon, alongside undocumented migrants, in a separate ward, Israelis convicted of criminal offenses who have at least four more years to serve on their sentence are also jailed. The prison can hold 276 prisoners in total, 138 beds in wards of migrants, 59 are in the female ward (Ward 2), and 79 are in the ward for males (Ward 1).

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<sup>14</sup> The grounds for voiding a detention order: the Tribunal was convinced that the migrant will depart Israel willingly, holding the person in detention may endanger their health, humanitarian reasons, and if the migrant remained in detention for longer than 60 days and cooperates with his deportation proceedings.

- **The Yahalom Facility** for those denied entry: Located at the Ben Gurion Airport and is the only detention facility in Israel administered by the Population and Immigration Authority and not the Israeli Prison Service (IPS).<sup>15</sup> The facility is supposed to hold migrants denied entry to Israel, whether due to a perceived security threat or suspicion that they intend to remain in Israel, until they are deported to the country from which they arrived. Additionally, the facility holds families with minors arrested inside Israel before their deportation. The facility has nine rooms and 52 beds. According to information received from the Population and Immigration Authority, five of the nine rooms fail to meet the criteria set in the High Court of Justice (HCJ) ruling 1892/14 concerning living space for prisoners, and detainees are also unable to regularly go into the facility's small yard.

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<sup>15</sup> On December 21, 2022, the Hotline and the Association for Civil Rights in Israel (ACRI) sent an appeal to the ministers of interior and internal security to transfer the responsibility for running Yahalom to the UPS. According to the response of the attorney general of the Ministry of Internal Security, this is a facility intended "to serve as a place for temporary holding until the flight and departure from Israel" and therefore "it is only natural the facility would be run by the Population and Immigration Authority." The subsequent request by the Hotline for a meeting with the attorney general of the ministry went unanswered. The original [appeal](#) (Hebrew).

## 2021 in Numbers

The prolonged effect of the COVID-19 pandemic was clearly evident in 2021 and manifested in the limited number of arrests, forcible deportations, and denial of entry at border crossings. The limitations imposed on entry to Israel, the global reduction in the number of flights, and the closure of international borders, are the main reasons that led to the drop in the number of those entering and existing in Israel, whether they exited voluntarily or were deported. The restrictions imposed on the ability to deport foreigners led to a reduction in enforcement actions, and additionally resulted in a drop in the manpower available for this task, and re-prioritization of tasks within the various relevant governmental authorities. This chapter will summarize 2021 through quantitative data and examine the main trends concerning the populations this report focuses on: detainees, deportees and those denied entry.

## Migrants Ineligible to Enter Under the Law of Return

### Migrants Residing with Permits

- **Tourists:** In 2021, the trend of a dramatic drop in incoming tourism continued. That year, only about 396,500 tourists arrived in Israel, marking a 54.6 percent drop compared to 2020, while in 2020 itself, a drop of 80 percent was observed compared to the average of the three years prior to the outbreak of the COVID-19 pandemic (2017-2019).

- **Migrant workers:** in 2021, 104,000 migrants with valid work visas resided in Israel, a six percent rise compared to the year prior.<sup>16</sup> Most of them were employed in the caregiving sector (55 percent), while the rest were employed in agriculture (22 percent), construction (16 percent) and other fields requiring specific expertise (seven percent). During the second half of 2021, the bilateral agreement concerning caregivers working in private homes, which was signed in 2018, came into effect. A total of 40 percent of migrants residing in Israel in 2021 arrived as part of agreements, whether bilateral (35 percent), or through arrangements with contracting companies (five percent). Out of this group of migrants, a total of 10,024 workers arrived during 2021.<sup>17</sup>
- **Trainees in the agricultural sector:** In 2021, a new regulation came into force, administering the government's handling of trainees in the agricultural sector who come to Israel for periods of 11 months. Under the new regulation, 2,500 trainees arrived in Israel. These trainees, who reside in Israel on a student visa, are in fact obligated to work full-time in agricultural farms, and often get employers by Israeli farmers are replacements for migrant workers.
- **Infiltrators:** meaning, migrants who have entered Israel from Egypt through irregular border crossings (as the regular ones are closed to them). At the end of 2021, Israel was home to 28,235 migrants with this legal status, 91

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<sup>16</sup> Israeli authorities did not provide data on the number of migrant workers who arrived during 2021 and how many arrived in prior years.

<sup>17</sup> The Call Center for Foreign Workers, Data for 2021, the Center for International Migration and Integration (CIMI).



percent of the citizens of Eritrea or Sudan, who reside in Israel legally, owing to the policy of temporary non-removal to their countries of origin.

- **Asylum seekers:** in 2021, the number of migrants who have filed asylum claims stood at 1,933, similar to numbers from the previous year, and reflects an 80 percent drop compared to the period prior to the COVID-19 crisis. Overall, since 2014, over 69,500 asylum applications were filed in Israel, of them, 28 percent were submitted by Eritrean and Sudanese citizens, who are all eligible for protection from deportation.<sup>18</sup> Among the detainees brought before the Detention Review Tribunal in 2021, 38 percent reported that they had filed an asylum request that was rejected, most of them citizens of Ukraine, Russia and Georgia. The asylum requests of citizens of those countries are summarily rejected,<sup>19</sup> thus contradicting the position of the High Court of Justice that summary rejections of asylum applications should only occur in “clear-cut, extreme and extraordinary cases.”<sup>20</sup>

## Undocumented Migrants

As of the end of 2021, Israel hosted about 50,000 people residing without a valid visa. Of them, about 30,000 entered Israel as tourists and overstayed their visas, with over half of them, entering Israel before 2015,<sup>21</sup> as well as about 20,000 undocumented migrants. These are workers who did not return to their country of

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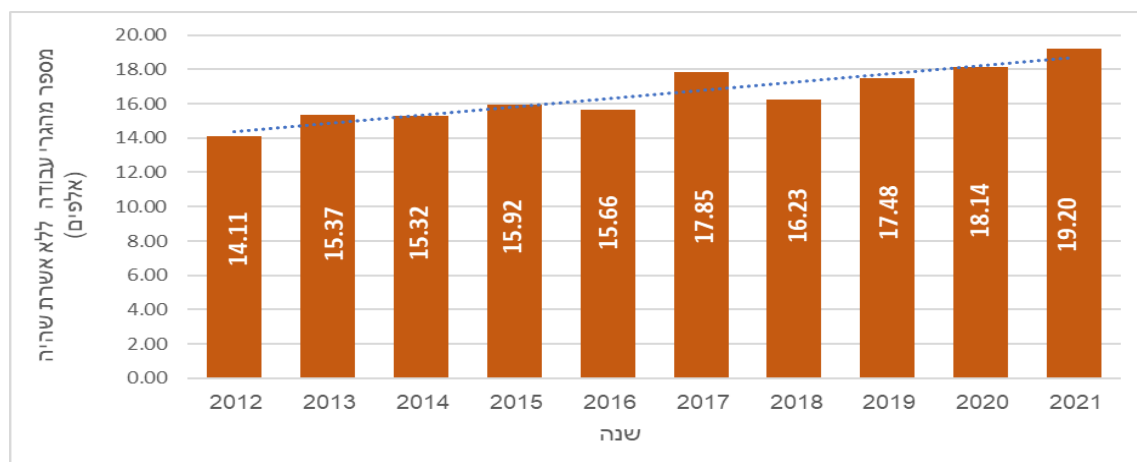
<sup>18</sup> Data on foreign workers issued by the Population and Immigration Authority in the years 2016, 2018 and 2021.

<sup>19</sup> This rejection is carried out in line with the Regulation on Handling Political Asylum Requests in Israel, which determines that no risk will come to asylum seekers from those countries who deported back to their homelands, with the exception of Ukrainians from the regions of Luhansk and Donetsk, under partial Russian occupation since 2014, whose requests need to undergo an “additional review.” This legal opinion concerning Ukrainian citizens was voided following the large-scale Russian invasion of Ukraine in February 2022.

<sup>20</sup> See ruling on Administrative Appeal 1440/13 Chima vs. the State of Israel.

<sup>21</sup> Israel’s Central Statistics Bureau: Foreign citizens who entered Israel on a tourism visa since 2008 and remained in Israel after the expiration of their visa, as of the end of 2020. <https://tinyurl.com/3ez7r2ux> (Hebrew)

origin after completing the period of their employment in accordance with their work agreement, those who left their employer and the sector to whom their visa was linked, or women who became pregnant or refused to separate from their baby, as required by the Immigration Authority's regulations. Graph 1 shows the number of migrant workers residing without a permit over the past decade, and changes over time. The graph shows that since 2012, the number of migrants workers without a valid permit rose by 36 percent, from about 14,100 migrants in 2012 to 19,200 migrants in 2021.

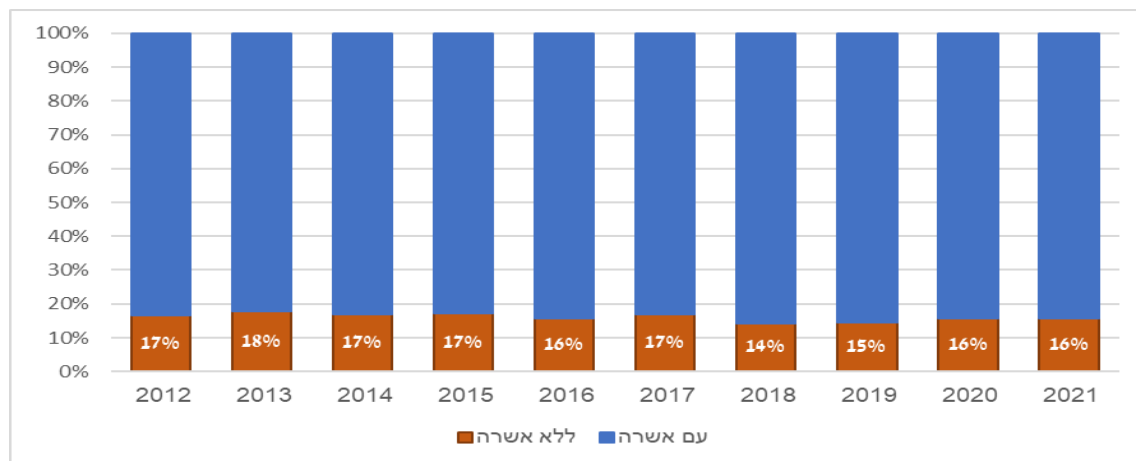


Source: Data on Foreigners in Israel 2021, the Population and Immigration Authority

Graph 1: The number of migrant workers without a valid permit (in thousands)

Graph 2 shows the percentage of migrant workers without a valid permit out of the total number of migrants over the past decade. The graph clearly shows that the vast majority of migrant workers return to their homelands. Additionally, it is possible to observe that the changes in the number of those residing without a visa are miniscule, and the overall trend is static, despite the increase in the total number of migrants, as Graph 1 shows. This provides an indication about the intensity and effectiveness of enforcement and deportation procedures, and it

implies that there is a certain number of undocumented migrants that the State is willing to tolerate.



Graph 2: the share of undocumented labor migrants out of the total number of migrant workers

## Detained Migrants

Throughout 2021, the trend of a reduction in the overall number of detained migrants, which started the year prior due to the COVID-19 pandemic, continued apace.<sup>22</sup> As of November 2021, Givon Prison held 73 detainees, of them 60 men and 13 women.<sup>23</sup> At the end of December 2021, the number of women detained in the facility rose to 34.<sup>24</sup>

A cross-reference the data concerning the number of deportees and the number of detainees brought to a hearing before the Detention Review Tribunal indicates that about 41 percent of detainees were held in prison for four days or more. If all

<sup>22</sup> This trend coincides with a long-term trend in the number of detained migrants in Israel, which started in 2018 with the shuttering of the Holot Detention Facility, and the cancelation of the plan to deport asylum seekers to Rwanda and Uganda, and following the ruling of the High Court of Justice in the case 1892/14, which set timelines for a reduction in overcrowding of all prisons in Israel.

<sup>23</sup> According to data provided by the Public Defenders' Office in January 2022.

<sup>24</sup> See the [protocol](#) (Hebrew) of a visit held by the Knesset Special Committee on Foreign Workers to Givon Prison, December 30, 2021.

decisions issued by the Tribunal are published, as is obligated by law, and assuming that all the detainees are brought before judicial oversight within 96 hours since they received a deportation order, it appears that over half of the detainees left Israel within a few days, and before appearing before an adjudicator, despite the limited number of flights available due to the pandemic.

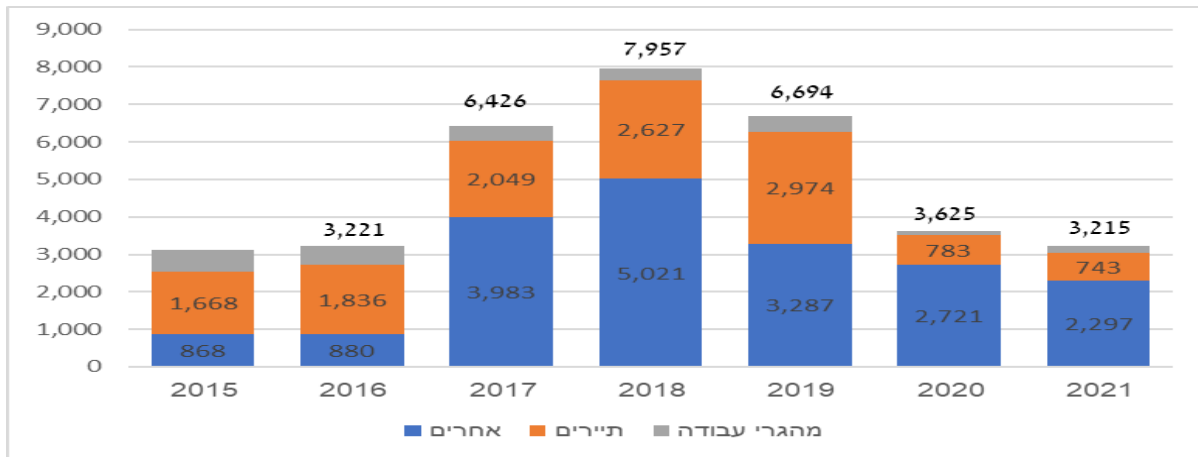
In 2021, the Detention Review Tribunal held 2,862 hearings to 1,336 detainees,<sup>25</sup> of them 46 percent women and 54 percent men. In 2021 too, as in prior years, the country whose citizens made up the largest group of detainees was Ukraine (345 men and women). Followed by a descending order among the men: Georgia (129 men), Thailand (90 men), Russia (69 men) and Turkey (60 men), and among women: Georgia (99 women), Russia (92 women), Moldova (62 women), and the Philippines (39 women). The vast majority of hearings were held by a single Adjudicator, Raja' Marzouq (75 percent of hearings).

## Deported Migrants

The deportation orders from Israel are given to migrants who violated the conditions of their stay permit and to migrants who lack a stay permit. As can be seen in Graph 3, in 2021, the number of deportees from Israel stood at 3,215 people, about a ten percent drop compared to the year prior, and a 55 percent drop compared to the average of the three years prior to the outbreak of the COVID-19 pandemic in Israel (2017 – 2019).

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<sup>25</sup> The data was drawn from the database of ruling issued by the Detention Review Tribunal on the website of the Ministry of Justice.



Source of the data: Data on Foreigners in Israel 2021, Population and Immigration Authority

Graph 3: number of deportees over time, with a breakdown of the migrant population

During 2021, Israel deported 175 migrant workers who violated the terms of the work permit, 743 migrants who entered Israel as tourists, and 2,297 migrants defined by the Population and Immigration Authority as “the rest of the foreigners.” According to the Immigration Authority, this includes mostly those who held a temporary residency permit under article 2(A)5 of the Entry into Israel Law.

It is likely that this information was worded incorrectly, since the migrants holding this type of visa reside in Israel legally, and cannot be removed. This visa is given to citizens of Eritrea, Sudan and the Democratic Republic of Congo due to the non-removal policy of citizens of those countries, as well as other asylum seekers awaiting a decision on their application for political asylum. Therefore, it is likely that most of the deportees among “the rest of the foreigners” are asylum seekers who lost the 2(A)5 visa they possessed, because their asylum applications were rejected, and they are citizens of countries that are not Eritrea, Sudan, or Congo, and hence can be deported.

In our experience, many of these migrants arrived in Israel at the encouragement of organized rings whose purpose is to bring migrant workers while bypassing the mechanisms and quotas that regulate the arrival of migrant workers to Israel. These rings encourage the migrants to file asylum applications to extend the time of their stay in Israel, allowing them to stay and work while the requests are being examined. As mentioned, the data of the Population and Immigration Authority indicates that many of them indeed file asylum claims. The high number of the deportees defined as “the rest of the foreigners” raise the concern that as part of the deportation process, the Immigration Authority does not make any meaningful and systematic effort to identify migrants who fell victims to human trafficking and modern slavery, who could have been eligible to this legal status of survivors and rehabilitation services in Israel.<sup>26</sup>

## Migrants Denied Entry

Articles 9 and 10 of the Entry into Israel Law establish the authority of border control officers to delay and even prevent the entry of foreigners arriving through international border crossings.<sup>27</sup> The grounds for refusing entry are numerous but fall under two main categories: (A) considerations relating to national security, public peace or public order; (B) considerations related to preventing illegal immigration.

The limitations on entry that were imposed following the outbreak of the COVID-19 pandemic, which resulted in a drastic drop in the number of foreigners entering

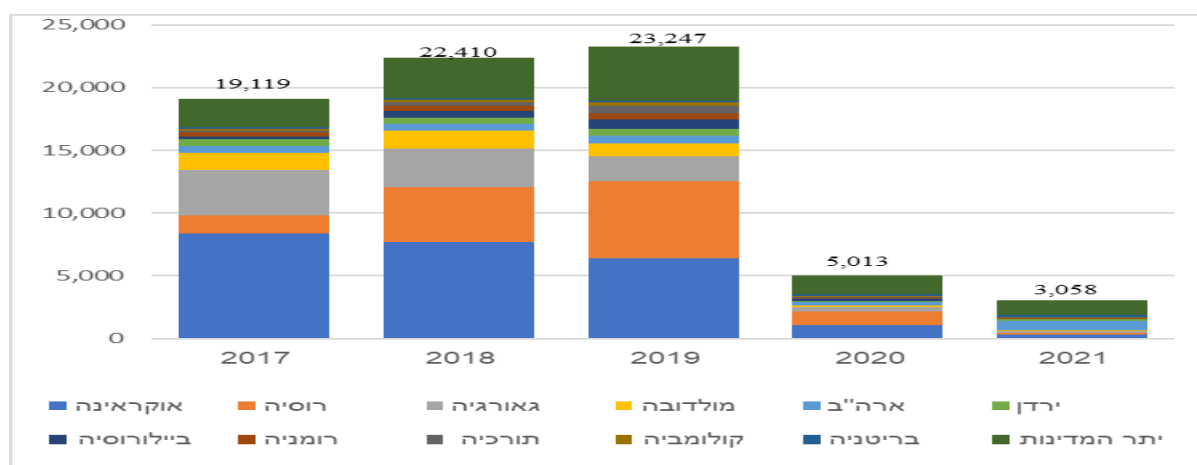
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<sup>26</sup> See more in the Hotline’s report, [“Through Hidden Corridors”](#): New trends in human trafficking which exploit the asylum system in Israel, September 2017.

<sup>27</sup> See the Population and Immigration Authority’s [Regulation](#) on Handling those Passing Israel’s International Border Crossings (Hebrew).



Israel, also manifested in a sharp decline in the number of foreigners whose entry was denied, as can be observed in Graph 4. In 2021, Israeli authorities denied the entry of 3,058 foreigners, marking a 40 percent drop compared to the prior year, and an 80 percent drop compared to the average of the three years prior to the outbreak of the Coronavirus (2017 – 2019).



Source: Data on Foreigners in Israel 2021, Population and Immigration Authority

*Graph 4: Migrants denied entry over the years, detailing the leading countries of origin*

Examining Graph 4 indicates that beyond the dramatic drop in the number of migrants denied entry since the outbreak of COVID-19 in Israel (2020-2021), this period also saw a major shift in the identity of the countries whose citizens were denied entry. Unlike the years prior to the pandemic, when citizens of Ukraine, Russia and Georgia constituted the largest groups of migrants denied entry, in 2021, the largest group of those denied entry were American citizens, and the main reason was the COVID-19 pandemic (74 percent of those refused). Citizens of Ukraine were the second largest group, making up just ten percent of the total of those denied entry. Between 2017 until 2021, the percentage of migrants whose entry was denied out of the total number of foreigners who reached Israel's border

crossings stood at nine percent.<sup>28</sup> In years prior, the Population and Immigration Authority would regularly transfer those denied entry to the Yahalom Detention Facility, but in October 2021, during a visit conducted by the Knesset's Special Committee on Foreign Workers at the facility, no people were held there.

During 2021, the Hotline learned that those denied entry are no longer brought to Yahalom, but are held at the airport itself until they are removed, even if they are unable to depart for several days. In early August 2021, we appealed to the Immigration Authority to understand where and in what conditions are those denied entry being held. This address remained unanswered. The Immigration Authority did clarify that individuals infected with COVID-19 were not held at Yahalom during 2021, but we did not receive information concerning the number of detainees tested for COVID-19, or the number of those found to be positive for the virus. We were told that no regulation was written on how to handle sick migrants or detainees requiring isolation so as not to infect others.<sup>29</sup>

In recent years, the Hotline repeatedly warned that Israel's asylum system is inaccessible to individuals seeking to file an application at the Ben Gurion Airport, although the deportation of individuals who state that their life or liberty will be at risk if deported to their homeland violates refugee law, as well as the non-refoulement principle, which is part of customary international law, and obligates all nations, including Israel.<sup>30</sup> In a response to a freedom of information request, the Immigration Authority informed us that in 2021, no asylum applications were

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<sup>28</sup> Data on foreigners whose entry to Israel was denied, 2022, the Knesset's Research and Information Center.

<sup>29</sup> Response of the Population and Immigration Authority to a freedom of information request concerning the health status of detainees held at the Yahalom Detention Facility. A response was provided on April 7, 2022. The request was filed on March 31, 2022.

<sup>30</sup> For a detailed [explanation](#), see on the website of the Hotline.

filed by detainees held at the Yahalom Detention Facility. However, the Authority claimed that the facility has signs in different languages with all the relevant information on how to file an asylum request.<sup>31</sup> However, during a visit that the Knesset's Special Committee on Foreign Workers, the Chairwoman of the Committee, MK Ibtisam Mar'ana, criticized the Immigration Authority for not making information on how to apply for asylum and access to legal aid, as well as the rights of detainees held at the facility, more available to detainees. "The forms to apply for asylum were not easily available at the facility. They should be printed out in all languages and given out to the detainees," she stated.<sup>32</sup>

As mentioned, Yahalom is the only detention facility in Israel managed by the Population and Immigration Authority and not the Israeli Prison Services. Therefore, access to it is highly restricted, and no official visits are conducted to it in accordance with the Order of Prisons. Hence, the information available concerning the detention conditions in Yahalom is more limited, compared to Givon Prison, where official visits are held on a regular basis. In this context, it is worth mentioning that in 2017, 2019 and 2020, no oversight visits were conducted at Yahalom at all.<sup>33</sup>

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<sup>31</sup> Response of the Population and Immigration Authority to a freedom of information request concerning asylum proceedings. Response provided on May 9, 2022. The request was filed on March 13, 2022.

<sup>32</sup> See the [protocol](#) (Hebrew) of the visit of the Knesset's Special Committee on Foreign Workers to the Yahalom Facility, October 28, 2022.

<sup>33</sup> See the annex to the [appeal](#) (Hebrew) of the Hotline to the minister of interior and minister of internal security concerning shifting the responsibility of managing Yahalom to the IPS.

## Immigration Detention

The Entry into Israel Law stresses that the purpose of holding migrants in detention is not punitive but preventative and is intended to ensure the departure of a person residing in Israel illegally, in accordance with the deportation order issued against them. Under Israeli law, the default policy toward migrants who received a deportation order is to place her in detention, unless one of the four grounds for release on bail exist in her case: (1) the illegal stay in Israel is based on a mistake; (2) the undocumented migrant will depart Israel at the pre-determined time; (3) based on medical or humanitarian grounds; (4) if the migrant remained in detention for at least 60 days (uninterrupted), if the release of the detainee does not pose a threat to the public and the detainee is cooperating with his removal.

As mentioned, in 2021, a significant drop occurred in the number of detained foreigners, but the main issues of concern that were the focus of prior Hotline reports were negatively affecting migrants in 2021 as well: poor detention conditions, lack of access to asylum proceedings and lack of proper translation to make those proceedings accessible; (non) deportation of migrants detained for prolonged periods; detention of migrants who can not be deported; and detention of vulnerable migrants. Additionally, this report dedicates a section to the ramifications of the COVID-19 pandemic on immigration detention in Israel.

## Conditions in Immigration Detention Facilities

The official body providing oversight to detention conditions in Israel, the Public Defender's Office, found the detention conditions in Givon Prison to be reasonable, determining that the staff display "a great deal of care and attention to the living

conditions and welfare of those residing in the prison.”<sup>34</sup> They also found that the women’s ward was clean and well-maintained, the yard had potted plants, and the rooms met the standard for prisons (4.5 square meters per detainee, as set by the High Court of Justice in a 2017 ruling), and included small closets, a table, a shower, a bathroom, and heating and cooling appliances.

The men’s ward, on the other hand, was neglected, the size of the rooms failed to meet the standard (3 square meters per detainee), there is a small yard whose floor is cracked, which the commander of the prison committed to fixing in 2022. During 2021, the Hotline received complaints from male detainees concerning absence of heating appliances and blankets during winter, as well as complaints about bugs. The problem of bed bugs, which keeps reoccurring every year, was mentioned in the report of the Public Defender’s Office. In response, an IPS sanitarian stated that the issue was examined and that “a significant improvement has been observed on this matter.”<sup>35</sup>

During the COVID-19 pandemic, we paid close attention to the policies implemented by authorities to protect detainees’ health and the health of those around them. Givon Prison operates in accordance with Ministry of Health guidelines, and we observed that all those entering the prison are tested and remain in isolation 72 additional hours to prevent the spread of the virus.<sup>36</sup> During 2021, 1,184 detainees were tested for COVID-19, of them 631 men and 553

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<sup>34</sup> Representatives of the Public Defender’s Office – Central Division, conducted a formal visit to the prison on November 21, 2021. The report summarizing the visit was provided to the Hotline in response to a freedom of information request. The quote appears in page 11 of the report.

<sup>35</sup> From a response of the IPS to the Public Defender’s Office report.

<sup>36</sup> See fn 25.

women. Two detainees tested positive, and their cases were addressed by the medical department at the prison.<sup>37</sup>

Vaccines were made available to all detainees, and all those who desired so, were vaccinated during 2021. Protocols of Detention Review Tribunal hearings indicate that detainees took advantage of this opportunity, as was claimed by the representative of the Population and Immigration Authority in a hearing concerning a request for release from prison: “all those who enter Givon [Prison] undergo a Corona test in the infirmary, and most of those held in detention in Givon are vaccinated.”<sup>38</sup> However “it was forbidden to vaccinate detainees not interested in being vaccinated, but they undergo tests on a regular basis.”<sup>39</sup> The director of the clinic at Givon Prison reported that the vaccination of detainees is logged into the Ministry of Health’s system based on the passport number of the detainee.<sup>40</sup> This creates difficulties for detainees who do not possess a passport, or hold a passport no longer valid. In these cases, the vaccination ID includes the detainee’s IPS number, an identification number that is not accepted in the countries to which migrants are deported.

## Access to the Asylum System and Lingual Accessibility in Prisons

The right to asylum and protection is codified in the UN Convention Relating to the Status of Refugees (1951), which obligates the states who have ratified it, Israel among them, to provide access to asylum and all the information required for

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<sup>37</sup> Response of the IPS dated April 26, 2022, in response to a freedom of information request filed by the Hotline.

<sup>38</sup> See fn 25.

<sup>39</sup> Response of the Ministry of Interior. See the [protocol](#) (Hebrew)

<sup>40</sup> See fn 25.



applying for asylum. During 2021, 28 of the detainees in Givon Prison (25 men and three women) had pending asylum claims.<sup>41</sup> This number includes both asylum claims filed while in prison, through employees of the Enforcement and Foreigners Administration of the Ministry of Interior based in the prison, as well as asylum applications filed prior to the detention, and no determination was made on them by the time the migrant was jailed in Givon.

However, we found that even when filing asylum applications is possible in detention, the proceedings are not carried out properly, and oftentimes, the detainees do not realize that this is a procedure separate from the detention and unrelated to it. For example, Y. K. from Belarus,<sup>42</sup> who was later represented by the Hotline, described the asylum interview that was conducted with her while in detention, without prior preparation or an explanation about the purpose of the interview, following which her asylum claim was rejected. “I did not understand that I was interviewed for the asylum interview, and I was afraid to speak because I was previously questioned by a [police] investigator... I struggled to answer the questions. I was depressed about my situation...” Following the intervention of the Hotline, and due to the multiple failings in the asylum interview process, the asylum application was re-examined by the Ministry of Interior.

All data show that detainees lack information in their language concerning their status and rights. Authorities have contracted a company providing translation services, but its employees are called to detention facilities only on special occasions. Therefore, the translation of daily interactions is done informally, and is based on the goodwill of those involved, regardless of their language competency

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<sup>41</sup> See fn 32.

<sup>42</sup> See protocol 121-99-2021-005756 of detainee number 9155145.

and translation skills, as the commander of Givon Prison described the daily running of the facility:

*I have a prison officer who is from Russia, and he's always by my side, translating all Russian language [interactions]. I have Ethiopian prison guards; I have guards who can help. You will also see in the wards a board, and it has all of the world's languages [exaggerated] concerning the basic things that the resident [detainee] needs. [How to call for] the director of the ward, 'I need soap', it's translated to him, he understands. I even use the detainees [as translators]. Just as an example, I had two prisoners from a country, one speaking Hebrew and the other not, so I used the assistance of the one speaking Hebrew. I told him to translate my answers, and he translated it to him.<sup>43</sup>*

Similarly, the head of the social work service in Givon Prison described how the daily communication with the detainees is carried out “through all sorts of creative ways. Those who do know Hebrew, especially the Eritreans who have been in the country for a long time. There are all sorts of ways, through Google Translate, through people who speak the language, through prison guards...”<sup>44</sup>

Those who apply for asylum in prison, most often rely on actors providing informal translation of varying qualities. This is a fateful procedure for the migrant and requires knowledge and expertise. In response to a request filed under the freedom of information act, the Immigration Authority claimed that “to translate the forms [to file asylum requests] in prison, the detainees can use friends, relatives or an attorney who represents him.”<sup>45</sup>

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<sup>43</sup> See fn 25.

<sup>44</sup> See fn 25.

<sup>45</sup> See fn 32.

This state of affairs is also described by the report of the official body conducting oversight of prisons, the Public Defender's Office. Their report did praise the awareness of the prison staff of the detainees' language difficulties and their efforts to address this, which manifested in a myriad of ways to make information accessible. However, according to them, IPS personnel indicated that these efforts are not systematic or codified in any work plan and is more of an improvised and disorganized effort. Among other things, the Public Defender's Office mentioned that information on regulations and detainee rights is translated into "many languages," but also that authorities rely on other detainees and prison guards as translators, as well as the use of technological means, such as Google Translate.<sup>46</sup> The Chairwoman of the Knesset's Special Committee on Foreign Workers, MK Ibtisam Mar'ana, also found that the prison's staff are making a serious effort to facilitate detainees' access to information in their languages, but that those efforts are insufficient. She called on the Ministry of Internal Security to "provide additional manpower to provide translator and enable communication with the detainees."<sup>47</sup> Multiple researchers show that providing information in the relevant languages to migrants is crucial for their ability to realize their rights,<sup>48</sup> and this is particularly the case when it comes to a vulnerable population that is held in detention, isolated from their environment and set for deportation; for them, having access to information in the relevant language may be the determining factor for whether they will receive protection, or be removed to a country where their life would be in danger.

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<sup>46</sup> See fn 35.

<sup>47</sup> See fn 32.

<sup>48</sup> See for example Pandey et al., Impacts of English language proficiency on healthcare access, use, and outcomes among immigrants: a qualitative study. *BMC Health Serv Res* 21, 741

## Detention for Prolonged Periods

The overall trend of a reduction in the number of detainees owing to the COVID-19 pandemic, which started in 2020, persisted into 2021, and the number of detainees held for periods longer than a year dropped to ten people.<sup>49</sup> Four of them remained in detention for longer than a year, two of them for over two years, and four others for other three years. As mentioned, the Entry into Israel Law restricts the detention to 60 days, with some exceptions. As in previous years, the reasons for prolonged detention include lack of diplomatic relations between the migrant's country of origin and Israel, which prevent the issuance of travel documents, and due to non-cooperation of the detainees with the process of deportation, which in some cases stems from the danger the detainees believe they will face if returned to their country of origin.<sup>50</sup> It is worth stressing yet again the destructive effect of long-term detention on the physical and mental health of migrants, which worsens as the period of detention grown longer, to the point that the trauma at times can not be overcome.<sup>51</sup>

As of the end of 2021, the detainee held for the longest period is M. L. from Ethiopia. He had entered Israel as a tourist in 2008. During his first years in the country, he was in a relationship with an Israeli citizen, and the couple had two children. On February 2, 2017, he was arrested for illegally residing in Israel, and

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<sup>49</sup> This does not include citizens of Sudan who can not be deported from Israel, who will be addressed in the next sub-section. Five of those detainees are Eritrean citizens, two are Russian nations, one is from Ukraine, one from the Ivory Coast and one migrant is from Guinea.

<sup>50</sup> See the Hotline's report, [Forgotten in Prison: The Prolonged Detention of Migrants](#), December 2016.

<sup>51</sup> Studies found that prolonged detention has long-term effects of migrants, many years after their release. Among other symptoms, migrants continued to experience a sense of injustice and insecurity, difficulties in relationships, dee changed in self-perception and disordered mental health. Depression, demoralization, attention deficit, memory problems, and permanent anxiety were also frequently reported. For more, see for example Coffey GJ, Kaplan I, Sampson RC, Tucci MM. The meaning and mental health consequences of long-term immigration detention for people seeking asylum. *Soc Sci Med*. 2010 Jun;70(12):2070-2079. doi: 10.1016/j.socscimed.2010.02.042.

orders of deportation and placement in detention were issued against him. His detention period was extended, again and again, in over 100 hearings during more than four years, after the various adjudicators found, according to them, no grounds to release him due to his non-cooperation with his deportation.

The multiple protocols of M. L.'s case indicate that both the Detention Review Tribunal and the representatives of the Immigration Authority in the hearings operated mechanically, without considering for how long it is justified to keep him detained, without taking into account whether he is likely to be deported, and without examining alternatives to detention. Above all else, the handling of the case shows the disregard for the heavy personal toll paid by a person held in detention for over four years. More so, authorities did not take into consideration the right of the detainee to family life with his children in Israel, or the harm caused to the children growing up with their father imprisoned.

Another extreme case is of U. D. from Guinea who entered Israel in 2006 crossing the border from Egypt. We had mentioned the case in previous reports and U. D. remained in detention throughout 2021. On March 28, 2018, A. D. was arrested, and orders of detention and deportation were issued against him. In a hearing held on February 26, 2019, he informed the Detention Review Tribunal: "I agree to return to my country; Six days ago, I signed the documents the Ministry of Interior had asked me to sign." He repeated this statement, again and again, in every hearing held to him during his years of incarceration.

During a hearing held on April 2, 2019, Adjudicator Liron Krispin Boker remarked: "the response of the Ministry of Interior indicates that the removal of the detainee to his country of origin reached a dead end... We are in a situation in which, on the one hand, there is no capacity to remove the detainee to his country, and on the

other hand, there is no action that the detainee can take that he has refused to carry out while in detention to facilitate his removal.” She therefore concluded the hearing: “there is no removal process set to occur soon that would end his detention, and therefore, the legal basis for his detention is undone.”

However, a month later, he remained in detention, and the hearing focused on an effort to deport him to a country other than Guinea. In a hearing held on June 26, 2019, the adjudicator decided to release U. D. on bail, a release that occurred only six months later, in December 2019, after guarantors were found. However, before the release, and when U. D. was unable to cover the payment of the bail, the Immigration Authority attempted to deport him. The detainee refused to get on the flight and explained: “they wanted to deport me to Guinea with Israeli documents. I am certain that if I flew with these documents, I would get into trouble in Guinea. To answer the question of the Tribunal, I am not Israel and I do not agree to fly with Israeli documents. Guinea is a Muslim country where they don’t love Israel, and I’m sure they would have caused me problems if I had arrived with Israeli documents.” Since U. D. refused to fly with Israeli documents, the decision to release him was voided on December 26, 2019. From this point on, for the next two and a half years, until the end of June 2022, U. D. remained in detention.<sup>52</sup>

## Detention for Migrants who Can Not be Deported

In 2021, as in years prior to it, Israel applied a temporary non-removal policy toward citizens of Eritrea, Sudan and Congo. Migrants from those countries, who can not be deported, unlike other migrants, are placed in administrative detention if they

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<sup>52</sup> Quotes from protocols of hearings for detainee no. 1240636.



are suspected or convicted of committing criminal offenses. This detention is made possible owing to the Regulation on Handling Infiltrators Involved in Crime, which allows Israel to place migrants in administrative detention although it would not lead to their deportation. During 2021, 64 migrants were held in administrative detention under this regulation after completing their sentence for a criminal offense: 38 are Eritrean citizens, and 26 are from Sudan. Examining the Detention Review Tribunal protocols of these detainees raises two central and inter-related issues, which deserve consideration (and were mentioned in previous reports):

1. The administrative detention essentially means extending the period of imprisonment as set in the sentencing by a criminal court, after that court already took into consideration all relevant circumstances: the public interest, the severity of the crime, the individual circumstances, and the criminal past of the detainee. In other words, migrants who can not be deported, become involved in criminal proceedings, are not equal before the law compared to other residents of Israel, and face a harsher sentence due to their legal status.<sup>53</sup> An illustrative example of this injustice is the case of F. Q., a citizen of Eritrea, who was transferred to administrative detention on June 21, 2021, after serving seven months for assaulting his partner. This was his first offense. He was held in Givon Prison for additional three months, until September 19, 2021, when he was released on bail. This means that F. Q. served ten months in prison despite being sentenced to only seven.<sup>54</sup>
2. A second issue worth considering is the State's use of administrative detention whose legal purpose is entirely different. As mentioned, the

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<sup>53</sup> For more on the administrative detention of migrants who can not be deported who are involved in criminal proceedings, see the Hotline's report: [No Way Out: De Facto Stateless Migrants in Israel](#), October 2020.

<sup>54</sup> See the protocols in the case of prison number 1448013

purpose of immigration detention is not punitive, and is intended only to facilitate the deportation of the migrant. Therefore, detention is “impermissible when there is no actual process of removal, and when the prospect of deportation is not in sight.”<sup>55</sup> The case of Sudanese, Eritrean and Congolese nationals, who can not be deported to their homelands, clearly fit these criteria. Despite this, the Supreme Court approved administrative detention in such cases.<sup>56</sup>

In practice, administrative detention under the Criminal Procedure is the only way the state decided to address the unique challenges stemming from and contributing to the involvement in the crime of migrants who can not be deported. However, data indicate that this tool does not provide an appropriate solution to this issue: of the 64 detainees held in administrative detention due to involvement in criminal proceedings during 2021, 47 had prior convictions, and some were even defined as recidivists. This means that 73 percent of those held in administrative detention under the Criminal Procedure came in and out of prison in what can be described as a revolving door.

Studies indicate a link between traumatic experiences and exposure to violence as a victim, and violent and criminal behavior as a perpetrator.<sup>57</sup> Indeed, communities of migrants who can not be deported – asylum seekers from Eritrea and Sudan – have been exposed to physical and emotional violence in their countries of origin and during their journey to escape it.

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<sup>55</sup> See the ruling of Justice A. Fogelmann in the High Court of Justice ruling on the case 8425/13 Eitan – The Center for Israeli Immigration Policy vs. the State of Israel.

<sup>56</sup> See Administrative Appeal 4496/12 Habtom vs. the Ministry of Interior.

<sup>57</sup> See for example a collection of academic studies on the subject: Offending behaviour: the role of trauma and PTSD, European Journal of Psychotraumatology 2012, 3

However, during their administrative detention, they are not provided with any rehabilitation or treatment that would allow them to leave the criminal life behind and reintegrate into normative society. Additionally, the rehabilitation programs available in prisons are not adapted culturally or linguistically to them. Finally, the Law on the Authority for Rehabilitation of the Prisoner (1983) determines that redhibitory services of this Authority are only available to residents of Israel. As a result, not only does the state ignore the needs of the detainees, but it also disregards the well-being of their families and community, since these detainees, some of whom are dangerous, are eventually released back into society since the only tools the Detention Review Tribunal possesses are continuing to hold them in administrative detention or releasing them on bail. Undocumented migrants are ineligible for any of the support services the State provides to released prisoners,<sup>58</sup> while private organizations that offer redhibitory care, such as the New Start Center, are too expensive for most detainees among asylum seekers to be able to afford their services.

## Detention of Vulnerable Populations: Children, Human Trafficking and Modern Slavery Victims, and Those Affected by Mental Health Disorders

Governmental authorities around the world often handle migrants as a vulnerable group more likely to endure psychological, physical, economic and social harm, and less likely to possess tools to manage those stressors. However, the degree of vulnerability is not homogeneous, and some migrant communities are at greater

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<sup>58</sup> With the exception of sex offenders who are handled under the Law for Protecting the Public from Commission of Sex Crimes.

risk, and therefore need to be handled with greater care. Among those populations are minors, survivors of torture and human trafficking, women, pregnant women, LGBT folks, people suffering from physical disabilities and mental disorders, and stateless persons – populations whose unique rights are stipulated in various international conventions, which clearly state that their detention should be avoided.<sup>59</sup> In 2021, we identified a limited number of detainees belonging to one of the abovementioned groups. We believe the small number of such detainees stems from the overall trend of reduction in the number of migrants in detention, and not due to a substantive policy change.

Minors: The Entry into Israel Law does not deal specifically with the detention of minors, and as of the writing of this report, no regulations were stipulated concerning this group. In 2021, as far as we know, no children were placed in detention.

Survivors of Modern Slavery, Torture and Human Trafficking: A government decision stipulates that when an individual may be a victim of human trafficking or modern-day slavery, authorities must turn to the Human Trafficking Unit and Investigative Division within the Israeli Police.<sup>60</sup> However, it appears that many victims are not recognized by employees of the IPS, representatives of the Immigration Authority, or Detention Review Tribunal adjudicators. As a result, on many occasions, potential victims are held in detention and have even been

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<sup>59</sup> For example, the UN High Commission for Refugees (UNHCR) developed [criteria](#) for detention of asylum seekers, and instructed countries to avoid jailing pregnant women, particularly in the last months of their pregnancy. Also see a [report](#) by the Special UN Envoy for Human Rights of Migrants, which recommends avoiding the detention of stateless migrants, since there is no country that protects them to which they can return. Children too should not be held in detention, and alternatives to detention should be used in their case. See UN High Commissioner for Refugees (UNHCR), [Options Paper 1](#): Options for governments on care arrangements and alternatives to detention for children and families (first published 2015, revised version 2019), 2019.

<sup>60</sup> See government [decision](#) no. 2806 (Hebrew) issued in December 2002.

deported without proper care. Protocols from Detention Review Tribunal hearings from 2021 attest to cases in which the testimony of the detainees should have raised the suspicion that the migrant is a victim of modern-day slavery or human trafficking. Three of those cases are detailed below:

- A migrant worker from Moldova who arrived in Israel in April 2011 as a caregiver. On June 7, 2021, a detention order was issued in her case, and the next day, a deportation order. During the Detention Review Tribunal hearing, she stated that “she served them [the employers] for ten years without being paid even a single shekel. They charged money from her for the right to stay in Israel...”<sup>61</sup> On June 15, 2021, she was deported to her country of origin without her testimony being examined by authorities.
- A migrant from Thailand who arrived in Israel to work in agriculture was caught working in a restaurant. According to him, he worked there as a volunteer without pay, and was promised to later receive paid work in agriculture.<sup>62</sup>

In both abovementioned cases, not only did the prison service personnel was not sufficiently attentive to the circumstances in which the migrants lived in Israel before their detention, but the Tribunal adjudicators too did not pay heed to the testimonies, and they did not raise alarm among anyone, and no further examinations of these cases were conducted. It appears that the only goal guiding the adjudicators was to facilitate the deportation of the detainees as soon as possible, which is what indeed happened in all three cases.

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<sup>61</sup> From the protocol 121-99-2021-004179 of detainee no. 9158307.

<sup>62</sup> Case of detainee no. 9167633.

A rare case in which the Tribunal adjudicator did identify a migrant woman as a potential trafficking victim based on her testimony, was the case of a migrant from Ukraine who entered Israel on a tourist visa in June 202. On July 26, 2021, a detention order was issued in her case, and the day after, a deportation order. On July 28, 2021, a hearing was held at the Detention Review Tribunal, during which her detention order was extended. During the hearing, the detainee testified that she “was in Israel in slavery-like conditions for almost a year, and was not paid any money, in street [REDACTED] in Netanya. According to her, she worked as a cleaner for [REDACTED]. They did not let her leave without a chaperon. According to her, she arrived in Israel to travel, and stayed in Israel because she was offered work, but she was used...”<sup>63</sup> Adjudicator Assaf Noam decided that there are no special humanitarian reasons to release her, yet he sent the hearing's protocol to the Ministry of Justice's Unit for Combatting Human Trafficking. The Hotline found out later that she was recognized as trafficking victim and entered a rehabilitation shelter.

The poor track record of identifying victims of human trafficking and modern slavery may stem from the lack of a clear regulation or procedure on this matter, as described by the Intra-ministerial Coordinator for Combatting Human Trafficking, Adv. Dina Dominitz, during a visit of the Knesset's Special Committee on Foreign Workers at Givon Prison:

*There is a regulation vis-à-vis the police that you refer [cases]. This regulation, I must say, is only oral. It works because we preserve it and we work on a personal basis every time, vis-à-vis [Adv.] Sigalit [Zohar, the head of the Legal*

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<sup>63</sup> From protocol 121-99-2021-006715 dated July 28, 2021, of detainee no. 9161425.

*Aid Department assisting human trafficking victims, within the Ministry of Justice], vis-à-vis Legal Aid [at the Ministry of Justice] and the representatives of the Police. There is a written regulation, but there is no identical regulation at the Immigration Authority that determines that when a person has been in detention for some time, if such a suspicion arises [to trafficking], it needs to be referred to the Police, and within a certain time period, the Police ought to make a decision. This is an issue that the Immigration Authority has tried to facilitate, we tried to advance it too...*

*No, I'm saying that big picture, this works, but we do need to strive for it [the regulation] to be written down, also according to our [international law] obligations, also according to the [international] conventions [ratified by Israel], we need to have a written regulation among the regulations of the Immigration Authority that when a person is received at a detention facility ahead of removal [deportation], and the suspicion arises that this is a trafficking or slavery victim, whether for prostitution, or forced street peddling, or labor of foreign workers, in all the contexts we are trying to train them [personnel] on, then they need to turn to the person in charge, in line with the governmental decision, the person in charge with the police, who can determine whether this person is a trafficking victim or not. The Police officer in charge of this needs to make a decision whether this is a trafficking victim, and she gives a document recognizing this, and the person is released to shelters for continued protection and assistance.*

The Head of the Enforcement and Foreigners Department at the Immigration Authority, Yossi Edelstein, agreed with Dominitz, and claimed that the Police is not cooperating in efforts to write such a regulation.<sup>64</sup>

Individuals suffering from mental health disorders: detainees who suffer from psychiatric disorders may take decisions that do not further their interest, and even endanger it. In recent years, we encountered cases in which detainees suffering from severe mental disorders were held in prolonged detention, even when they refused to appear at hearings, or when it was clear they did not understand the proceedings concerning them. Despite this, adjudicators did not address these warning signs, and the procedures continued as regular.

One of the striking examples is S. L. from Gambia, who was issued a detention order in January 2020, and whose case was described in detail in our previous monitoring report.<sup>65</sup> S. L. suffers from psychiatric disorders, a fact known to Israeli authorities. He is treated with psychiatric medications, and was previously forcibly hospitalized due to a psychotic break. This has not stopped Israeli authorities from attempting, again and again, to deport him to his country of origin. The adjudicator at the Detention Review Tribunal kept him in detention for the entirety of 2021 due to “non-cooperation” with his removal.

Another individual who remained in detention throughout 2021, also known to authorities as suffering from psychiatric disorder, is A. A. H. D., an asylum seeker from Sudan. In this case too, the Immigration Authority sought to deport him to his country of origin, although it is evident his judgment is compromised and can not give informed consent to being deported. In one of the hearings, he stated: “I want

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<sup>64</sup> See fn. 25.

<sup>65</sup> The Hotline for Refugees and Migrants, [Detention of Migrants and Asylum Seekers in Israel: An Annual Monitoring Report for 2020](#), p. 32.



to go back to my country. I don't want to leave prison. I want to leave Israel. I am the Messiah. I have been drugged in prison. I was given poison in the food in Abu Kabir [detention facility for those suspected of committing criminal offenses, and individuals sentenced for brief periods]. I am afraid of the State of Israel. I am willing to leave the country even today.”<sup>66</sup>

In both abovementioned cases, the adjudicators did not express any concern regarding the mental health of the detainees and did not utilize their authority to order they receive legal representation from the state, as is required by law.<sup>67</sup> Legal representation that helps navigate the procedural and bureaucratic maze is essential for disadvantaged groups, which also struggle to understand the language and culture they face, such as undocumented migrants and asylum seekers, as was mentioned by Supreme Court Justice Barak Erez in her book.<sup>68</sup> This need is particularly dire in the case of migrants suffering from mental health disorders. The Supreme Court's ruling on the matter obligates the state to ensure legal representation in extreme cases when the person can not represent himself, is relevant in such cases.

In June 2021, the Hotline appealed to Adv. Michael Tzuk Shafir, the Chief Adjudicator of the Detention Review Tribunal, asking her to instruct all adjudicators that they are obligated to identify migrants suffering from mental health disorders who are brought before them, and act to protect them by utilizing their right to order the migrant receive legal representation provided by the State. In response to our letter, the chief Tribunal adjudicator informed us that it had been decided

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<sup>66</sup> From protocol no. 121-99-2021-003080 dated May 13, 2021, of detainee no. 9083707.

<sup>67</sup> Eventually, S. L. (detainee no. 9113129) was provided by the state with legal representation in 2022.

<sup>68</sup> Dafa Barak Erez, *Administrative Law*, Book 1, 2010, p. 527-528.

to promote steps to increase the knowledge and tools given to adjudicators on the matter of detainees suffering from mental health disorders. One step to be taken is to conduct lectures by relevant mental health professionals.

## Extended Detention during the COVID-19 Pandemic

According to a report of the Public Defender's Office, the average stay in the foreigners' ward in Givon Prison lasted between seven to ten days. However, analysis of the protocols of Detention Review Tribunal hearings indicates that the COVID-19 pandemic extended the period of detention for many migrants, beyond what is necessary to realize the purpose of the detention. In some cases, migrants found themselves illegally residing in Israel against their will, whether because they could not find a flight back to their homeland, or because they could not extend their stay permit.<sup>69</sup> The conduct of the Detention Review Tribunal in these cases is a grave violation of the rights of these migrants. The Tribunal extended detention orders, again and again, despite the lack of prospect for a de-facto removal from the country, due to international border closures and cancelations of flights. It bears repeating that the purpose of immigration detention is not punitive but is intended to ensure the process of deportation.

We have identified four factors that extended the duration of the detention periods despite the cooperation of the detainees with the efforts to deport them. These factors at times intersected and reinforced each other, extending even further the period of detention.

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<sup>69</sup> For example, the case of a migrant worker from Uzbekistan who was unable to return to her country after she completed her period of employment and ended up jailed in Givon Prison: "because of Corona, I did not return. Ben Gurion [Airport] was closed... later Uzbekistan became a "red" country [travel from Israel was not permissible], and it was closed". See protocol 121-99-2021-009973.

Limited set of flights and closed international borders: a sharp drop in the volume of international flights,<sup>70</sup> and many months during which countries around the world, similar to Israel, shuttered their borders, prevented the departure of migrants who were held in detention and asked to return to their homeland. One example of many is the case of P. W. T., a migrant from Vietnam who arrived in Israel for training in the agricultural sector and stayed in Israel on a student visa. On February 22, 2021, he was given a detention order, followed by a deportation order. Throughout all hearings on his case before the Detention Review Tribunal, P. W. T. expressed his desire to return to his country, but only on June 23, 2021, after remaining in detention for four months, was the Immigration Authority able to coordinate a flight for him to return to his homeland.<sup>71</sup>

Another example is that of a citizen of the Philippines, a migrant worker, who was held in detention from May 9, 2021, and during a hearing held a month and a half later, on June 21, she begged: “The Immigration [Authority] spoke to me and said that right now, there is no flight and no date [for a flight]. I am asking to urgently be returned home. I am even willing to purchase the ticket myself. I have a passport and it is valid, and I am ready to leave. Please, I am asking for a decision.”<sup>72</sup> Eventually, this migrant was deported only after over three months that she unnecessarily spent in detention.

It appears, however, that the most egregious case is that of a migrant caregiver from Sri Lanka who was detained for illegal residency and was issued a detention order on June 1, 2021. During the first hearing, she informed the adjudicator that

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<sup>70</sup> According to the International Air Transport Association (IATA), the number of international flights in 2021 dropped by 50 percent compared to the period prior to the global outbreak of COVID-19.

<sup>71</sup> See the protocols in the case of detainee no. 9141624.

<sup>72</sup> From the protocol of detainee no. 9155926.

she has a flight ticket to her country of origin, and is asking to depart Israel as soon as possible, a fact she repeated in all hearings concerning her case. “I want to return home and I have a flight ticket for July 20, 2021, and I can change it and move the date earlier. The Immigration [Authority] did not tell me when is my [earlier] flight [possible] and I want to return quickly... I can see if I can move the flight and leave earlier. I told the Immigration that I can leave on June 21, 2021, and they did not provide any response.” Only on July 29, 2021, was she able to board a flight back to her country, after a ticket on an earlier flight was canceled due to miscommunication with the airline. This means that the detainee stayed in detention for two entirely unnecessary months, despite asking to return to her country or origin as soon as possible, and even purchased a flight ticket at her expense, and sought to use it immediately.

Due to the multitude of cases when migrants sought to return to their country and cooperated fully with their removal yet remained in detention for prolonged periods due to lack of available flights, the Hotline alongside Kav LaOved turned to the chief adjudicator of the Detention Review Tribunal, and the head of the Enforcement and Foreigners Administration within the Immigration Authority, asking them to set regulations that are appropriate to the period of COVID-19. We also demanded that they instruct Tribunal adjudicators to conduct more rigorous judicial oversight, closely examining whether any progress has been made in the removal proceedings of detainees who cooperate with their deportation and examining alternatives to detention when there is no date in sight for the deportation flight.

Difficulties in issuing valid travel documents: The partial closure of foreign embassies and consulates in Israel, alongside a drop in the capacity of ministries in

the countries of origin due to the closure of offices and lockdowns, often made it difficult to obtain or renew travel documents. Therefore, detainees found themselves without a valid passport, forced to wait in prison for long periods of time until new documents could be issued.

An example is the case of a migrant from Ghana, S. A., against whom a detention order was issued on August 2, 2021. In a hearing held the next week, the legal representative of the detainee stated that she does not hold a valid passport and asked for her release since there was no prospective date for her deportation. He explained that “the embassy of her country in Israel is working limited hours. Her removal depends on multiple third parties, and there is no prospect for her removal. Additionally, the airport in Accra is not allowing incoming flights, with the exception of emergency situation, until further notice.”<sup>73</sup> Despite this, the woman remained in detention for three more months, during which the Immigration Authority attempted to obtain valid travel documents for her, unsuccessfully.

After three months in detention, on November 7, 2021, Adjudicator Raja’ Marzouq released her on bail, while berating the representatives of the Ministry of Interior for not doing enough to facilitate her removal, despite her cooperation, and raised doubts about the ability and willingness of the Ministry of Interior to deport the detainee. “It appears that the individual in charge did not do enough to benefit from the visits of the consul when it was claimed that linguistic and communication problems made the meeting difficult, and it was not clarified why no translator was scheduled to come, as was done during the hearing. I also did not find any response in the statements of the individual in charge as to why no meeting was held with the detainee to advance [her] deportation on October 19, 2021.”

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<sup>73</sup> From protocol no. 121-99-2021-007399 of detainee no. 9161889.

The case of Q. H. also demonstrates the difficulties of obtaining valid travel documents from the Ghanaian embassy. He was released on bail in 2020 and throughout all of 2021 attempted to obtain valid travel documents, as Adjudicator Raja' Marzouq remarked in one of the hearings to delay his date of departure from Israel: "the individual has made and is making multiple attempts to obtain new travel documents, but during the current period, and owing to the outbreak of COVID-19 in Ghana, his efforts were to no avail..."<sup>74</sup>

#### Failures to Meet the Requirement of a COVID-19 Test Prior to the Flights:

International guidelines that required a negative PCR test prior to the flight posed another obstacle to deportation, more than once delaying it, and thus extending the duration of detention. An illustrative example is of a migrant from Ethiopia, against whom a detention order was issued on April 6, 2020. For over a year, the Immigration Authority made efforts to deport him, and in a hearing held on June 21, 2021, the border control officer reported that they were able to schedule a flight for the detainee, after over a year in detention. Still the migrant was not able to board the flight because "the airline did not accept the [COVID-19] tests that are in Hebrew. We [are now] conducting a rapid COVID-19 test at the Ben Gurion Airport in the English language, which would be acceptable to the airline."<sup>75</sup> As a result of this failure, when no other flight was found, the Ethiopian citizen remained in detention for **three more months**, until he was released on bail.

A similar case is that of a migrant from Uzbekistan, who was arrested on November 22, 2021, and was supposed to board a flight to his homeland a week later, on November 30, 2021. A day after the scheduled flight, the border control officer

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<sup>74</sup> From protocol no. 121-99-2021-006667 of detainee no. 9010854.

<sup>75</sup> From protocol no. 121-99-2021-004774 from June 21, 2021, of detainee no. 1498119.

updated the Detention Review Tribunal that they were unable to place the migrant on the planned flight “due to the need for an up-to-date Corona form [negative COVID-19 PCR test].”<sup>76</sup> On December 20, 2021, his detention order was extended, indicating that the migrant was forced to remain in detention for at least **three more weeks** because the Immigration Authority failed to meet guidelines concerning COVID-19 tests. These procedural obstacles are tacked on top of inevitable delays as a result of positive COVID-19 tests of those scheduled for deportation.

Increasing Financial Inability to Pay Bail: The COVID-19 crisis dealt a major blow to the communities of undocumented migrants, which were already disadvantaged and generally characterized by a low socioeconomic status. As a result, detainees who were released on bail struggled to provide the necessary sums, or guarantors who could give those sums, and were forced to remain in prison until they were able to deposit the required bail money.

One example of many is the case of A. B., a migrant from Sierra Leone, who entered Israel as a tourist and during his stay, filed an asylum application that was rejected. After he was held in detention for over two years, in November 2020, the Detention Review Tribunal ordered his release on bail, but he struggled to gather the required sum. He described it thus: “I called several friends to deposit bail, but all of them said that because of Corona and the lockdown, they are unable to get the money for my release, and right now, I have nothing to do. A person who I thought would help me told me he had not worked in over a month...”<sup>77</sup> A. B. remained in detention for two more months, during which the Tribunal adjudicator

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<sup>76</sup> From protocol no. 121-99-2021-013491 from October 20, 2021, of detainee no. 9168599.

<sup>77</sup> From protocol no. 121-99-2021-000412 from January 14, 2021, of detainee no. 1448844.

reduced the amount of bail, so that A. B. could meet the requirement and be released.

Another example is a Sudanese asylum seeker who was placed in administrative detention after serving out a prison sentence for drug possession. On March 11, 2021, the Detention Review Tribunal ordered his release on bail, but he did not manage for over a month, until April 22, 2021, to raise the bail amount that was set, despite the adjudicator reducing it twice, as Adjudicator Raja' Marzouq wrote in his decision: "with the passage of time since the release decision, the detainee was unable to raise the full amount of the bail imposed. The detainee lacks any resources or savings, prior to his arrest he was unhoused, he has only a few acquaintances, and the ramifications of the Coronavirus make it difficult to raise [the amount] of assistance..."<sup>78</sup>

In summary, as was stated by Adv. Ariana Pinsker Lehrer who represented A. A. B, an asylum seeker from Sudan, on behalf of the Hotline, during a hearing concerning the size of the bail demanded by the Detention Review Tribunal for the release of the detainee: "concerning the bail, we are in an economically difficult situation in general, and particularly within the community to which the applicant belongs following the Corona crisis. We are witnessing [what is happening within] the community, and we are witnessing the economic burden placed on members of the community. People are struggling to afford food."<sup>79</sup>

In the abovementioned cases, as well as the vast majority of cases examined in 2021, the adjudicators tended to adopt a flexible approach and adapt the bail requirement to the financial abilities of the detainees. It is possible that this

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<sup>78</sup> From protocol no. 121-99-2021-002179 from April 22, 2021, of detainee no. 1430221.

<sup>79</sup> From protocol no. 121-99-2021-002083 from April 19, 2021, of detainee no. 1428013.



stemmed from the general atmosphere during the COVID-19 crisis, and the desire to reduce the number of detainees held in prisons. It could also indicate a significant shift by the State, seeking to ensure that poverty will no longer prevent release on bail, as stated by Supreme Court Justice Barak Erez, “alongside the well-known importance of ensuring the satisfaction of the limiting conditions [for release], we should not abide by a situation in which poverty alone keeps a person in detention.”<sup>80</sup> However, the necessary adaptations, even when implemented, were usually made after a significant period in detention, and every adjustment required waiting one month for the next hearing, until the detainees could meet the lower bail requirements. As a result, migrants spent many months in detention for no reason.

In addition to the factors detailed above that extended the detention of migrants who cooperated with their removal, the COVID-19 crisis also extended the detention period of those who did not cooperate with their removal, at times significantly. During the COVID-19 crisis, the Civil Service Commissioner prohibited state employees from flying outside Israeli borders, including in cases when their presence was required to accompany prisoners. As a result, no accompanied (forced) deportations were carried out until November 2021.

## Fully Attaining Compensation Owed by Employers

In Israel, labor laws apply to all workers, regardless of their legal status. Examining the protocols of the Detention Review Tribunal hearings indicates that many of the

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<sup>80</sup> Criminal Request for Release 388/21 Khaled Badr vs. the State of Israel, ruling issued on January 28, 2021. Previous rulings have determined that individuals should not be kept in detention due to lack of means (see Administrative Request to Appeal 629/11 Lemlem [Mespin](#) Gebre vs. the State of Israel – Ministry of Interior and others).

detainees struggle to fully attain compensation owed to them by their former employers. An illustrative example is the case of A. L., a migrant from the Philippines who entered Israel on a tourist visa and was arrested on March 3, 2020. Throughout her entire period in detention, A. L. conditioned her departure on receiving the money owed to her for her work. Thus, she asked in one of the hearings extending her detention: “I still don’t want to leave Israel. I want to receive the money from my last employer. I am cooperating with the Immigration [Authority] but without my money, I am not willing to return. He owes me NIS 15,800 [\$4,617]. I tried calling the employer, but he won’t answer me. I understand I must cooperate with the removal and if not, I will remain in detention.”<sup>81</sup>

Another case is of a migrant worker from Turkey, who asked the assistance of authorities to receive the backpay he was owed by his employer. As stated by the translator: “the name [of the employer] is: [REDACTED], his phone number is [REDACTED]. According to him [the detainee], the employer owes him backpay for one and a half month, a total of 430 hours, earning NIS 70 per hour, so he is owed in total NIS 30,100 [\$8,800].”<sup>82</sup> These two cases are just a small share of detainees who claimed they are owed compensation that remained unpaid by their former employers.

Almost always, the arrest occurs unexpectedly, without prior planning, and when the bill with the employer is still not settled. Almost all migrants who are arrested are in Israel for the purpose of working and saving money for themselves and their families. They are willing to work long hours in harsh conditions, often tolerate hostility and abuse to achieve this goal. Therefore, non-payment of owed salaries or compensation for their (forced) resignation is a major blow to them.

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<sup>81</sup> From protocol no. 121-99-2021-000785 dated February 4, 2021, of detainee no. 9123955.

<sup>82</sup> From protocol no. 121-99-2021-011910 from November 22, 2021, of detainee no. 9159978.

On July 21, 2021, the Hotline, alongside the labor rights NGO Kav LaOved, addressed Adv. Michal Tzuk Shafir, the Chief Adjudicator of the Detention Review Tribunal, asking her to instruct the adjudicators to inform the Population and Immigration Authority in every case when a detainee claims that she is yet to be paid back fully by her former employer(s). In addition, we asked that rulings in such cases be forwarded to the official in charge of the rights of foreign workers in the Labor Arm of the Ministry of Economy and Industry, which is charged with handling violations of the labor rights of migrant workers. No answer has been received as of the writing of the report.

Although case law, both rulings of the Court on Administrative Matters and the High Court of Justice, determined that collecting a debt in a civil case does not justify continuing to remain illegally in Israel, and also does not provide grounds for release from detention, according to Yossi Edelstein, the Head of Enforcement and Foreigners Administration, representatives of the Immigration Authority ask any migrant who is placed in detention whether there are outstanding debts to her, and whether she worked illegally. In cases when such debts allegedly exist, the Immigration Authority calls the employer, asking him to arrive and pay the debt.<sup>83</sup> Despite these claims, it appears from the testimonies of detainees before the Detention Review Tribunal, that such questioning, if it is indeed conducted, does not always result in the payment of the debt.

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<sup>83</sup> See fn. 25.

## Lapses in Translation of Hearings at the Detention Review Tribunal

Accurate and reliable translation is crucial for a fair and comprehensive hearing in which the detainee can express herself, ask questions and understand what is being said to her. During 2021, all translations were carried out using remote technological means (Zoom) due to the COVID-19 pandemic. In response to the Hotline's letter from August 2021 to the chief adjudicator of the Detention Review Tribunals, which argued that remote translation harms the right of argument of detainees, as well as their right to a fair procedure, we were informed that in the coming year (meaning, 2022), translators working with the companies that provide translation services to the Detention Review Tribunal, will be offered to undergo training.

Beyond the faults and gaps in translation stemming from the use of online technology, we have documented other failings in the translation service. For example, a tourist from Georgia was questioned in Russian, despite saying he does not know the language well;<sup>84</sup> a migrant worker from Kazakhstan claimed that he did not understand the proceedings well because the translation to Russian during the hearing was done over the phone;<sup>85</sup> a tourist from China conducted her interactions with the Tribunal through another detainee, thus violating her right to privacy. It was unclear to both the adjudicator and detainee to what extent the detainee-translator knows the relevant languages well and whether the "translator" has satisfactory translation skills;<sup>86</sup> and a migrant worker from Ukraine

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<sup>84</sup> Detainee no. 9168793.

<sup>85</sup> Detainee no. 9144291.

<sup>86</sup> See protocol no. 121-99-2021-011510 from November 10, 2021, or detainee no. 9166498.

whose hearing was translated using Google Translate.<sup>87</sup> During a hearing concerning extending of detention of a migrant worker from China, the detainee protested the poor translation: “the translation of the translator is incorrect. The adjudicator said something, and the translator is saying something else. I understand a little bit of Hebrew, and this does not match.”<sup>88</sup> These problems posed an additional difficulty in an already-stressful situation, during proceedings about which the detainee often has only partial information, held in a setting characterized by clear hierarchical power relations.

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<sup>87</sup> Detainee no. 9165260.

<sup>88</sup> See protocol no. 121-99-2021-001293 from March 4, 2021, of detainee no. 9058954.

## Rights Violations in the Process of the Arrest

One of the most important roles of the Detention Review Tribunal is to provide judicial oversight over the process of arrest itself that placed the person in detention, and its legality. Protocols of the Detention Review Tribunal point to repeated rights violations in the process of apprehending the migrant, and the unlawful arrest of migrants who reside in Israel legally.

For example, a migrant worker from India was arrested before the Immigration Authority completed the examination of her asylum application.<sup>89</sup> In another case, the asylum application of a detainee was rejected, and he was given 30 days to leave Israel, but despite this, he was arrested within this month. Adjudicator Raja' Marzouq lambasted the Immigration Authority for this conduct: "the detainee was given 30 days to leave the State of Israel, as detailed in the letter rejecting his application for political asylum, which was handed to the detainee on December 8, 2021, and on his day of arrest, this period has not elapsed. It would be appropriate that the border control officer examine and take into consideration the argument raised also by the legal presentative [of the migrant] that the 30 days given to him to depart Israel are yet to pass."<sup>90</sup>

The abovementioned detainees and others who were illegally arrested were released on bail. However, it is impossible to ignore the harm inflicted to the migrants by the unnecessary period in detention, even if it lasted a few days, and the sorrow and humiliation entailed in the arrest itself. In all cases, the attorneys who represented the detainees highlighted the failures of the Immigration Authority inspectors to abide by the law. This points to the importance of legal

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<sup>89</sup> Detainee no. 9167167.

<sup>90</sup> From protocol no. 121-99-2021-013618 from December 22, 2021, of detainee no. 9169943.

representation for a disadvantaged community such as undocumented migrants who lack the language skills and knowledge to represent themselves in such a way that ensures a fair proceeding. This is particularly the case since having or lacking legal representation may determine the fate of an individual and make the difference between liberty and incarceration. It is hard not to think about all those individuals who do not have legal representation and who have been sent to detention despite the grave rights violations in the procedures that led to their placement behind bars.

## Statistical Discrimination (Profiling)

A common manifestation of statistical discrimination (profiling) is when a person is suspected of carrying out a crime merely due to his race, ethnic origin or religion. Article 13E(A)(1) of the Entry into Israel Law gives policemen and inspectors the authority to “demand from a person to identify himself and present to him the documents relating to his residency, when there are grounds to believe that his stay in Israel requires a stay permit based on this law...” In 2021, the District Court interpreted the clause “there is grounds to believe” as the existence of an objective underpinning that may arouse the suspicion of the policeman or inspector, while taking into consideration the proportionality, equity and seeking to minimize a violation of individuals’ rights.<sup>91</sup> Thus, the court prohibited arrests based solely on outward appearance and stereotypes that a person “looks foreign,” as well as “fishing” for undocumented migrants, which has been an acceptable practice over the years.

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<sup>91</sup> Administrative Appeal 64729-06-21 Madovichi Ono vs. the Ministry of Interior.

R. G., a caregiver from Moldova, was arrested without a valid visa and on September 13, 2021, detention and deportation orders were issued against her. In a hearing held six days later, the legal representative of the detainee argued that the arrest was without legal grounds and demanded that the detention order be voided. She argued: “the action report on the [Immigration Authority] inspectors indicates that they approached her because of her appearance, not because she aroused any suspicion, and the detention order therefore must be abrogated.”<sup>92</sup> The Detention Review Tribunal accepted the position of the detainee, voiding her detention order, allowing the woman to be released on bail.

The arrest of a Ukrainian tourist, who stayed in Israel without a valid visa, was also based on profiling, as explained by Adjudicator Raja’ Marzouq in his decision to void the detention order and release her on bail. He stated: *“In the context of the case, there condition of “ground to believe” to allow the arrest of the detainee was not fulfilled, as it became apparent that she was stopped as part of random action, as mentioned, without having grounds to believe, as required, and without the inspectors providing an explanation as to why they had grounds to believe that they are justified in questioning the detainee. The report [filed by the inspectors] does not provide an explanation as to why the detainee was stopped, except to mention that it was done randomly. In my opinion, this fails to meet the condition of having grounds to believe [she resides in Israel illegally] to justify [asking] the detainee to provide identifying documents.”*<sup>93</sup>

In addition to the deficiencies in the arrest process, there were also cases when substantive flaws occurred during the initial hearing before a border control officer

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<sup>92</sup> From protocol no. 121-99-2021-008965 from September 19, 2021, of detainee no. 9164277.

<sup>93</sup> From protocol no. 121-99-2021-010796 from October 28, 2021, of detainee no. 9166695.



and the issuance of a detention order. For example, a migrant worker from China was arrested,<sup>94</sup> and a hearing was held despite his attorney not yet arriving at the hearing, although both the detainee and his lawyer asked to wait for his arrival.

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<sup>94</sup> The case of detainee no. 9157069.

## Summary and Recommendations

This annual monitoring report, the seventh in number, described the main trends concerning the detention of migrants, the arrest, the deportation and the denial of entry to Israel in 2021. In addition, we highlighted the factors contributing to violations of the rights of the detainees.

The COVID-19 pandemic, with its various ramifications, was evident throughout 2021, and therefore we continued to observe a reduction in the movement of people, a low number of detained and deported migrants, as well as an increasing tendency to release migrants on bail, compared to years prior. To a large extent, the COVID-19 pandemic also affected the period of detention, which sometimes dragged out for longer, because, among other reasons, no available flights were found to remove the detainees. COVID-19 tests also posed another bureaucratic challenge, and the forcible deportation of migrants who do not cooperate with their removal, which requires the accompaniment of an Israeli state employee, was suspended. However, even this year, which was characterized by a limited number of enforcement proceedings, 1,336 migrants were held in detention, denied their basic rights and liberty. Therefore, we continue to repeat our main recommendations to formulate an immigration policy under which detention is the last resort to ensure the departure of migrants illegally residing in Israel.

Additionally, drawing on the insights of this and prior monitoring reports, we recommend:

- Ensuring the protection of basic rights of detained migrants, even in cases of emergencies such as pandemics. Particularly, authorities should avoid situations in which migrants remain in detention for prolonged periods

simply due to the absence of available flights to deport them, or due to other circumstances that are not under their control.

- Acting to reduce the prolonged detention of migrants concerning whom there is no prospect for removal.
- Appointing legal representation by the State to every undocumented migrant who has been held in detention for a prolonged period.
- Ensuring that migrants whose lives may be in danger in their homeland will not be deported, including those denied entry without being given the opportunity to apply for asylum in Israel.
- Setting effective mechanisms to identify victims of human trafficking and modern-day slavery by authorities, including appropriate and periodic trainings for those who hold positions that make it possible they will interact with such victims.
- Setting a regulation concerning locating individuals struggling with psychiatric disorders and ensuring their rights are protected.
- Ensuring professional translation during hearings held by border control officers and at the Detention Review Tribunal. Also ensuring all information concerning asylum applications is available in all relevant language.
- Ordering the abrogation of the Criminal Procedure, which allows to continue open-ended detention of “infiltrators” after they have served out a sentence relating to a criminal offense. Instead, authorities ought to develop a rehabilitation program tailored to this population.
- Developing a regulation together with the officer in charge of labor rights at the Labor Arm at the Ministry of Trade and Industry to ensure detained

migrants are able to fully receive backpay and compensation owed to them by their employers.