The Labyrinth

Migration, Status and Human Rights

רופאים לזכויות אדם
PHYSICIANS FOR HUMAN RIGHTS Israel
أطباء لحقوق الإنسان

המוקד לפליטים ולמהגרים ע"ר

האגודה לזכויות האזרח בישראל
جمعية حقوق المواطن في إسرائيل
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About the Hotline for Refugees and Migrants:

The Hotline for Refugees and Migrants is a nonpartisan nonprofit organization which aims to protect and promote the human rights of migrant workers and refugees, and prevent human trafficking in Israel. We are committed to eradicating the exploitation of migrants, ensuring they receive respectful and fair treatment, and formulating government policy to this end. We seek to lend our voice to those who are not heard in the public sphere and build a just, equal, and democratic Israeli society. The organization acts by providing information, counsel and legal representation to migrants, educating the Israeli public, and promoting legislation and public policy.

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About The Association for Human Rights in Israel :

The Association for Civil Rights in Israel (ACRI), founded in 1972, is Israel's oldest and largest human rights organization and the only one dealing with the entire spectrum of rights and liberties in Israel and in the Occupied Palestinian Territories under its control. As an independent and non-partisan organization, ACRI's mandate is to ensure Israel's accountability and respect for human rights by addressing violations in Israel and in the OPT. ACRI also educates the public about human rights and civil liberties. In a democracy with no constitution set in a diverse and polarized society, ACRI plays an essential role by promoting universal human rights and defending the human rights and civil liberties of all persons, regardless of race, gender, ethnicity, nationality, religion, political affiliation, sexual orientation, or socio-economic background. ACRI utilizes a unique combination of litigation, advocacy, education and public outreach tools in our efforts to protect and promote human and civil rights in Israel and in the Occupied Palestinian Territories.

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About Physicians for human Rights – Israel:

Physicians for human Rights – Israel (PHR-I) is a non-profit, non-governmental organization that strives to promote human rights in general and the right to health in particular in Israel and the occupied Palestinian territories. It is PHR-Israel's view that everyone has the right to health, and that this is both the basis for the realization of other human rights, as well as a derivative thereof. We believe that it is Israel's obligation to equally apply the right to health to all the populations and the individuals under its jurisdiction: the Palestinians in the occupied territories, Israeli residents who are covered by the National Health Care Act, the Bedouins in the unrecognized villages at the Negev, prisoners and detainees, migrant workers, status-less persons, refugees and asylum seekers.

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Introduction

In recent years, there has been growing public, political, media and legal concern with non-Jews in Israel – with deporting them, imprisoning them, regulating their status and rights, and more generally – the manner in which the authorities handle this population group. The statement "the State of Israel has no immigration policy" has almost become a cliché in recent years – a truism that does not require any further contemplation. However, the authorities' treatment of non-Jews who are not citizens of Israel comprises a complex map of fragmented procedures, decisions and actions whose combination indicates at the very least one clear aspect of policy – a growing stringency whose goal is to revoke legal status, avoid granting legal status, isolate from society and remove non-Jews from the territory of the State of Israel.

The Population and Immigration Authority (PIBA) holds the seat of honor when it comes to this policy. PIBA holds powers – which we will expand on below – that allow it to implement stricter or more lenient policy regarding "foreigners." PIBA, which considers itself the "gatekeeper" of the State of Israel, implements policies with these powers – some of which are dictated by the political echelons and some of which are of its own initiative – to build the walls higher and less scalable. In order to do this, it implements measures which severely undermine the human rights of "foreigners," of non-Jewish residents of Israel, and of Israelis who have bound their lives to those of non-Jews.

Over a decade ago, the Association for Civil Rights in Israel (ACRI) published a thorough report about the Population Registry called "The Ministry," which examined the policy and bureaucracy that relates to non-Jews who are not citizens.[1] Most of the report remains relevant today, while certain issues have undergone significant changes. Since the publication of The Ministry in 2004, tens of thousands of asylum seekers (labeled "infiltrators" by the authorities) have entered Israel via the Israel-Egypt border; legislation initiatives on a range of topics have been advanced to toughen policy – such as expanding aspects of the "binding arrangement" which binds migrant workers to their employers or geographic areas, the establishment of tribunals solely to deal with issues concerning the legal status and deportation of "foreigners," harsher regulations for imprisoning "infiltrators," limiting the scope for spouses to regularize the legal status of partners living in Israel without permits, etc. – have been discussed in the Knesset, and some have passed into law. In addition, the organizational structure of the authorities responsible for these issues has changed.

Alongside these many negative developments, a small number of decisions that benefit "foreigners" have been made, such as one-off arrangements that grant legal status to children of migrants who were raised in Israel and their families. These constitute exceptions to the overall toughening of policy.

1 ACRI, The Ministry: Violations of Human Rights by the Population Registry, http://tinyurl.com/pt5hq6d [link in Hebrew].

Aside from these significant changes, the rationale behind the conduct of the authorities in general, and PIBA in particular, has remained unchanged from that which guided the actions of the Population Registry at the time when The Ministry was published: i.e. reducing the number of non-Jews with legal status in Israel, while remaining apathetic towards violations of their human rights and the rights of Israeli citizens who have tied their futures to those of "foreigners."

In this report, we are unable to focus on all of the details, the intricacies of PIBA bureaucracy, and all aspects of the state authorities' policy regarding the status of non-Jews. Therefore, this report should not be considered a complete documentation of all of PIBA's violations of human rights. We chose to focus on a number of key population groups and aspects of policy in a way that demonstrates the issues comprehensively, if not completely.

This report will first cover the structure of PIBA. Afterwards, we will address the general structure of the immigration regime in Israel and examine how PIBA fits into this structure.

Following these two general sections, we will address PIBA's violations of human rights according to sub-topics and population groups. First, we will address violations of the right to family life in the context of the policy applied to families of Israeli citizens and residents. Next, we will dedicate a section to Israel's permanent residents. Following this section, we will address a number of groups of "foreigners" handled by PIBA – migrant workers, refugees and asylum seekers, and victims of human trafficking. Finally, we will address practicalities regarding the detention of those defined by government authorities as "unauthorized residents" and "infiltrators."

About the Population and Immigration Authority

As mentioned, in the time since the previous report was published, the Population and Immigration Authority (PIBA) was established. Today, PIBA is the principal entity responsible for processing people who are not Israeli citizens, including procedures for granting legal status, revoking status, detention, deportation, and so on. PIBA was established as a division of the Ministry of Interior in 2008 through a government decision.[2] PIBA has various authorities and functions, some of which were previously the responsibility of the Population Registry, some the responsibility of the Ministry of Industry, Trade and Labor (today known as the Ministry of Economy), and the remainder of which fell under the responsibilities of the Israel Police. Prior to the establishment of

2 Government decision no. 3434, Establishment of The Population, Immigration and Border Crossings, Authority (13 April 2008), http://www.pmo.gov.il/Secretary/GovDecisions/2008/Pages/des3434.aspx (in Hebrew).

PIBA, powers regarding the provision of permits to employ migrant workers, as well as the enforcement of labor laws on the employers of migrant workers, were held by the Ministry of Industry, Trade and Labor. Enforcement and detention, as well as border control, were under the authority of the Israel Police. With the establishment of PIBA, all powers regarding "foreigners" were concentrated into a single framework.

PIBA consists of four administrations:

The Population Administration handles issues regarding citizenship, status, registration and passports, and consists of two units. The first, the Offices Unit, operates 24 offices throughout Israel and is responsible for interfacing with and providing services to the public on these topics. The second, the Registry Unit, is the body with professional authority on these issues, and its responsibility is to instruct the offices and handle cases transferred to it by the Offices Unit, either because the offices are not authorized under PIBA guidelines to make decisions on these cases by themselves, or because the offices consider the cases to be particularly complex. In addition, the Registry Unit makes decisions on internal appeals of decisions made by the offices. The Registry Unit is itself divided into three departments – the Registry and Passports Department, the Visas and Foreigners Department, and the Citizenship Department.

Employers and Foreign Workers Service Administration holds the responsibilities formerly held by the Ministry of Industry, Trade and Labor, and is divided into four units – the Permits Unit, which is responsible for allocating permits for the employment of migrant workers; the Offices and Corporations Unit, which is responsible for regulating private firms in the caregiving and agriculture sectors, manpower corporations in the construction industry, and regulating the employment of Palestinian workers; the Employers and Foreign Workers Service Unit, which is responsible for collecting fees from corporations and private firms, for transferring workers between corporations or firms, and collecting and returning deposit monies paid by migrant workers within the construction industry; and the Implementation of Bilateral Agreements Unit, whose role is to promote bilateral agreements with other countries for recruiting workers (see more on this topic below).

The Enforcement and Foreigners Administration is the entity responsible for enforcing the prohibition against unauthorized presence in Israel, and is responsible for detaining and deporting those present in Israel without authorization. The Administration is also responsible for allocating residence permits to those defined as "infiltrators" and for summoning "infiltrators" to the Holot facility (see below). In addition, the Asylum Seekers Unit, which receives applications for asylum and attempts to assess whether they meet the requirements of the UN Convention Relating to the Status of Refugees and their eligibility for asylum in Israel, also falls under the purview of this administration.

Finally, the Border Crossings Administration is responsible for border control at Israel's border crossings, as well as for operating these crossings.

About Legal Status and Bureaucracy

Before delving into the depths of bureaucracy and describing in detail PIBA's human rights violations against several groups, we will briefly describe the State of Israel's legal arrangements for immigration, as well as the mechanism responsible for these violations.

The general basis of immigration law in the State of Israel comprises clear and unequivocal rules on the legal status of Jews, clear parameters for naturalization in Israel, and in contrast – broad discretion for the Minister of Interior to provide entry visas and residence permits in Israel to non-Jews.

At the heart of Israel's immigration regime is the Law of Return, which grants all Jews, and also some relatives of Jews, the right to immigrate to Israel and receive the status of oleh, with the exception of those who have acted against the Jewish people, who are a danger to public health or state security, or who have a criminal record which could endanger public security.[3] Those defined as olim by the Law of Return are eligible for citizenship based on the Nationality Law.[4]

In addition to granting citizenship to those eligible under the Law of Return, the Nationality Law establishes a closed list of grounds for receiving citizenship in Israel – residency in Israel under certain circumstances, being born in Israel to a parent who is a citizen of Israel (or being born abroad to a citizen of Israel under certain circumstances), adoption, etc. The law also establishes guidelines to ease the naturalization process for the "husband" or "wife" of an Israeli citizen (or in certain circumstances for minors), as well as provisions regarding the revocation of citizenship. The method of granting citizenship and processing requests for naturalization is regulated by Ministry of Interior guidelines. However the essential rules have been fully established by the legislature in the Nationality Law.

In contrast, with regards to other kinds of status in Israel, the legislature has not established clear parameters, and has left the responsibility for determining the essential conditions and criteria for legal status in the hands of the Minister of Interior, and has only listed the types of status that can be granted. The only law passed by the legislature on this issue, the Entry into Israel Law, establishes that entry into Israel shall be regulated in accordance with entry visas; residence in Israel in accordance with residence permits; and that the Minister of Interior may grant five types of entry visas or residence permits, and subject them to conditions.[5]

Israeli case law has so far interpreted the authority of the Minister of Interior to grant or refuse legal status in Israel according to the Entry into Israel Law as a very broad

3 The Law of Return, 5710-1950, Sections 1-2.

4 The Nationality Law, 5712-1952, Section 2.

5 Entry into Israel Law, 5712-1952, Sections 1-2 and 6.

authority (although it has ruled that this authority is subject to the rules of administrative law including the right to inspect documents and be heard, that discretion must be exercised reasonably, proportionally, without extraneous considerations, etc.).[6] Furthermore, it was established that the Minister of Interior's broad discretion must be exercised in accordance with written criteria.[7]

The Entry into Israel Law authorizes the Minister of Interior himself to grant visas and permits, but obviously it is unreasonable for the Minister to rule on every application for legal status in Israel, and therefore this authority is delegated to the Director of PIBA, as well as additional PIBA staff.

Accordingly, the details missing from the Entry into Israel Law – criteria for applying the authority to grant entry visas and residency permits – are supplemented by PIBA guidelines. PIBA guidelines cover many topics, including granting residence permits to spouses of Israeli citizens and residents, migrant workers, refugees and asylum seekers, and other groups. The guidelines themselves, which determine the criteria for granting legal status in Israel, are usually established by PIBA and not the Minister of Interior himself.

This authority – to make decisions regarding the manner in which the Minister of Interior exercises his broad discretion, and to establish guidelines on this matter – concentrates vast power in the hands of PIBA, and with that, the significant potential for human rights abuses. PIBA utilizes this potential for human rights abuses to full effect, not only through deciding on individual cases and establishing provisions for Ministry of Interior guidelines, but also in the way that it operates the bureaucratic mechanism at its disposal.

For example, for many years, the Ministry of Interior did not publish its guidelines. When it did begin to publish them, it did so partially and sporadically. The Ministry of Interior only began to regularly publish its guidelines regarding granting legal status in Israel on its website after a court ruling on a petition filed by the Association for Civil Rights in Israel.[8] However, until today, updates to the guidelines are not necessarily released to the public in a timely manner, and some are not released at all.

Similarly, PIBA, which exclusively holds the data on applications for legal status in Israel, frequently manipulates the numbers in order to promote its policy. For example, in 2004, the Ministry of Interior informed the Knesset Committee on the Rights of the Child that there were 83,100 children without legal status in Israel who had entered the

6 On the application of the rules of natural justice on decisions regarding the granting of residency permits in Israel, see Administrative Appeal 1038/08 State of Israel v. Gaavich (Nevo, 11 August 2009). On the Minster of Interior's obligation to exercise discretion in accordance with the rules of administrative law, see, for example, HCJ 758/88 Kendall v. Minister of Interior, IsrSC. 46(4) 505, 528 (1992).

7 HCJ 1689/94 Harari v. Minister of Interior, IsrSC 51(1) 15, 19-20 (1994).

8 Administrative Petition (Jerusalem) 530/07 Association for Civil Rights in Israel v. Ministry of Interior (Nevo, 5 December 2007).

country as tourists since 1988 and had not left. In reality, after regularizing the legal status of these children, it became clear that there were only a few thousand such cases, including children born in Israel. In 2008, PIBA informed the Knesset Internal Affairs Committee that an examination concluded that 70% of applications to regularize the legal status of spouses of Israelis were based on fictitious relationships. PIBA made this claim in order to convince MKs to support legislation that would require spouses of Israelis residing in the country without authorization, to leave the country as a condition for reviewing their application for legal status. However, the data provided did not include all applicant couples, but rather a tiny minority – couples for whom suspicion had been raised and who were therefore under examination. Similarly, in 2009, the director of PIBA informed the media that 279,000 people were residing in Israel without authorization, when the true number is, at most, a few tens of thousands.

Furthermore, when PIBA provides data on the number of asylum seekers recognized as refugees, the numbers are manipulated according to the goal of the report – when the goal is to prove that the State of Israel is operating a fair and honest asylum system that provides protection for refugees, the numbers are inflated by including instances of family members of refugees who received legal status in Israel, asylum seekers who received humanitarian status but have not been recognized as refugees, etc. When the goal is to prove that most of the asylum seekers are not refugees, the numbers and rates of recognized refugees are watered down.

PIBA's guidelines do not prevent it from arbitrarily exercising its discretion. Many of the Ministry of Interior's guidelines combine an extreme degree of literality and stringency directed against those seeking to initiate procedures, together with complete arbitrariness in decision-making on cases of those who manage to meet the stringent criteria. While according to some Ministry of Interior guidelines, it is sufficient to meet their criteria in order to receive legal status (for example, the guidelines covering the Gradual Process for regularizing the legal status of spouses of Israeli citizens and residents, which we will cover below), some other guidelines determine that cases of those who meet the conditions must then be transferred to the Inter-ministerial Committee for Humanitarian Affairs, which decides whether or not to recommend to the director of PIBA to grant the applicant legal status.

Participants in the Inter-ministerial Committee's meetings include representatives of the Ministry of Interior, the Israel Security Agency, the Ministry of Health, the Ministry of Foreign Affairs, the Ministry of Welfare and Social Services, the National Insurance Institute, and the Liaison Bureau (Lishkat Hakesher). In recent years, the committee has operated in accordance with a guideline published on the PIBA website. However, this guideline only covers the procedural aspects of submitting an application and how such an application is considered.[9] Criteria for exercising discretion are not included

9 Procedure for arranging the work of the Inter-ministerial Consulting Committee for Determining and Granting Status in Israel on Humanitarian Grounds, (Regulation no. 5.2.0022 updated on: 6 October 2013), http://www.the Population and Immigration Authority.gov.il/Regulations/5.2.0022.pdf [link in Hebrew].

in the guideline, and decisions are made with no standards whatsoever. As a result, applicants for legal status on humanitarian grounds must meet a list of conditions which do not necessarily indicate the existence or lack of such humanitarian grounds, and PIBA refuses to deviate from these conditions at all. Meanwhile, meeting these conditions only allows the application to be transferred to a mechanism in which decisions are made completely arbitrarily.

Further bureaucratic measures intended to make receiving legal status in Israel difficult include the underfunding of services connected to granting legal status, as opposed to the generous funding given to enforcement and the vast costs imposed on applicants for legal status. The PIBA bureaucracy, in certain cases, stonewalls those who meet the criteria to receive legal status but are unable to obtain certain documents required by the Ministry of Interior. For example, PIBA demands a "Single Status Certificate" from those applying for status based on their relationship with an Israeli citizen or resident, even when the applicant is from a country that does not issue such certificates. Similarly, PIBA requires a "Certificate of Good Conduct" from the police of the applicant's country of origin, even when the applicant is an asylum seeker who cannot return to his/her country to obtain such a certificate, and cannot apply to their country's embassy for such a certificate either.

Often, PIBA exploits its power to provide services in order to make illegal demands and extort applicants to act according to its wishes. An example of such conduct is the practice of "non-treatment", whereby services are denied to citizens and residents whom PIBA suspects of registering their religion or nationality details with the Population Registry incorrectly (i.e. that they are not Jewish), or whom PIBA suspects of obtaining their status deceitfully. When people thusly flagged arrive at PIBA offices to request services, they are denied, and as time passes and their problems reach crisis points, PIBA staff explain that until they agree to change their details with the Population Registry or admit to obtaining their status deceitfully, they will not receive the requested services. Legal proceedings have been initiated against this method of blackmail, and a guideline prohibiting has been formulated, and yet PIBA staff continue to follow the outlawed policy. Another routine method has been to demand that asylum seekers inform on relatives residing in Israel without permits, or ensure that they leave the country, as a condition for regularizing their status. This method has also been the target of criticism, but PIBA continues to use it.

Despite PIBA's obligation to function within the bounds of administrative law, the bureaucratic culture favors ignoring these rules. Most of the procedures to regularize legal status in Israel are not subject to any timeframe, and are likely to be prolonged over many years. Even where there are deadlines for reviewing applications (for example, for decisions meant to be made by the advisory committee which examines humanitarian applications of Palestinians who have family members in Israel, which we will cover below), PIBA does not meet these deadlines. Some decisions are made without fully upholding the right to be heard and most decisions in which applications for legal status are rejected fail to provide any justification for the ruling.

Due to all of these failures, a very large number of cases end up in the courts. Until recently (and in the Haifa and North districts until today), administrative appeals against PIBA decisions could be submitted to the district courts sitting as courts for administrative matters. District court decisions could be appealed to the Supreme Court. In order to limit access to the courts, several years ago, Ministry of Interior appellate committees were established, to which those whose applications were rejected were required to submit appeals prior to applying to the courts. Over the last year and a half, appeals tribunals were established in the Tel Aviv, Center, Jerusalem and the Southern districts, within the Ministry of Justice. These tribunals review PIBA decisions under the Entry into Israel Law, in accordance with an amendment to the law passed in 2011.[10]

The significance of these appeals tribunals is, first and foremost, that they have created a quasi-judicial pathway for decisions connected to "foreigners," separate from the regular justice system, which examines administrative decisions for Israeli citizens and residents. Moreover, oversight on administrative decisions is no longer provided by the courts. Though appeals against decisions made by the appeals tribunals may be filed in the district courts, the oversight of such appeals is more limited than that of an administrative petition. The decisions and rulings of the district courts do not allow an additional right of appeal to the Supreme Court, and those who wish to appeal must request permission to do so. In recent months, the Supreme Court has adopted especially limited criteria for granting permission to appeal procedures initiated in the appeals tribunals, while stating that the tribunals "are characterized by professionalism and expertise in their field."[11] This is despite the fact that it is doubtful whether such a short time after the tribunals' establishment it can indeed factually be determined that they are characterized by such professionalism and expertise. Thus, the true result of establishing the tribunals has been that the Supreme Court is now distanced from final decisions on issues of legal status in Israel.

Finally, PIBA operates in the tribunals as if they were its own. It routinely submits responses and notices late. Requests to extend deadlines for submitting responses are common. Claims filed by PIBA are not always served to the appellant. The tribunals actually have tools to deal with PIBA's procedural misconduct, such as by handing down judgments without accepting PIBA's positions when they are not submitted in time or by ordering it to pay the appellant's legal costs. However, the tribunals usually avoid using these tools, essentially indicating to PIBA that it can continue to behave as it pleases in tribunal proceedings.

10 Entry into Israel Law, 5712-1952, Section 4.

11 MAA 5778/15 Anonymous vs. Ministry of Interior – Population and Immigration Authority, Para 13 (Nevo, 27 August 2015).

Legal Status of Family Members of Israeli Citizens and Residents

Introduction

The right to family life is a fundamental right under international and Israeli law.[12] Israeli case law has determined that a person's right to choose with whom to establish a family unit forms the basis of the right to family life, and that the right to establish a family is protected in the Basic Law: Human Dignity and Liberty. Moreover – the right of an Israeli to confer legal status to a foreign partner to enable the maintenance of the family unit inside Israel has been established as a constitutional right.[13] The courts have further ruled that the constitutional right to family life also applies to non-citizens in Israel.[14]

The right of Israeli citizens to confer citizenship to their spouses is established in the Nationality Law and in Ministry of Interior guidelines. The Ministry of Interior guidelines further establish the right of permanent residents to confer legal status to their spouses, and the right of Israeli citizens and residents to confer legal status in Israel to their partners, even if they are not married to them.

In addition to safeguarding the opportunity to establish a intimate relationships, the protection of the family unit is also intended to protect the rights and wellbeing of minors. The accepted approach in Israeli and international law is that it is best for minors to be raised by their parents, and that it is the right of parents to raise their children.

However, the practices implemented by PIBA in matters that directly impact the right to family life do not coincide, in many cases, with the constitutional principle of protecting the family unit, with the principle of prioritizing the wellbeing of the child, and with the constitutional perception of the rights of the child. PIBA's actions are more often than not guided by an approach that seeks to limit the number of non-Jews with permanent status in Israel, and often tramples on the constitutional principles discussed above. In this chapter we will focus on these practices.

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12 International Covenant on Civil and Political Rights, UNTS, Vol. 999, p. 171 (opened for signature in 1966), Article 23.

13 HCJ 7052/03 Adalah Legal Center for Arab Minority Rights in Israel V. Minister of Interior, IsrSC 61(2) 202 (2006); HCJ 466/07 Galon V. Attorney General of Israel (Nevo, 11.1.2012).

14 HCJ 11437/05 Kav LaOved V. Ministry of Interior (Nevo, 13.4.2011).

Married couples

The right of "foreigners" who are married to Israeli citizens to become citizens themselves is enshrined in Section 7 of the Nationality Law, which eases the naturalization process of those married to Israelis, and allows for their exemption from some of the conditions for naturalization established in Section 5 of the law.

The procedure that results in the naturalization of the spouse of an Israeli citizen is established by Ministry of Interior guidelines.[15] In the framework of this procedure, known as the "Gradual Process," at first a B/1 permit, which is a temporary visitor's permit that provides the holder with the right to work but not social rights, is granted. This permit is given, according to the procedure, for the duration of six months. In the second stage, temporary residency is granted (in the form of an A/5 permit), which grants, in addition to the right to work, social rights provided for in the National Health Insurance Law and the National Insurance Law. According to the provisions of the guideline, temporary residency is granted for the duration of one year, and is extended each time by an additional year up to a cumulative period of four years. At the end of the process, which is meant to take four and a half years, the "foreign" spouse is granted citizenship.

Once the process has been initiated and throughout its duration, the Ministry of Interior examines whether there is a "criminal impediment" or "security impediment" to granting the spouse legal status in Israel. In instances in which the spouse has such an "impediment," the Gradual Process will not be initiated. If such an "impediment" arises or is made known to PIBA after the initiation of the Gradual Process, the procedure is terminated. Furthermore, within the framework of the process, PIBA examines whether the center of the couple's life is in Israel, as well as the "genuineness" of the relationship over time.

Despite the fact that the Entry into Israel Law and its amendments do not provide any guidance with respect to the right of spouses of permanent residents to receive legal status in Israel, this right is anchored in a PIBA guideline.[16] According to this guideline, the spouse of a permanent resident receives a B/1 permit for six months, or in the case of a spouse who is a resident of the occupied territories – who is entitled to receive legal status despite the temporary order that applies to Palestinians (see below) – a permit issued by the military. This half-year is not considered part of the Gradual Process. After one half-year and after the genuineness of the relationship, whether its center of life is in Israel, and the existence or lack- of any criminal or security impediment are examined, the Gradual Process is initiated and the spouse is granted a B/1 permit for

15 Procedure for processing the provision of legal status to a foreign spouse of an Israeli citizen, (Regulation 5.2.0008, updated on: 1.10.2014), http://www.the Population and Immigration Authority.gov.il/Regulations/5.2.0008.pdf, [link in Hebrew].

16 Procedure for processing the provision of legal status to the foreign spouse of a permanent resident, (Regulation 5.2.0011, updated on: 1.12.2014), http://www.the Population and Immigration Authority.gov.il/Regulations/5.2.0011.pdf, [link in Hebrew].

the cumulative duration of 27 months; then an A/5 permit for the cumulative duration of three years; and ultimately permanent residency.

These fundamental rules for the naturalization process of the spouse of an Israeli citizen and of the procedure for the acquisition of permanent residency for the spouse of a permanent resident appear, at face value, to be reasonable. However, applicants for legal status through this procedure encounter many obstacles that undermine, and occasionally even obstruct, their ability to fully exercise their rights as established by the guidelines.

The criteria for examining the "genuineness of the relationship"

Demanding the couple's relationship to be genuine as a condition for regularizing the legal status of the non-Israeli partner and as a condition for naturalization at the conclusion of the process is, in itself, reasonable. The purpose of the right to regularize legal status in Israel is to protect the family unit. Naturally, in the absence of a genuine relationship or true marriage, that rationale does not exist. The right to family life is granted to a couple, and not to those who establish a fictitious marriage that is not based on a genuine relationship.

However, the manner in which the demand for a "genuine relationship" is applied indicates two possibilities – either a deliberate attempt to minimize the number of people who are not Israeli citizens who receive legal status due to their marital status, or a lack of understanding of the various ways in which an authentic marriage or intimate relationship can be expressed.

In order to prove the genuineness of their relationship, couples are required to present the Ministry of Interior, again and again through the years-long duration of the Gradual Process, documents that prove their shared life together, such as a shared rental agreement, bills addressed to both partners, photographs from their marriage life, letters from friends and family, confirmation of a shared bank account, and so on. In addition to presenting this kind of evidence, couples are also required to undergo interviews, in which they are asked about their private lives, including questions about intimate private details.

However, any deviation from what the PIBA bureaucrats consider to be a normative relationship, may lead them to the conclusion that the relationship is fictitious. Couples, who for financial reasons share their apartment with others, are likely to have their relationship be considered fictitious. Those who do not personally know their partner's relatives (either because their family members do not accept the relationship with a person who belongs to another religion or nationality, or because the family connection is weak, or because the family members do not live in Israel, or because of any infinite

number of reasons stemming from the complexity of family relations) are perceived as maintaining a fictitious relationship.

Other incidents that cast doubt on the genuineness of the relationship between married people arise from situations in which the financial status of the couple or of one of the partners, or the temporary status of the "foreign" partner, generate circumstances that are regarded by the Ministry of Interior as suspicious. Couples that do not have shared bank accounts, cases in which the Israeli spouse is the only one signed on an apartment lease or the only one to whom utility bills are addressed – all these cast suspicion on couples as maintaining fictitious relationships.

Those who go out from time to time with friends, without their spouses, are sometimes perceived to be maintaining fictitious relationships. Those who are forced by their financial circumstances into living arrangements that fall outside of the norm expected by PIBA are considered fictitious. Relationships between Israelis and care workers who stay part of the week with their employers also fall under suspicion.

As said, spouses who seek to initiate the Gradual Process or who are already within it, are asked intimate questions about their spouse's habits. This questioning includes being asked to disclose private details about their spouse's sleep patterns, eating and recreation habits and so on. Real or imagined contradictions in the details disclosed to PIBA also arouse suspicion of a fictitious relationship and are likely to lead to the termination of the Gradual Process, or to stalling its progress. Age gaps between the couple also lead to suspicion of a fictitious relationship.

Many incidents indicate that some Ministry of Interior officials hold a somewhat romantic view, at least when it comes to their professional decision-making, with regard to relationships. Any suspicion that the relationship is based on more than just "love" and is based on other considerations such as personal or economic comfort, casts doubt on the genuineness of the relationship in the eyes of PIBA officials. In one extreme incident, an applicant for legal status by virtue of a relationship explained that she entered the relationship because she felt alone and she wanted to alleviate this sense of loneliness. PIBA pounced on this statement, deciding that a simple desire not to be alone was an insufficient basis for a genuine relationship deserving of legal status in Israel, and thus rejected her application.

Suspicion as to the genuineness of a relationship does not just lead to the rejection of applications for the regularizing of legal status of spouses of Israeli citizens. Such suspicion also leads to delays in the review of applications in cases where they are not rejected. Suspicion as to a fictitious relationship at the outset of the Gradual Process will lead to delays in the initiation of the process, until the suspicions are removed. Such suspicions that arise during the course of the relationship sometimes lead to the suspension of the process. Even if ultimately it becomes clear that the suspicion of a fictitious relationship was baseless, this does not in any way lead to a deduction of the time over which the Gradual Process was delayed from the four and a half years set by the guideline. Even though the guidelines provide PIBA with the authority to reduce

the duration of the Gradual Process, in general, delays caused by PIBA itself do not lead to this option being exercised.

This chapter's description of the examination of the genuineness of a spousal relationship applies equally, and even more stringently, to the examination of the genuineness of a relationship of an unmarried couple, upon which we will now expand.

Discrimination against domestic partners of Israeli citizens

In Israel, marriage cannot be conducted outside of religious law. The meaning of this is that Jews can only be married in Israel to other Jews. In circumstances in which a Jewish citizen has a "foreign" partner who is Jewish, there is no need for a procedure to regularize their legal status based on the couple's relationship, and in any case the Jewish "foreigner" is eligible for immediate citizenship based on the Law of Return, without any dependence on their relationship with an Israeli citizen. Conversely, when Jewish citizens establish relationships with non-Jews, they cannot be married in Israel. Therefore, initiating the Gradual Process as it applies to married couples requires a wedding to be performed outside of Israel.

In cases in which the couple lives in Israel, traveling overseas for the purpose of getting married is likely to involve significant costs. In addition to the financial burden, in certain cases the partner who is not Israeli cannot leave the country. For instance, when it comes to an asylum seeker or someone who does not have travel documents and the State of Israel does not maintain diplomatic relations with their country of origin, the option of getting married outside of Israel becomes impossible. In addition to all of that, it is worth noting the fact that there are also people who wish to tie their lives together but who do not wish, for various reasons – such as a perception of the institution as discriminatory or oppressive – to enter into the institution of marriage.

Since the beginning of the 2000s, the State of Israel has followed a policy, delineated in PIBA guidelines, according to which Israelis who are not married can also confer legal status to their domestic partners. The guideline was considered, at the time, to be progressive compared to the policies adopted by many other western countries. At that time, many of those countries did not allow for the regularization of legal status for the unmarried domestic partners of their citizens (however, it is important to take into account the fact that in almost any other western country there is no obstacle to members of different faiths getting married through civil ceremony). On the other hand, the way in which the guideline has been applied since its adoption demonstrates that certain officials within the Ministry of Interior are ill at ease with the option of granting legal status to "foreigners" in this way.

First of all, in the early years of the guideline's existence, it was a closely guarded

secret, known about only among closed circles. Ministry of Interior officials denied the existence of such a guideline when unmarried couples applied for legal status. Even in legal proceedings in courts for administrative matters, the state denied the existence of such a guideline, and claimed that there is no way to regularize the legal status for an unmarried couple.[17]

The discrimination against unmarried couples who seek to regularize the legal status of the "foreign" partner, compared to married couples, manifests in a number of ways. Firstly, for many years the prevailing policy was that the domestic partner of an Israeli who applied for legal status was required to leave Israel as a condition for the initiation of the Gradual Process, if at the time they were residing in Israel without authorization. The requirement to leave the country previously applied also to married couples, but was removed when the Supreme Court established in 1999 that it was unlawful.[18] For years afterward, the Ministry of Interior continued to apply this illegal requirement to domestic partnerships, until this was also outlawed by the Supreme Court in 2006.[19]

The distinction between married couples and domestic partnerships and the discrimination against the latter is also apparent in the Gradual Process, through its various stages and in the status granted at its conclusion. Over the years, the guideline applied to unmarried couples has been amended a great number of times. On some occasions the provisions were eased and at others they were made stricter. We will not expand here on all of the changes of the guideline over the years. We will relate to its current version, which should suffice.[20] The current version of the guideline establishes that the "foreign" partner of an Israeli citizen will receive a B/1 permit (as said, this permit allows the holder to reside and work in Israel but does not grant social rights) for the first three years of the process, and afterward will receive an A/5 permit (temporary residency) for four years. At the conclusion of seven cumulative years, the "foreign" partner will receive permanent residency. For the sake of comparison, in the framework of the Gradual Process as it applies to married couples, the "foreign" partner receives a B/1 permit for six months, after which he/she receives an A/5 permit for four years, and at the end of the Gradual Process – citizenship.

In other words, the Gradual Process for domestic partnership takes two and one half years longer than the duration of the Gradual Process for married couples; a period of time during which the "foreign" partner holds a B/1 permit, which does not ensure the right to national health insurance or other social rights, two and one half years longer

17 See, for example, Administrative Petition (Tel Aviv) 1722/03 Yevtachov v. Minister of Interior (Nevo, 16.11.2013).

18 HCJ 3648/97, Stamka v. Minister of Interior, [1999] IsrSC 53(2) 728.

19 Administrative Appeal 4614/05 State of Israel v. Oren, IsrSC 61(1) 211 (2006) 293.

20 Procedure for handing the provision of legal status to partners of Israelis, including same-sex partners, (Regulation 5.2.0009, updated on: 7.10.2013), http://www.the Population and Immigration Authority.gov.il/Regulations/5.2.0009.pdf [link in Hebrew].

than the married partner of an Israeli citizen holds a permit that does not grant these rights. Furthermore, the status that a partner in a domestic partnership will receive eventually is inferior to that which a married partner would receive.

As said, the discrimination against domestic partnerships manifests also in that at the end of the process, the "foreign" partner receives permanent residency, whereas the married partner of an Israeli citizen receives citizenship. Indeed, after the unmarried partner becomes a permanent resident, the path is opened to him or her to apply for citizenship. However, as opposed to the married partner of an Israeli citizen, the unmarried partner of an Israeli citizen is not eligible to have their naturalization process eased, and is forced, inter alia, to renounce their foreign citizenship in order to become a citizen of Israel.[21]

Discrimination against permanent residents and their domestic partners is even worse. In the past, there were no guidelines that enabled the acquisition of legal status to the domestic partner of a permanent resident. Only following a ruling by the Jerusalem District Court, which held that not applying the Gradual Process to domestic partners of permanent residents was discriminatory and illegal,[22] was PIBA prepared to amend the guideline. Nonetheless, still today domestic partners of permanent residents suffer from severe discrimination and they must undergo an arduous and prolonged Gradual Process of nine years including four years on a B/1 permit, then five years on an A/5 permit, and only then are they eligible to apply for permanent residency.

Discrimination against same-sex couples in the Gradual Process for married couples

PIBA refuses to apply the Gradual Process for married couples to same-sex couples who were married outside of Israel. In its refusal, PIBA discriminates against same-sex couples that were married outside of Israel in comparison to opposite-sex couples that married overseas.

Since a Supreme Court ruling in 2006, same-sex couples that married outside of Israel are entitled to register as married with the Population Registry.[23] However, PIBA adheres to the argument that the Supreme Court has not yet decided on the question as to the validity of such marriages in Israel, and has ruled only with regard to their registration. However, the legal situation with regard to opposite-sex couples, where

21 Section 5(a)(6) of the Nationality Law, 5712-1952. With respect to married couples, the Minister of Interior exempts the "foreign" partner from the requirement to renounce his/her citizenship, in accordance with Section 7 of the Citizenship Law.

22 Administrative Petition (Jerusalem) 25821-0310, Jerusalem Institute of Justice v. Ministry of Interior, (Nevo, 19.7.2012).

23 HCJ 3045/05 Ben Ari v. Director of Population Registry, IsrSC 61(3) 537 (2006).

the partners are of different religions, where one partner is an Israeli resident and the couple married outside of Israel, is the same. The Supreme Court also ruled in favor of registering their marriages,[24] while it never ruled on the validity of such marriages in Israel.[25]

Applying the Gradual Process for married couples to opposite-sex couples that married outside of Israel, despite the fact that the validity of such marriages in Israel has not been determined, while refusing to apply it to same-sex couples by reasoning that the question of the validity of their marriage has not been determined, constitutes blatant discrimination against the latter on the basis of their sex and sexual orientation.

Terminating the procedure for regularizing the legal status of a partner of an Israeli citizen due to the termination of the relationship

The purpose of the Gradual Process is, as aforementioned, to safeguard the possibility of keeping the family unit intact. In cases in which the family unit ceases to exist, the primary reason to regularize the legal status of the "foreigner" in Israel disappears. This is PIBA's working premise, and in general it is a reasonable premise. However, the implementation of this rule, both procedurally and substantively, is conducted by PIBA in an unreasonable manner which can undermine the rights of Israeli citizens and residents, their current or former partners, and their children.

According to the assumed goal of the procedure for regularizing the legal status of the "foreign" partner of an Israeli, the breakdown of the intimate relationship prior to the completion of the Gradual Process leads to the termination of the process and the revocation of the "foreign" partner's status. Often enough, anonymous reports of terminated relationship are made, which triggers PIBA to suspend its processing of the Gradual Process, and renew its examination of the genuineness of the relationship.

Terminating the Gradual Process due to a couple's having broken up and requiring the "foreign" partner to leave Israel has many serious implications, especially when the couple that has broken up have children together. Requiring the "foreign" partner to leave Israel means one of two things: either the children will remain behind in Israel with the Israeli parent and be separated from the parent who leaves the country; or the children will also leave the State of Israel (the country of their citizenship) to be

24 HCJ 143/62 Funk-Schlesinger v. Minister of Interior IsrSC 17 225 (1963).

25 See, for example, HCJ 4916/04 Zelaski v. Minister of Interior (Nevo, 19.6.2011).

separated from the parent who is an Israeli citizen.

In the past, no exceptions were made with regard to the requirement for the non-Israeli partner to leave Israel after the relationship broke down, even if this meant separating children from one of their parents.[26] Later on, provisions were established within the guideline that enabled exceptions to be made in specific circumstances within this strict rule,[27] but those exceptions are not sufficient in order to guarantee the upholding of the principle of the wellbeing of the child and the rights of the child to be raised by his/her parents. According to the guideline's provisions, when a couple that breaks up has children, a prerequisite for the examination of the possibility of granting a permit to the "foreign" parent to continue to stay in Israel is the completion of at least half of the duration of the Gradual Process and receipt of the A/5 permit (temporary residency) in the framework of the Gradual Process before the breakdown of the relationship. It is further required that the children's custody be shared between the Israeli and "foreign" partner, or for the "foreign" partner to maintain a close and consistent relationship with the children and see to their sustenance. Another condition requires the professional opinion of a public social worker or welfare officer as to whether the "partner leaving will significantly harm the children."[28]

However, these conditions alone may not necessarily suffice. Even when they are met, it is not at all clear whether the partner will be permitted to stay in Israel with his/her children. These are merely prerequisites, whose fulfillment enables the "foreign" partner's case to be transferred to determination by the Inter-ministerial Committee for Humanitarian Affairs, in order for that committee to use its discretion to decide whether or not to break up the family. There are no guidelines whatsoever for how the committee is meant to exercise its discretion, and it makes decisions on these matters without any clear criteria and in an arbitrary manner.

The prerequisites for transferring the case of someone who has separated from his/her Israeli partner for determination by the Inter-ministerial Committee are, of course, devoid of any connection whatsoever to the purpose that they are intended to fulfill. If the goal is to prevent tearing a child apart from one of his/her parents, the question of whether the couple's relationship persisted through half of the duration of the Gradual Process is not at all relevant. Whether the separated couple did not complete more than half of this period because they broke up less than two years after the process was initiated, or whether they did not complete it because the Ministry of Interior delayed its review of their application, or whether they did not complete it because the their

26 See HCJ 4156/01 Dimitrov v. Ministry of Interior, IsrSC 56(6) 289 (2002); HCJFH Dimitrov v. Ministry of Interior), (Nevo, 6.7.2003).

27 Procedure for processing the termination of the Gradual Process for an Israeli partner, (Regulation 5.2.017, updated on: 17.5.2015), http://www.the Population and Immigration Authority.gov.il/Regulations/5.2.0017.pdf [link in Hebrew].

28 Ibid, Section C.1.7 of the procedure.

application for the regularization of legal status was not handled properly, the result is the same – the "foreign" parent is not given legal status, which means tearing the child away from one of his/her parents forever.[29]

Terminating the Gradual Process in cases of a relationship that terminates because of domestic violence

PIBA's policy toward terminating the Gradual Process raises unique difficulties with regard to couples that break up as a result of domestic violence. The possibility that the Gradual Process would be terminated after a relationship breaks down generates a disincentive for women who are in the midst of the Gradual Process to break up with their partners, especially in cases where the couple has children together and in cases in which there are additional difficulties (such as financial, personal or family hardships) associated with the "foreign" woman returning to her country of origin.[30]

In order to minimize the effect of this disincentive for women in the midst of the Gradual Process, a guideline was established that enables, in certain circumstances, the provision of legal status in Israel to a woman who suffers domestic abuse, even after the couple's relationship is terminated.[31] Yet the conditions stipulated by the guideline in many cases leave women who suffer from violence in situations of uncertainty with regard to their legal status in Israel (or worse – with certainty that they will not be eligible for legal status) in a manner which does not serve the public interest to encourage them to leave violent relationships.

29 It should be noted that the district court's ruling allowed the Inter-ministerial Committee for Humanitarian Affairs, in certain cases, to consider the possibility of granting legal status to the parent of a child whose other parent is Israeli, even if the prerequisites have not been met according to the regulation. For instance, in Administrative Petition (Jerusalem) 1204/09 Kehige v. Ministry of Interior (Nevo, 26.1.2010) the court ordered the committee to consider granting legal status to the mother of a child who is an Israeli citizen and whose father is also a citizen and lives in Israel, despite the parents never having even initiated the process to regularize the mother's legal status. But despite the ruling on the matter, the Ministry of Interior as a rule does not transfer cases of this nature for hearing at the Inter-ministerial Committee without the court's intervention. For more, see Tali Kritzman Amir, On Parents and Children: Uniting Families in Israel, Mishpatim 361, (2014).

30 PIBA's policy and the relevant regulation are gender neutral and also apply in situations in which the "foreigner" is a male victim of domestic abuse. Nonetheless, the social reality in Israel is such that incidents in which men are the victims of domestic violence are rare, whereas cases of female victims of domestic violence are relatively common. Therefore, this report will relate principally to female victims of domestic violence.

31 Procedure for terminating the Gradual Process to regularize legal status for the partners of Israelis as a result of violence perpetrated by the Israeli partner, (Regulation 5.2.0019, updated on: 15.10.2013), http://www.the Population and Immigration Authority.gov.il/Regulations/5.2.0019.pdf [link in Hebrew].

Firstly, the guideline enables the renewal and extension of the validity of the residency permit for a woman who has broken up with her partner due to domestic violence, whether the couple has children together or not, only if the couple was married and its marriage was registered with the Population Registry. For reasons that are not at all clear, the guideline does not apply to couples in the process of regularizing legal status based on the procedure that applies to domestic partnerships.[32]

Secondly, the guideline contains conditions that relate to "progress" in the Gradual Process and "attachment to Israel," as they were termed by the Supreme Court.[33] In cases in which the couple does not have children, the option to extend the permit of a woman who separated from her partner due to violence will be considered only if she has already received an A/5 permit (temporary residency) and has completed more than half of the Gradual Process (i.e. more than two years). This is the "progress condition." The "progress condition" undermines the very working premises of the guideline itself, which are concerned with a situation in which losing legal status is likely to diminish a woman's chances of leaving a violent relationship. The "progress condition" is likely to incentivize women to remain in violent relationships for a period of two years (and even longer, given routine delays in the processing of the Gradual Process) to avoid revocation of their legal status.

This is also true for the "attachment condition." According to the guideline, in cases in which the couple does not have children, the question of the woman's attachment to Israel will be considered in comparison to her attachment to another country by examining "the duration of the foreigner's residency in Israel (this rule will also give weight to the legality of the aforementioned residency), employment in Israel, whether the foreigner has relatives in Israel, and the degree to which he/she has integrated into Israeli society," as well as "whether the foreigner has relatives overseas, overseas assets, visits overseas during the residency in Israel, social rights overseas etc." Like the "progress condition," the "attachment condition" also undermines the purpose of the guideline – to provide an exception to the principle according to which terminated relationships deprive eligibility for legal status, in order to advance the "public interest to encourage victims of domestic violence to leave their husbands who abuse them and to file complaints against them."[34]

Finally, fulfilling all the conditions of the guideline is no guarantee that the woman who has separated from her violent partner will receive legal status in Israel. If all the prerequisites are met, then the matter is transferred to the Inter-ministerial Committee for Humanitarian Affairs, which will make the ultimate decision without any criteria whatsoever to govern its discretion.

32 See Footnote 20 above.

33 Administrative Appeal 8611/08 Zawaldi v. Minister of Interior (Nevo, 27.2.2011)

34 Ibid, para 12.

Terminating the Gradual Process for widows and widowers

In the past, when an Israeli partner had passed away before the completion of the Gradual Process, there was no framework that enabled the remaining partner to apply to extend their stay in Israel. This raised, and still raises, a unique hardship especially in cases in which the couple resided in Israel for a significant period of time in which they may have cut off ties with the "foreign" partner's country of origin or in which it would now be very difficult to return to live there after years of life in Israel. It raises even more significant concerns for those who have had children in Israel.

During the course of Supreme Court litigation on this matter, the Ministry of Interior established a guideline which allows in certain circumstances to continue granting legal status to the widows and widowers of Israeli citizens. In a ruling from 2008, the Supreme Court ordered the Ministry of Interior to consider easing the requirements of the guideline,[35] after which the guideline reached its current form.[36]

According to the guideline's provisions, the matter of those who fulfill certain conditions is transferred to the Inter-ministerial Committee for Humanitarian Affairs for it to decide whether it is justified to extend the applicant's residency permit. With respect to the partners of Israelis who have passed away and with whom they had children together, the remaining partner's matter will be transferred to the Committee if the Gradual Process had been initiated and if they had received an A/5 permit.

In cases in which the couple did not have children together, in addition to the requirements mentioned above, the partner is required to have completed at least half of the Gradual Process and there must have been no doubt at any stage of the process as to the genuineness of the relationship between the couple. The latter requirement is harmful and illogical, in that it prevents the continued residence in Israel of a partner for whom any sort of doubt was raised, no matter how baseless and unfounded, even if it was completely discounted before the Israeli partner passed away. Moreover, remaining partners who have not had children are forced to undergo an interview, in which their attachment to Israel is examined in comparison to their attachment to their country of origin.

It is important to keep in mind that even those who fulfill all these conditions are not guaranteed legal status. Fulfilling all these conditions merely means that the case of a widowed partner of an Israeli will be transferred to the Inter-ministerial Committee for

35 HCJ 7211/02 Hillel v. Minister of Interior (Nevo, 12.10.2008).

36 Procedure for processing the termination of the Gradual Process for the foreign partner of an Israeli, (Regulation 5.2.017, Updated on: 17.5.2015), http://www.the Population and Immigration Authority.gov.il/Regulations/5.2.0017.pdf [link in Hebrew]. The Supreme Court ruled that the provisions of the regulation are reasonable. HCJ 7211/02 Hillel v. Minister of Interior (Nevo, 2.8.2009).

Humanitarian Affairs, which will discuss the application, like all other applications, arbitrarily without any semblance of guideline or standards.

Impossible requirements to produce documentation

A major bureaucratic obstacle in the way of a person seeking to establish his/her legal status in Israel based on their relationship with an Israeli citizen or resident is the requirement to produce various documents. In general, the need for various documents, in order to prove the identity, personal status, or lack of any criminal record of the person seeking legal status, is a legitimate requirement. But PIBA uses this requirement as a barrier for application in cases in which it is clear that it is simply not possible to obtain these documents or in which it is clear that there is no reason to require them.

For instance, in order to initiate the Gradual Process and in order to extend the permits that are provided as part of the process, "foreign" partners of Israelis are required to produce valid passports. This condition is reasonable, generally, though in certain cases its fulfillment is impossible. For instance, a person whose country of origin has no diplomatic ties with Israel is not able to renew their passport at an embassy in Israel (because embassies do not exist). In the absence of a valid passport, such a person is also unable to travel to a country in which their country of origin does have an embassy, or to travel to their country of origin to renew their passport.

These issues stand out especially with respect to asylum seekers attempting to obtain legal status by virtue of a relationship or to those entitled to "temporary protection" or "group protection" (see further details below). Naturally, it is unacceptable to require someone who claims that they are in danger in their country of origin to travel to their country of origin in order to obtain a valid passport. In certain cases, the countries of origin of asylum seekers or those entitled to "temporary protection" or "group protection" have no embassies in Israel (Sudan, for instance). However, even in cases where such countries do have embassies in Israel (Eritrea, for instance), it is unacceptable to require a person to present him/herself to the representatives of the regime that persecutes him/her in order to request that they issue documents for him/her.

This is also true for other documents, such as a certificate of good conduct or a document that proves that the applicant for legal status was single when he/her married an Israeli citizen. Whether with respect to asylum seekers or those entitled to "temporary protection" or whether with respect to those from countries without diplomatic relations with Israel, obtaining these documents is often impossible.

Maltreatment of parents of "accompanying minors"

According to the guideline that deals with the legal status of married partners of Israeli citizens,[37] a child minor of the "foreign" partner is entitled to accompany the parent and to receive the same legal status that the parent receives through the various stages of the Gradual Process.

However, in cases where the minor is older than 15 years, the guideline requires proof that the minor was, legally and de facto, in the custody of the parent for the two years immediately preceding the application for legal status. This requirement ignores the gamut of circumstances that make it harmful and unreasonable. In many cases, immigration leads to the temporary separation of a parent from his/her children by necessity. The fact that for a period of time a child was not in the direct custody of his/her parent does not obviate or mitigate the harm done to the parent and the child by imposing a continued separation on them.

In many cases, parents cannot allow themselves financially to bring their children with them. At first they seek to establish an economic base and only then to bring them. In other cases, migrant workers may come to Israel with the assumption that their stay here will be temporary and leave their children under the supervision of relatives in their country of origin for a limited period of time with the intention of returning. However in situations where they enter into relationships in Israel and wish to be reunited with their children, they find that the requirement that the children have been in their custody for two years makes their bringing the children to Israel impossible, and is likely to force them to have to choose between separating from their partner or from their children.

In other cases, life circumstances can change in a way that prevents the continuation of the arrangement in which the children of a person seeking legal status were not under their direct care. For instance, a parent who comes to Israel is likely to place his/her children in the care of the children's grandparents, or other parent. After a number of years the health or economic situation of the grandparents or other parent is liable to deteriorate in a way that does not enable them to continue to care for the children. In other situations, relatives who cared for the children of the person applying for legal status might decide, for a variety of reasons, not to continue seeing to the needs of the child. In this kind of scenario, the condition of direct care for the two years preceding the application for legal status is likely to leave the children without any right to come to Israel and without any supervision, or to force the parent who initiated the Gradual Process in Israel to abandon his/her Israeli partner and return to his/her country of origin in order to care for the children.

37 See Footnote 15 above.

The right to family life for couples in which one person is a resident of the occupied territories

For more than a decade, the rights of couples, where one person is a citizen or permanent resident of Israel and the other is a resident of the occupied territories, to realize their right to family life has been suspended. This suspension tears apart families, destroys couples' ability to maintain marriage life, and even separates children from their parents. In legal proceedings on the matter of the provisional order which governs this policy, the state argued that the only purpose of the provisional order relates to security. However, anyone who wishes to be convinced that this is indeed the only, or even primary, purpose of the law will need to block their ears and shut their eyes. At the time that this policy was adopted, starting as a government decision and later established by statute, and further over the course of the many years in which this policy has been applied, prime ministers, ministers and MKs who were involved in drafting the policy and legislation, have repeatedly declared the true purpose of the provisional order: the demographic purpose of reducing the number of Palestinians who live with their Israeli family members inside the State of Israel.

It must be emphasized that refusing to provide legal status and depriving the right to reside in Israel from someone who clearly poses a risk to public security, is legitimate. Indeed, the state is not obliged to allow someone who poses a threat to its citizens to reside in its territory, and this manifests in the non-application of the Gradual Process to the partners of Israelis when a security or criminal impediment is identified, whether they are Palestinian or not. However the policy as it is applied by PIBA, which has also been anchored in legislation, does not examine whether a person poses an actual risk. Instead, the policy is based on the assumption that Palestinian residents of the occupied territories, whoever and wherever they are, threaten the security of Israel, and thus it is permitted to categorically deny them the right to be united with their families.

In May 2002, the Israeli government decided to suspend the review of applications for legal status by residents of the territories. Later, in August 2003, the Citizenship and Entry into Israel Law (Provisional Order) 2003 was enacted, which enshrined in law the policy established by government decision. The law was passed as a provisional order for one year, but since then, for twelve years, its validity has been extended again and again.

The Supreme Court rejected, by majority opinion, petitions on the constitutionality of the provisional order, and established that despite its infringement on the constitutional right to family life, it should not be annulled, given the security interst that it fulfills.[38]

38 Adalah Affair and Gal'on Case, Footnote 13.

The provisional order has gone through several incarnations. In its current form, the rule it establishes is that residents of the territories will not receive residence permits in Israel or permits issued by the military under security legislation (known as a "DOC Permits"). The law enables, as an exception to the rule, to issue DOC Permits to women over the age of 25 and men over the age of 35, who have Israeli partners, but does not enable the provision of residence permits. It also enables issuing residence permits to minors under the age of 14 and DOC permits to minors over the age of 14 to prevent their separation from their parental guardian who is legally staying in Israel.[39]

In addition, since 2007, the law has enabled residents of the territories who have relatives who reside legally inside Israel, to be granted staying permits or DOC permits for humanitarian reasons. However, the law stipulates that the fact that the partner of a resident of the territories resides in Israel does not in itself constitute humanitarian justification to grant them with such status. For that purpose the law provided for the establishment of the Inter-Ministerial Committee for Humanitarian Affairs.

As said, the provisional order does not enable Israeli citizens and their Palestinian partners to realize their right to family life and tears apart thousands of families. Even in those cases in which it does allow, as an exception, children to live with their parents or adults to live with their partners, it leaves them in a weakened situation, without basic rights and without any sort of horizon. As said, the provisional order allows, in certain circumstances, the granting of DOC permits, though these, unlike permits granted to foreign citizens as part of the Gradual Process, do not provide their holders with basic social rights. This fact casts doubt on the state's claim that the provisional order is intended to serve a security need – if those who are given DOC permits live inside Israel in any case, it is difficult to find logic in the claim that granting permits that do not allocate basic social rights prevents their holders' from becoming involved in activity that threatens public security. Their very presence inside Israel is what was supposedly going to enable their involvement in this kind of activity, as it was put forward in the claim with regard to the sweeping security threat posed by Palestinians. Abandoning Palestinian residents of the territories to a situation in which they lack basic rights does not serve the declared security purpose of the provisional order.

Similarly, the impact of the provisional order on those who had already initiated the Gradual Process to regularize their legal status in Israel before the government decision of 2002 is severe, and clarifies that the dominant consideration behind the provisional order is not security. As said, according to the Gradual Process, partners of Israelis receive, in the first stage, a B/1 permit (or DCO permit, for Palestinians) for a period of six months, after which they receive temporary residency for four years, and finally, citizenship. However, according to the government decision of 2002 and in accordance with the provisional order, the status of Palestinians who initiated the Gradual Process before then does not advance through the stages. As a result, for more than 13 years

39 For an interpretation of these provisions see Administrative Appeal 5718/09 State of Israel v. Sarur (Nevo, 27.4.2011).

now, those who initiated the Gradual Process before 2002 continue to hold a status that does not provide them with basic social rights. Given that they live inside Israel, it is clear that leaving them with a temporary status for over a decade undermines their ability to actualize basic rights, without that harm serving any sort of security purpose.

After years of violations to the rights of Palestinian family members of Israeli citizens who live inside Israel on DOC permits, provisions were established that allow this population group to register with healthcare providers.[40] Nevertheless, the regulation which applies to this group is costly, discriminatory and inferior when compared with regulations that apply to family members who are not Palestinians, and further demonstrates that the considerations that stand behind the policy for Palestinian family members are not security considerations.[41]

40 National Health Insurance Amendments (Registration with Health Funds, Rights and Obligations for Residency Permit Holders According to the Citizenship and Entry into Israel Law (Provisional Order), 5763-2003), 5774-2014.

41 Association for Civil Rights in Israel v. Health Minister (Nevo, 4.11.2015).

Violations of the Rights of Residents of East Jerusalem

After the occupation of the West Bank in 1967, Israel annexed the neighborhoods of East Jerusalem. Overnight, tens of thousands of Palestinians living in an area of approximately 70,500 dunams of annexed land became residents of territory in which Israel enforced the "law, jurisdiction and administration of the state."[42]

The unilateral annexation of conquered territory is not recognized under international law. From the perspective of international law, the rules of belligerent occupation apply to the territory of East Jerusalem and its residents are protected persons, according to international humanitarian law. Nevertheless, according to Israeli law, the laws of the State of Israel now apply to the annexed territory.

Following the annexation of East Jerusalem, the State of Israel conducted a census in which approximately 66,000 Palestinians were registered. Those who registered were given the status of permanent residents.[43] Later, in certain circumstances, permanent residency status was also given to those who did not register in the 1967 census but who proved that they had lived in East Jerusalem prior to its annexation and that they had continued to live there uninterruptedly since.[44] The residents did not have much choice regarding the acceptance of this status as the refusal to accept permanent residency meant that those who lived their whole life in East Jerusalem would be staying without authorization in their own home and be exposed to the risk of deportation.

As permanent residents, the residents of East Jerusalem are supposed to benefit from all the rights of Israeli citizens, except the right to participate in elections and the right to obtain an Israeli passport. As such, they should also benefit from the services on an equal basis to that enjoyed by Israeli citizens.

Since the annexation of East Jerusalem, the number of East Jerusalem residents has increased fivefold. Despite the duty to treat residents of East Jerusalem equally, they suffer from discrimination on a vast range of issues. This includes discrimination with regard to planning and construction policies, investments in physical infrastructure, as well as government and municipal services. The social, employment, education, postal, water, sewage and sanitation services that they do receive are significantly inferior when compared to services received by Israeli citizens.

42 Administrative and Judicial Order (No. 1), 5727-1967.

43 HCJ 282/88 Awad v. Prime Minister and Ministry of Interior, IsrSC 42(2) 424, Para 9, (1988).

44 Administrative Appeal 10811/04 Surhi v. Ministry of Interior (Nevo, 17.3.2005).

However, the most blatant manner in which the State of Israel violated the rights of residents of East Jerusalem manifests itself in the policy of the Population and Immigration Authority (PIBA). The approach that guides the Ministry of Interior is based on an aspiration to "Judaize" Jerusalem and to achieve a Jewish majority within its borders. To that end, PIBA's bureaucratic mechanisms are exercised in a manner that treats East Jerusalem residents as "foreigners." The approach adopted in relation to East Jerusalem residents does not treat them as an indigenous population that has lived in this territory since time immemorial and to which the State of Israel has come. The policy towards them resembles an approach to foreigners who have come to the State of Israel. Their residency is always conditional.

The relation to the residents of East Jerusalem as migrants or as conditional residents manifests in the possibility of revocation of their permanent residency under certain conditions,[45] and in the approach which was adopted in 1988 by the Supreme Court, according to which when a resident of East Jerusalem relocates the center of his/her life, their residency "expires."[46] As part of the effort to "Judaize" the city, the Ministry of Interior's bureaucratic apparatus requires the Palestinian residents of East Jerusalem to prove again and again that the center of their lives is in East Jerusalem and to prove that they are residents of East Jerusalem. Those who are unable to prove this find their residency expires. The revocation of residency usually takes place after the fact and without the right to argue their case. Many East Jerusalem residents discover that they are no longer permanent residents, as far as the Ministry of Interior is concerned, when they seek services or to enter Israel.

Unlike Israeli citizens – who are free to depart and to enter Israel at will, to study or travel abroad, leave for family or any other reasons, for short-term or long-term – the departure of residents of East Jerusalem from the country places them at risk of having their residency revoked. An East Jerusalem resident's visit abroad for the purpose of, say, an extended period of study, leads the Ministry of Interior to repeatedly raise concerns regarding the center of their life and places them in danger of having their residency revoked. Marriage to a foreign citizen, in which as a result the East Jerusalem resident obtains legal status in their spouse's country of citizenship, will also lead to an investigation regarding the resident's center of life and to the consideration of revoking his/her residency. East Jerusalem residents living in another country for a period of time with a partner who seek to return to Israel, either after separating from or together with their partner, also encounter obstacles when returning to Israel.[47] Those who work both in Israel and abroad, or for other reasons leave Israel on a regular basis, are also exposed to the risk of their residency being revoked. According to data collected by HaMoked: Center for the

45 Entry into Israel Amendments, 5734-1974, Amendment 11.

46 Awad Case, Footnote 43 above, Para 14.

47 See, for example, Administrative Petition (Jerusalem) 1633/09 Aziv v. Minister of Interior (Nevo, 23.12.2010)

Defense of the Individual and B'Tselem, between 1967 and 2014, 14,416 residents of East Jerusalem were stripped of their residency.

Every interaction between the residents of East Jerusalem PIBA provides the pretext for investigating the center of their lives. Even an act which would be simple and routine for an Israeli citizen, such as changing a person's registered address with PIBA, is hampered by bureaucratic obstacles and the requirement to show proof of residence at the address for which registration is requested. This is especially true in cases where city residents wish to register as living in an area that is not East Jerusalem.

Moreover, naturally East Jerusalem residents have cultural affinities and family ties in the West Bank. Some people marry residents of the West Bank and as a result raise suspicions that the center of their lives is in the West Bank rather than East Jerusalem. This kind of suspicion could also lead to the revocation of residency. Similarly, this can lead to their children who are entitled to permanent residency not receiving this status.[48] Children of residents of East Jerusalem, whose second parent is a resident of the West Bank and who registered with the Population Registry in the West Bank, are not eligible to receive permanent residency if they are over the age of 14, even if they live in East Jerusalem with the parent who is an Israeli resident.[49] This is unlike the children of Israeli citizens who are eligible for citizenship from birth even if the other parent is a resident of the West Bank.

The option to revoke the residency of East Jerusalem Palestinians is exploited by the state authorities also to promote political interests and agendas. For example, the Minister of Interior acted to revoke the status of East Jerusalem residents who participated in the Palestinian parliamentary elections.[50] Similarly, recently there have been calls to revoke the permanent residency status of those who were involved in security incidents.[51]

48 Entry into Israel Amendments, 5734-1974, Amendment 12: Administrative Appeal 5569/05 Aweisat v. Ministry of Interior, Paragraph 17 (Nevo, 10.8.2008).

49 Citizenship and Entry into Israel Law (Provisional Order), 2003, Article 1; Administrative Appeal 5718/09 State of Israel v. Sarur, Paragraphs 18-23 (Nevo, 27.4.2011).

50 An appeal on this matter has been pending in the High Court of Justice for a number of years. HCJ 7803/06 Abu Arafa v. Minister of Interior.

51 Jonathan Lis and Barak Ravid, Netanyahu to advance bill to deny residency and social rights to perpetrators of attacks (Ha'aretz, 22.11.2014), http://www.haaretz.co.il/news/politics/1.2492450, [link in Hebrew].

Migrant Workers

Introduction

Since the early 1990s, the Israeli labour market has developed an addiction for migrant workers, who are referred to in legal, political and public discourse as "foreign workers."

The premise behind the importation of migrant workers into Israel is that certain sectors of the Israeli labour market (care giving, agriculture and construction, for example) are undesirable to Israelis. The number of Israelis willing to work in those sectors will never satisfy the needs of the economy, and therefore, bringing people from abroad to fill positions in these sectors is deemed unavoidable.

This report will not debate the validity of this premise. The working assumption in this report is that bringing migrant workers to Israel for the purpose of filling positions in certain sectors is a current reality, regardless of its justification (or lack thereof). Within the framework of a policy to import human beings, the central concern is whether or not basic steps are taken to protect their rights. The practices employed by the Population and Immigration Authority (PIBA), as well as by other state authorities, clearly express the government's policy towards this population group – a policy of "having one's cake and eating it too." The State of Israel wants, on the one hand, thousands of "foreigners" brought to Israel to fill certain needs of the labour market, but at the same time, it wants to deny their presence by implementing practices intended to keep migrant workers in a perpetual state of weakness and transience in order to ensure that they do not "settle down" in Israel. Leaving them in such a state leads to violations of basic human rights.

Many countries that at one point encouraged the development of a "foreign" labour force came to understand that such an importation has a price. The price is the possibility that eventually, some of those who came to the country temporarily might choose to stay permanently. These other countries understood that they could decide not to bring in a "foreign" work force at all. However, once the decision is made to import human beings, protecting their rights may lead to some of them settling down.

The State of Israel, in contrast, holds that it is possible to do what no other country has ever accomplished before – to import people to Israel who would remain temporarily, and who would all leave the country at the end of their stay. To achieve this imaginary goal, state authorities are prepared to take various measures that severely violate fundamental human rights.

It is not only the intention to prevent migrant workers from "settling" that causes the violation of their human rights. It is also the desire to satisfy the economic interests of employers, such as in agriculture or construction, or other needs of employers in the care giving sector, that are perceived as interests that justify infringements upon the rights of migrant workers. Violations that no one would think to inflict upon an Israeli worker for the benefit of their employer, or indeed the benefit of any other interest, are seen as natural when it comes to migrant workers.

Migrant workers in Israel are granted the right to live and work in Israel through a B/1 work visa for the duration of their stay. According to the Entry into Israel Law, migrant workers can acquire this kind of permit for a period of up to five years and three months at most.[52] An exception to the rule is in the field of care giving. If the proper authorities have declared that terminating the employment of a caregiver (who has been employed by a specific patient for at least one year) would result in significant harm to the patient, the caregiver can continue to stay and work in Israel indefinitely until the contract is terminated, either through dismissal or resignation, or following the death of the employer.[53]

According to PIBA, as of September 2015, there are approximately 45,000 caregivers, 7,000 construction workers, 21,000 agriculture workers and 3,000 specialists working and residing in Israel with the proper permits.[54]

Violations of family and parenthood rights of migrant workers

As was mentioned previously, one of the driving factors underlying PIBA policies regarding migrant workers is the preservation of their temporariness in the country. PIBA's concerns about "settling" non-Jews in Israel has led to a phobia of any sign of a normalized human life in Israel for anyone whose presence in the country is meant to be temporary. Therefore, the development of family ties (or intimate relationships that do not constitute a family unit) is considered grounds to revoke the legal status of migrant workers who have been brought to Israel and live here lawfully.

As can be seen in the chapter that deals with establishing a family unit with an Israeli provides migrants workers with the right to enter into a Gradual Process to regularize their legal status, and constitutes grounds for the provision, at the end of the process, of permanent legal status. However, establishing a family or having an intimate relationship with another migrant worker constitutes grounds for their status to be revoked.

Ministry of Interior guidelines do not prohibit the establishment of intimate relationships between migrant workers. However, the Ministry's position is that the guideline regarding the importation of migrant workers into Israel which prohibits the provision of a visa or permit to foreign workers who have first-degree relatives in

52 Entry into Israel Law, 5712-1952, Article 3(a)(i).

53 Entry into Israel Law, 5712-1952, Article 3(a)(ii).

54 Population and Immigration Authority, Foreigners in Israel Statistics, Edition 3/2015, Page 5 (October 2015), http://www.the Population and Immigration Authority.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/oct2015.pdf, [link in Hebrew].

Israel, and forbids migrant workers from bringing their spouses or children with them to Israel,[55] also means that migrant workers who develop a relationships in Israel cannot stay here.[56]

The violation of the right to family life is critical. Migrant workers who come to Israel are mostly young people in their twenties and thirties. They come for a period of around five years; in the case of caregivers it may be an even longer period. PIBA expects these employees to check their humanity at the door throughout their time in Israel, to avoid establishing any human relationships that might lead to intimate relationships or domestic partnership. Developing such relationships, according to the Ministry of Interior, leads to revocation of legal status, detention, and deportation. Migrant workers are expected to serve as working machines during their time in Israel, and nothing more.

This policy, which is equivalent to the prohibition of romantic or intimate relationships, leads to a wider circle of infringements on the rights of migrant workers and subjects them to absurd situations. Aware as they are of this policy, they are forced to develop relationships in secret. In cases where they wish to marry, the marriage will sometimes be kept secret so as to avoid to deportation. This veil of secrecy has also spawned a culture of informing. In a number of cases, migrant workers or Israelis have sought to take revenge upon other migrant workers for some reason, by reporting their romantic relationships to PIBA by sending pictures of wedding ceremonies. Such cases have resulted in the revocation of migrant workers' legal status in Israel. This of course leaves those who have romantic relationships vulnerable to blackmail.

Other cases we encountered indicated that, at least for a period of time, an intelligence unit in the Ministry of Interior called the "Oz Unit" (no longer an operational unit) collected "intelligence" about romantic relationships between migrant workers.

Such a situation in which a man or a woman wishing to have a romantic relationship is forced to do so in secret, in which couples who wish to marry must do so in secret, in which the very existence of a relationship puts couples at risk of being reported or extorted, is an intolerable situation that is inconsistent with the right to family life and the right to autonomy – rights afforded to all, including migrant workers.

Another policy that illustrates the phobia towards any aspect of normalization in the lives of migrant workers in Israel is the policy previously enacted towards female migrants who became pregnant. According to this policy, an authorized female migrant worker who became pregnant had to choose between one of two alternatives: either sending the newborn infant to the mother's country of origin so that she might stay in Israel legally, or leaving the country altogether with the newborn child. This guideline prohibited the mother from staying in Israel legally with her child. Later, the

55 Procedure for summoning a foreigner from abroad, (Regulation 5.3.0001 updated on: 22.6.2011), Article 1.4, http://www.the Population and Immigration Authority.gov.il/Regulations/93.pdf, [link in Hebrew].

56 See, for example, Administrative Petition (Tel Aviv) 2485/04 Ophir v. Minister of Interior (Nevo, 2.8.2005).

guideline was amended so as to deprive the migrant worker of the choice to stay in Israel without her child at all, and mandated that she had to leave the country following the birth. This policy was struck down by a Supreme Court decision that determined it to be an illegal infringement on the right of the migrant worker to parenthood and her economic aspirations, which was likely also to infringe upon her constitutional right to property.[57] However, the current guidelines, amended in light of the Supreme Court ruling, continues to reflect the fear of any normalization in migrant workers' lives in Israel. In cases where the mother's partner or the child's father is "a foreign national" the guideline decrees that PIBA will require one of the parents to leave the country.[58]

The binding of migrant workers

One of the most harmful practices against migrant workers is called "binding." In effect, the validity of a migrant worker's visa is bound to the identity of a specific employer. In the past, Israel applied a very strict bond – a migrant worker could not switch employers. If they did, they would automatically lose their legal status in Israel. The significance of binding, as it was used in Israel in the past, meant that termination of employment, resignation, or death of an employer would lead to the immediate expiration of a migrant's visa. Binding led to the deteriorating position of migrant workers in Israel. It allowed employers to implement practices that harmed their workers, to avoid paying minimum wage, and to deprive their workers of mandatory rights outlined in labor law, all with the full knowledge that workers wouldn't dare to act against them as their legal status was entirely dependent on the employer.

Over the years, the application of the Binding Arrangement on migrant workers has decreased, and new conditions have been established in which workers can move between employers. But the guidelines for switching employers have also imposed significant limits on the ability to exercise this right. Inter alia, workers are limited by the number of times they can change employers, and restricted in the amount of time between concluding one job and starting the next, and so on.

In 2006, the Supreme Court ruled the Binding Arrangement to be illegal and void, ordering the state to draft, within six months, an alternate regulation for employing migrant workers in Israel, one not founded on binding the worker to the employer.[59] However, to this day, the Binding Arrangement has not disappeared completely from the regulation that applies to migrant workers. At first, the Ministry of Interior dragged

57 Kav LaOved Case, Footnote 14 above. An appeal for a further hearing filed by the state after the ruling was rejected. HCJ (Additional Hearing) 3860/11 Ministry of Interior v. Kav LaOved (Nevo, 8.12.2011).

58 Procedure for handling a pregnant foreign worker or foreign worker who has given birth in Israel, (Regulation 5.3.0023, Article 3(d), updated on 20.5.2013), http://www.the Population and Immigration Authority.gov.il/Regulations/5.3.0023.pdf, [link in Hebrew].

59 HCJ 4542/02 Kav LaOved v. Government of Israel, IsrSC 61(1) 346 (2005).

its feet in applying the ruling.[60] In the end, the formulation of a new guideline designed, ostensibly, to cancel the Binding Arrangement, did not sufficiently implement the Supreme Court's instructions, nor was it sufficient to repair the severe damage to fundamental rights left in wake of the arrangement.

The ruling against the Binding Arrangement was revolutionary. It was so revolutionary, in fact, that the Ministry of Interior never managed to fully internalize its meaning. The ruling obligates the state, should it be inclined to continue importing a labor force from outside of Israel, to create a new regulation beyond the current Ministry of Interior guidelines – a regulation that provides a framework in which the legal status of non-Jews is not dependent on any "sponsor."

However, as noted above, the Ministry of Interior was not capable of internalizing this demand. In the end, the current regulation established by the Ministry of Interior known as the "Location of Employment Update for Foreign Workers," declares itself to be designed to implement the Supreme Court's instructions with regard to cancelling the Binding Arrangement.[61] It does not, however, do so. In reality, the only difference between the regulation struck down by the Supreme Court (which it deemed "a form of modern slavery") and the current regulation established by the guideline, is that a migrant worker whose employment terminated now has 90 days to find a new employer and to regularize legal status as opposed to the 60 days provided in the previous regulation. While the Ministry of Interior was obliged to formulate a regulation that disconnects dismissal, resignation, or death of an employer with the loss of the worker's legal status in Israel, the current regulation continues to bind the validity of the worker's visa to his/her employer, in that the visa expires when employment is terminated. It is doubtful whether the difference between allowing 60 or 90 days to find a new employer is substantial enough to distinguish between "a form of modern slavery" and a regulation that protects human rights.

In recent years, the Knesset and Ministry of Interior have worked to add new binding elements to the regulation for the employment of migrant workers. For instance, even though the Supreme Court refused to allow any limitation to the number of times a worker could change employers, the Entry into Israel Law was amended in 2011to "prevent misuse" of residence permits. Pursuant to the amendment, the Minister of Interior may now prescribe guidelines that contain provisions for "means of controlling" the number of times that a caregiver can switch employers.[62] Guidelines were enacted under this authority in 2014, which allow the initiation of a "clarification process" in instances where a worker has switched employers three times in the span of two years.

60 The Supreme Court held this in rulings handed down in contempt of court proceedings due to failure to implement a judgment.

61 Procedure for updating location of employment for foreign workers, (Regulation 5.3.0022 updated on: 1.8.2009). http://www.the Population and Immigration Authority.gov.il/Regulations/103.pdf, [link in Hebrew].

62 Entry into Israel Law, 5712-1952, Article 3(A)(iii.a)

If the worker is deemed to be "misusing" their residence permit, it can be revoked.[63] Neither the law nor the regulations clarify the definition of "misuse."

Furthermore, in 2011 the Entry into Israel Law was amended to provide the Minister of Interior with the authority to establish provisions for the "geographical binding" of caregivers – provisions that outline geographic regions in which caregivers are permitted to find employment.[64] Accordingly, in 2014, the Minister of Interior established provisions, which contain guidelines that limit the ability of caregivers to switch employers, in cases where the new employer does not live within the same region as the first employer to provide work to the caregiver in Israel.[65] This regulation limits the worker's ability to change employers, and increases the already significant power inequality between employee and employer.

Restoration of policies that allow collection of exorbitant brokerage fees

For many years, the "importation" of migrant workers was a highly lucrative business, due to the high fees collected from whoever applied to work in Israel.[66] Tens of thousands of workers came to Israel after paying fees that often amounted to tens of thousands of shekels. While Israeli law limits the extent to which brokers can demand fees from migrant workers,[67] enforcement has proven an almost impossible task for the authorities. In addition to the state's powerlessness to enforce fee limits, middlemen in Israel, working in tandem with entities overseas, have found creative ways to charge migrant workers higher fees than permitted by law prior to their arrival in Israel, and to transfer significant portions of the fees to brokerage firms in Israel and to employers.

High fees paid by migrant workers in order to travel to Israel and work there form fertile ground for human rights violations and the development of "debt bondage." Migrant workers amass very steep debts, often in grey or black markets in their countries of origin, in order to repay the brokerage fees. Entire families have levied or sold their properties in order to pay fees or to repay loans at exorbitant interest rates. Debt bondage has left many migrant workers in Israel very vulnerable. The need to repay loans, or the notion that if they were forced to stop working and return to their countries of origin they would not be able to cover debts or recover the huge investments made in order

63 Entry into Israel Amendments (Means of Controlling the Transfer of Foreign Workers in Caregiving), 5774-2014.

64 Entry into Israel Law, 5712-1952, Article 3(A)(iii.c)

65 Entry into Israel Amendments (Setting Geographical Areas for the Employment of Foreign Workers in Caregiving), 5774-2014.

66 Kav LaOved Case, Footnote 59 above, Paragraph 26 of the judgment; Administrative Appeal 1347/07 Gorong v. Ministry of Interior, paragraph 10 of the judgment (Nevo, 21.6.2007).

67 Employment Services Amendments (Brokerage Fees from a Job-seeker), 5766-2006.

to get to Israel, have weakened migrant workers' bargaining power with employers and have led many migrants into situations where they are prepared to put up with harsh working conditions or violations of their rights under Israeli labor law.

Following a petition led by Kav LaOved – Worker's Hotline in 2006 and a conditional order issued in the context of this petition, Israel began to work towards establishing bilateral agreements with foreign governments. These bilateral agreements established mechanisms for recruiting migrant workers for the construction and agriculture sectors. The goal of these agreements was to regulate the recruitment of migrant workers, and to subject this recruitment to standards for various issues, including the collection of brokerage fees. In 2011, the government decided not to import any additional construction workers, unless they arrived within the framework of these bilateral agreements.[68] The Israeli government signed bilateral agreements with the governments of Bulgaria and Moldova on the recruitment of construction workers, and with Thailand and Sri Lanka regarding agricultural workers.[69]

Although the phenomenon of brokerage fees has not disappeared entirely, their sums have declined dramatically in recent years. This decline has also led to improved situations for migrant workers in construction and agriculture, as well as a decline in the vulnerability of migrant workers within the Israeli labor market.

However, developments in recent months suggest that when the rights of migrant workers are put up against the economic interests of commercial entities or interests, which are perceived as the national interests of Israeli citizens, these interests tend to trample the rights of migrant workers.

And thus, in September 2015, under the pretext of increasing the pool of construction workers in Israel to deal with the housing crisis, the government decided to reverse its decision from 2011, and to allow the importation of construction workers form China, even though no bilateral agreement with this country has been signed.[70]

The decision to allow construction workers from China, in particular, to work in Israel raises concerns over the potential to return astronomical brokerage fees. In 2003, the State Comptroller held that brokerage fees for migrant workers in the

68 Government Decision 3453, Encouraging Employment of Israelis and Quotas for Foreign Workers in the Construction Sector and Regulating Entry of Foreign Workers in the Caregiving Sector (10.7.2011), http://www.pmo.gov.il/Secretary/GovDecisions/2011/Pages/des3453.aspx, [link in Hebrew].

69 The caregiving sector, as can be seen in the statistics provided above, is the largest sector of employment for foreign workers. However, in this sector, no agreements of the kind mentioned above have been signed.

70 Government Decision 541, Regulating Entry of Foreign Workers Performing Wet Work in the Construction Industry – Provisional Order (20.9.2015), http://www.pmo.gov.il/Secretary/GovDecisions/2015/Pages/dec541.aspx, [link in Hebrew].

construction sector at that time had reached between 5,000 to 10,000 USD.[71] With the passage of time, this sum skyrocketed. A 2007 report by the Hotline for Refugees and Migrants and Kav LaOved – Worker's Hotline based on hundreds of questionnaires answered by construction workers from China, determined that the rates of brokerage fees at the time reached 15-20,000 USD.[72] In 2010, reports showed that brokerage fees had reached 30,000 USD for Chinese construction workers.[73]

The decision to halt the importation of migrant construction workers outside of bilateral agreements had resulted in a retreat of the phenomenon of high brokerage fees. The government's decision to permit the reintroduction of migrant workers from China without this kind of agreement has taken the progress achieved in this area five years backward, and another astronomical increase in brokerage fees is to be expected. Alongside the increase in fees, renewed violations of the rights of migrant workers are also a likely prospect.

PIBA is powerless to enforce against employers

As previously mentioned, when PIBA was established, the power of enforcement against the employers of migrant workers was transferred from the Ministry of Economy to PIBA. A State Comptroller's report from May 2015 has revealed that PIBA has been neglecting this role.[74]

The State Comptroller's report revealed that PIBA does not monitor employers in the caregiving and agricultural sectors to inspect reports of wages paid to employees, as it is obliged to by law. As such, there is no data with which to monitor breaches of employers' obligations regarding the payment of wages. PIBA has also failed to review hundreds of complaints about failures to pay wages through Israeli bank accounts, as is required, and neglected to complete, over extended periods of time, an investigation into claims of serious violations of worker's rights by manpower agencies in the construction sector.

One of the most effective tools at PIBA's disposal is the ability to deny or revoke

71 State Comptroller, Annual Report 53(b) for 2002 and Accounts for the 2001 Fiscal Year, Page 656 (30.4.2003), http://tinyurl.com/onsdmbx, [link in Hebrew].

72 Hotline for Migrants Workers and Kav LaOved – Worker's Hotline, Freedom Inc.: Binding Migrant Workers to Manpower Corporations in Israel (August 2007), http://hotline.org.il/wp-content/uploads/FreedomInc072507.pdf.

73 State Comptroller, Annual Report 60(b) for 2009 and Accounts for the 2008 Fiscal Year, Page 1047 (11.5.2010), http://www.mevaker.gov.il/he/Reports/Pages/292.aspx, [link in Hebrew]

74 State Comptroller, Annual Report 65 for 2014 and Accounts for the 2013 Fiscal Year, Pages 1091-1140, http://tinyurl.com/obnxqzj, [link in Hebrew].

permits to employ migrant workers or to refuse to renew these permits in cases where employers are found to have violated workers' rights. However, the State Comptroller's report shows that even though in 2012-2013 PIBA was privy to more than 130 employers who violated the rights of migrant workers, there was not even one case in which it considered revoking employment permits. Additionally, while the Ministry of Economy launched numerous investigations against employers of migrant workers, it did not forward its findings to PIBA for it to consider revoking the permits for these employers.

The State Comptroller further held that since 2010, when the authority of the Commissioner for Migrant Workers' Rights was enshrined in law, there has not been even one case in which the Commissioner has made use of its authority to initiate civil proceedings against employers of migrant workers.

Refugees and Asylum Seekers

Introduction

The State of Israel signed and ratified the Convention relating to the Status of Refugees and its accompanying Protocol (hereafter referred to together as the Refugee Convention),[75] but still has not enacted its provisions through domestic legislation. Still, at least in theory, Israel is obligated to the Convention's provisions and operates a mechanism for reviewing asylum applications.[76]

Until 2009, the mechanism for reviewing asylum applications in Israel was operated primarily by the UN High Commissioner for Refugees (UNHCR).[77] The Commissioner's office received asylum applications, interviewed applicants, assessed their credibility and their compliance with the legal requirements of the Convention, and made recommendations to an advisory committee comprising representatives of various government offices (National Status Granting Body or NSGB) on whether or not to grant an individual refugee status.

In 2009, the Ministry of Interior assumed responsibility for processing asylum applications and opened the Unit for Refugee Status Determination (RSD) and the Unit for Registry of Asylum Seekers. From then on, individuals who sought to be recognized as asylum seekers in Israel were required to submit an application to the Population and Immigration Authority (PIBA). For about eighteen months, the mechanism for reviewing asylum applications operated without any written guidelines, and since 2011, the mechanism has operated pursuant to a PIBA guideline.[78]

Since the responsibility for processing asylum application was transferred, PIBA has been the entity that conducts interviews with asylum seekers, makes recommendations regarding whether to grant them refugee status, and forwards recommendations to the National Status Granting Body. Most asylum applications

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75 The Convention Relating to the Status of Refugees, UNTS, Vol. 189, p.137, (opened for signature in 1951); Protocol Relating to the Status of Refugees, UNTS, Vol. 606, p.267, (opened for signature in 1967).

76 Procedure for handing political asylum seekers (2.1.2011) ("The review of requests for political asylum will be carried out in accordance with Israeli law and with care given to obligations that the State of Israel has taken upon itself according to the Geneva Convention Relating to the Status of Refugees from 1951 and according to the Protocol Relating to the Status of Refugees from 1967, the authorized officials can also make use of the UN High Commissioner for Refugees handbook.") http://www.the Population and Immigration Authority.gov.il/Regulations/Procedure%20for%20Handling%20Political%20Asylum%20Seekers%20in%20Israel-he.pdf, [link in Hebrew].

77 Sharon Harel "Israel's asylum mechanism: How the review of requests for asylum is being transferred from the UNHCR to the State of Israel," from Where Levinsky Meets Asmara: Social and Legal Aspects of Israeli Asylum Policy, 43, Ed. Tally Kritzman-Amir, 2015.

78 Footnote 76 above.

are discussed and denied through "summary procedure," through which the chair of the NSGB adopts the RSD Unit's opinion and recommends to the director of PIBA to reject the asylum application. A minority of applications are discussed by the general assembly of the National Status Granting Body, which comprises representatives from the Ministry of Interior, Ministry of Justice and Ministry of Foreign Affairs, and which recommends to the Minister of Interior whether to accept or deny applications for asylum.

In this section we will discuss the significant failures in PIBA's processing of asylum seekers.

Rate of recognition of refugees

Before we investigate the failures of the mechanism for reviewing asylum applications, we will lay out the bottom line. The rate of recognition of refugees in Israel is so low as to be negligible, which itself points to the fact that the system is designed to reject applications for asylum. The Supreme Court recently ruled that the low rate of recognition of refugees in Israel compared to other countries is unacceptable and "raises questions about the way the state processes and adjudicates" asylum applications. Ultimately, the facts speak for themselves.[79]

According to data provided to the Supreme Court, since PIBA took responsibility for processing asylum applications in 2009, 45 asylum applications have been granted and 12,175 applications have been denied.[80] It should be noted that the figure of 45 applications "granted" does not accurately represent the scope of asylum seekers recognized as refugees, as it also includes individuals whose asylum applications were denied but who were granted legal status on humanitarian grounds, family members of recognized refugees, and individuals who were granted temporary residency in Israel through collective arrangements, rather than through being recognized individually as refugees. In other words, the number of individuals who have been granted refugee status is lower than the figure presented to the Supreme Court. But even if we were to assume that 45 asylum applicants had been granted refugee status, the rate of refugee recognition would still be miniscule – only 0.36%. This rate is especially egregious when compared to the rates of refugee recognition in other Western countries, which range from 10% - 40%.

79 HCJ 8665/14 Desta v. The Knesset, Para 3 of Justice Hayut's opinion, (Nevo, 11.8.2015).

80 HCJ 8665/14, Supplemental affidavit presented by the state (16.2.2015), http://www.acri.org.il/he/wp-content/uploads/2015/02/hit8665meshivim2-5-0215.pdf , [link in Hebrew].

Processing time of asylum applications and legal status of individuals awaiting adjudication of their applications

The processing time for asylum applications varies greatly from case to case. While some asylum applications are denied within a matter of days (and in the past some applications were denied within hours of being submitted), many asylum applicants wait many years for a decision.

The long processing time for asylum applications in Israel reflects the authorities' position that the purpose of the refuge system is not to protect refugees, safeguard their rights and facilitate their rehabilitation, but rather to deport those who are not entitled to refuge (according to PIBA) expeditiously. In fact, applications for asylum that are more firmly based drag on for many years, while all elements of the mechanism drag their feet.

For instance, although since 2007 many of Israel's asylum seekers have been citizens of Eritrea, for years they were not able to submit applications (see below), and even after they were allowed to submit applications, the Ministry of Interior refrained from ruling on them for a long time. Applications for asylum by Eritrean citizens only actually begun to be adjudicated in 2012.

Similarly, for a decade, since 2005, Israel has been home to Sudanese citizens from the Darfur region, where a bloody civil war and persecution of African tribes have been described by many as genocide. Despite the fact that throughout the world most asylum seekers from Darfur are recognized as refugees, the State of Israel has yet to recognize the refugee status of a single citizen of Darfur.

The state exploits the lack of adjudication on valid applications for asylum to argue that most of those who entered Israel via the southern border ("infiltrators" in the language of state authorities) are economic migrants, of whom a small few have been recognized as refugees. Even though there are thousands of Darfuri Sudanese inside Israel who meet the international standard for recognition as refugees, the state uses the fact that the review process of their asylum applications has not been completed as a rhetorical tool to brand them all as economic migrants.

Leaving thousands of people with the status of "asylum seekers" for many years without assessing their applications has left them vulnerable with regards to exercising their rights in Israel. A recognized refugee in Israel is granted an A/5 visa (temporary residence permit), which provides them with the right to work, the right to state health insurance, and other rights delineated in the National Insurance Law. In contrast, a person who has submitted an asylum application and is waiting for it to be assessed is in legal "limbo" and cannot exercise basic rights.

Individuals who have submitted asylum applications and are awaiting assessment are granted temporary stay permits pursuant to Article 2(a)(5) of the Entry into Israel Law, the permit granted to individuals who have received expulsion orders until the date of their deportation. It does not confer any rights. It does not confer the right to work. However, the Supreme Court ruled that the "non-enforcement" policy of the prohibition on working (see below for more details), adopted by PIBA for individuals eligible for "group protection," should also apply to asylum seekers awaiting adjudication of their asylum applications.[81] Many difficulties arise from this policy, which we will expand on below.

Furthermore, this temporary stay permit does not confer the right to medical services beyond emergency services (to which all people in Israel are entitled regardless of visa status), or social security services. It leaves applicants for asylum hanging, without basic rights, sometimes for years, even if their asylum applications are firmly based.

Since the establishment of the Holot holding facility (which we will also refer to below), the prolonging of rulings on asylum applications has taken on another meaning altogether. The Prevention of Infiltration Law, under which people categorized as "infiltrators" are held in the facility, does not establish any protocol whatsoever for the detention of asylum seekers. The administrative matters court ruled that a person's having submitted an asylum application does not negate the authority to hold that person in the facility, and is at most a consideration to be factored in when determining the length of their detention in the facility.[82] This means that the long period between submitting an asylum application and its resolution also exposes applicants to the potential to be summoned to the Holot facility before their eligibility for asylum is determined.

Unreasonable standards of evidence for reviewing asylum applications

Many asylum applications in Israel are denied due to an inability to prove facts on which the applications are based.

It is common practice worldwide, based on UNHCR standards, to apply lenient standards when examining evidence presented in asylum applications. The prevailing assumption is that an individual who left his/her country of origin and cannot return due to a founded fear of persecution, will have difficulty presenting documents proving the danger – partly because it is not possible to return to the country of origin to gather evidence and partly because countries do not tend to produce documents proving that they are

81 HCJ 6312/10 Kav LaOved v. The Government (Nevo, 16.1.2011).

82 See, for example, Administrative Petition (Jerusalem) 31754-08-15 Abdallah Ibrahim v. Ministry of Interior (Nevo, 4.9.2015); Administrative Petition (Be'er Sheva) 27663-06-15 Rashid v. Ministry of Interior (Nevo, 3.8.2015).

persecuting people and present them to the people they are persecuting. Because of this assumption, the widespread practice (that the UNHCR also promotes) is to grant refugee status based on firsthand testimony alone when it is clear that producing external documents will not be possible.[83] When there is doubt as to the existence of a wellfounded fear of persecution in a person's home country, benefit of the doubt is given to the asylum seeker.

These standards for examining evidence have been adopted by Israel's Supreme Court,[84] but they have not permeated to the level of decision makers. The grounds for rejection of asylum applications indicate that many asylum applications are denied due to an inability to produce evidence of persecution, even when such evidence is impossible to produce. Moreover, the Ministry of Interior utilizes practices designed to generate "unreliability" among asylum seekers, which is then used as grounds for denying their asylum applications. Asylum seekers whose applications are based on well-founded grounds undergo more and more asylum interviews, which are intended to produce contradictions. They undergo long interviews, sometimes lasting several workdays, and are often called back later for repeat interviews. The interviews are often conducted like a police investigation aiming to uncover incriminating evidence, rather than a procedure designed to identify victims in need of protection. Many interviews are conducted in accusatory tones, sometimes accompanied by shouting.

Regarding the content of the interviews – asylum seekers are often interrogated about peripheral details not directly pertaining to their grounds for seeking asylum or about details that it would be difficult to expect someone to recall when relating to events that took place years previously and that are often associated with trauma and confusion. The aggressive interviewing style and the focus on the periphery of the asylum application lead to doubt being cast on the credibility of the majority of asylum seekers, and the categorical rejection of asylum requests.[85]

83 See: UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, U.N. Doc. HCR/IP/4/Eng/REV.1 at para. 195-205 (Jan 1,1992).

84 Administrative Appeal 8870/11 Gonzales v. Ministry of Interior, paras 13-20 of Justice Danziger's judgment (Nevo, 25.4.2013).

85 Hotline for Migrant Workers, Until Our Hearts Are Completely Hardened: Asylum Procedures in Israel, pp. 19-23 (March 2012).

Legal standards that do not correspond to the Convention Relating to the Status of Refugees

The Convention Relating to the Status of Refugees defines a refugee as a person who "owing to wellfounded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country."[86]

According to the procedure for processing asylum seekers and according to declarations made by the government in court, requests for asylum are supposed to be assessed in accordance with the legal standards established by the Convention Relating to the Status of Refugees.[87] In practice, and contrary to what is declared publically, it is impossible to say that requests for asylum are assessed in accordance with these standards.

For a range of matters for which there is not enough room here on which to elaborate, the Ministry of Interior refuses to apply the accepted interpretation of the term refugee. For instance, the Ministry of Interior refuses to recognize that in cases where the danger emerged after a person left the country in which the danger is posed, they still meet the conditions of the Convention. The Ministry of Interior demands a higher standard of human rights violation in all cases where there is a requirement to prove that a person is in danger of "persecution," than the prevailing interpretation of this term, which is understood as any abuse of basic human rights. The Ministry of Interior refuses to recognize groups such as female victims of domestic violence, who are not protected by their own countries, as refugees, despite the fact that today Western countries and the UNHCR hold women to fall under the definition of "a particular social group" as defined by the Convention. Until recently, the Ministry of Interior's position was that LGBT persons who were persecuted in their countries of origin because of their sexual orientation or gender identity did not constitute "a particular social group" under the Convention, a matter which also contradicts the norms accepted throughout the world.

The largest group to be affected by the flawed legal standards exercised by PIBA is citizens of Eritrea. Most Western countries and the UNHCR have recognized that Eritrean citizens who left their country without authorization and who are of conscription age and therefore in danger should they return – are persecuted because of an ascribed political view or due to their belonging to a particular social group, and therefore they meet the conditions of the Refugee Convention. In contrast, PIBA, despite recognizing that Eritrean citizens in this situation are in danger should they return to their country of origin, has adopted the legal position that the danger posed to a person due to what

86 Refugee Convention, Footnote 75 above, Article 1(A)(2).

87 Procedure for processing political asylum seekers, Footnote 82 above.

the Ministry of Interior terms "desertion from military service" (and what most countries in the world term escaping from indefinite forced labor and a serious violation of human rights) does not fall under the definition of persecution as grounds for refugee status established by the Refugee Convention. The Supreme Court drew on the results of the assessment of asylum applications by Eritrean citizens in Israel – whereas the international rate of recognition of asylum seekers from Eritrea was 81.9% in 2012, the rate of recognition in Israel was less than 1%.[88]

"Temporary protection," "group protection," and "non-expulsion policy"

The flaws in the mechanism for processing asylum seekers in Israel are especially present when it comes to population groups to whom collective policies apply.

"Temporary protection" or "group protection" is a term used by the UNHCR and other countries in two related contexts. One relates to situations in which a relatively large group of asylum seekers come from a country in which conditions are such as to indicate that a significant number of people who leave meet the conditions of the Refugee Convention, and where it is clear that individually reviewing each application for asylum will place a serious burden on the system. In these cases, governments are likely to opt to grant temporary legal status to every person who arrives from that country until a time when it is possible to review each individual request for asylum or until a time in which the situation in their country of origin changes and they no longer need to seek asylum. This situation is directly connected to the status of asylum seekers in accordance with the Refugee Convention.[89]

The second situation in which the term is used is for cases in which it is known that human rights abuses in a particular country pose a danger to anyone who would return there, but where such abuses would not necessarily cover individuals coming from that country under the definitions of the Refugee Convention. Nevertheless, either through recognizing that international law prohibits deportation to such a country (under customary law, under the Convention against Torture or under the International Convention on Civil and Political Rights), or for humanitarian reasons, protection is granted against deporting such a group.[90]

88 Desta Case, Footnote 79 above, paragraph 3 Judge Hayut's opinion; HCJ 7385/13 Eitan – Israeli Immigration Policy v. The Government of Israel, para 35 of Justice Fogelman's opinion (Nevo, 22.9.2014).

89 This is the approach provides the basis of the definition of "temporary protection" in the European Union. See: Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

90 This is the approach that constitutes the basis of the definition of "temporary protection" in the US. See: INA § 244 (8 U.S.C.A. § 1254).

Towards the end of the 1990s and beginning of the 2000s, the State of Israel granted "temporary protection" or "group protection" to citizens of a number of countries – Liberia, Sierra Leone, the Ivory Coast, and the Congo. "Temporary protection" for citizens of these countries meant, on the one hand, that their requests for asylum were not reviewed individually, and on the other hand, that they were not deported. At that time, whoever fell under this policy received a B/1 visa, which does not provide any sort of social rights, but does permit the holder to work inside Israel.

The "temporary protection" policy applied to citizens of these countries, except for the Congo, has since been lifted. In recent years "temporary protection" has been applied to the citizens of Eritrea and Sudan. However the rights that this protection grants have been significantly reduced compared to the past.

Since 2005, Israel has recognized that it cannot return citizens of Sudan to their country, and since 2007 it has recognized that it cannot return Eritrean citizens to their country. In 2007, the decision was made to grant A/5 visas (temporary residence permits) to a group of 500 people form Darfur, Sudan and B/1 work visas to a group of 2,000 Eritrean citizens. However, other citizens of these countries, who entered Israel from that date on, receive temporary stay permits pursuant to Article 2(a)(5) of the Entry into Israel Law. As said, these permits do not grant any rights to their holders.

PIBA's policy toward these population groups is characterized by "normative uncertainty," as it was termed by the Supreme Court.[91] Through the years, officials have designated the policy applied to Sudanese citizens as "temporary protection," and have also clarified that this policy stems from the danger posed to Sudanese citizens should they return to their country of origin. This danger, according to the former Minister of Interior himself, derives from Sudan viewing Israel as an enemy state, and it being likely to execute or torture anyone who spent time inside Israel. The state clarified that this was its position in a great number of cases heard by the district courts.

However, in 2012, the Ministry of Interior adjusted its rationale on the matter. Since 2012, the Ministry has denied the existence of a "temporary protection" policy or a "non-deportation" policy with respect to Sudanese citizens, and has argued that the only reason that Sudanese citizens are not deported is the lack of diplomatic relations between Israel and Sudan.[92] In order to understand the falsehood of this argument, it should be noted that Israel has routinely deported citizens of countries with which it has no diplomatic relations, such as Mali, Togo, Guinea-Conakry or Niger, and as long as the deportee holds a valid passport, there is no difficulty in doing so.

The Ministry of Interior began denying its use of the term "temporary protection," which it had used in the past with regard to Eritrean citizens, in 2012, when it began calling it a "non-return policy." In any case, with regard to Eritrean citizens, the Ministry of Interior continues to recognize that most of them can expect to be in danger if they return

91 Administrative Appeal 8908/11 Asafu v. Ministry of Interior (Nevo, 17.7.2012)

92 HCJ 7146/12 Adam v. The Knesset, Paragraph 10 of Justice Arbel's opinion (Nevo, 16.9.2013).

to their country of origin, and admits that this is the reason that it does not deport them.[93] Nevertheless, as previously mentioned, in general, the Ministry of Interior does not recognize Eritrean citizens as refugees according to the Convention Relating to the Status of Refugees.

The "normative uncertainty" on this matter is also manifest in the failure to enshrine any "temporary protection," "non-deportation" or "group protection" policy in Israeli legislation, regulations or guidelines. There is no known procedure or substantive criteria for decision-making with regard to the application of this policy, or its removal.

This situation found further expression in the 2012 government decision to lift the "temporary protection" that then applied to some Sudanese citizens. In 2011, South Sudan arose as an independent state, and shortly thereafter PIBA announced that all South Sudanese citizens were to leave Israel, or they would be subject to detention and deportation. It was not clear who made this decision and how. After the district court rejected a petition against the decision to lift "temporary protection,"[94] most of the South Sudanese who were living in Israel left or were deported. Not long afterward, the reality proved that the decision to remove the "temporary protection" that covered the South Sudanese was premature. In 2013, another bloody civil war broke out in South Sudan, a war which continues until today.[95] Many of those who were deported or left Israel following the removal of "temporary protection" died as a result of sickness or were killed in battle. Many others have become refugees for a second time after being forced to flee for their lives.[96]

Non-enforcement policy applying to those eligible for "temporary protection"

As mentioned previously, unlike earlier groups that were eligible for "temporary protection" in Israel, Sudanese and Eritrean citizens receive temporary stay permits under Article 2(a)(5) of the Entry into Israel Law – permits given to people who have been issued with expulsion orders while they await deportation. These permits do not provide any rights, not even the basic right to work in order to subsist.

93 Ibid, Para 9 of Justice Arbel's opinion.

94 Administrative Petition (Jerusalem) 53765-03-12 ASSAF – Aid Organization for Refugees and Asylum Seekers in Israel v. Minister of Interior (Nevo, 7.6.2012).

95 See: UNHCR Position on Returns to South Sudan – Update 1(14 April, 2015), http://www.refworld.org/docid/552bc6794.html.

96 See, for example, Tamar Dresler, The refugees who returned from Israel to South Sudan are once again searching for hope (Maariv, 11.11.2014), http://www.maariv.co.il/news/new.aspx?pn6Vq=E&0r9VQ=GIIII, [link in Hebrew].

The policy by which Sudanese and Eritrean citizens are denied visas that would allow them to work in Israel legally has carried on for years. Some asylum seekers in Israel will soon "celebrate" a full decade in Israel without any actual legal right to work.

Although the people to whom this policy applies have no legal right to work, state authorities have stated that the proscription against employing them will not be enforced, and thus, their employers will be neither fined nor prosecuted. The Supreme Court upheld this policy in response to a petition, in which it was asked to mandate that residence permits be given to this population group.[97]

This policy of "officially turning a blind eye" raises many concerns, not only with respect to the rule of law, but also regarding those who fall under the policy of "temporary protection." Those who are eligible for this kind of status receive permits that are stamped "This temporary permit does not constitute a work permit." Potential employers who come across these permits are naturally anxious about hiring those who hold them. When potential employers contact the PIBA information center, they are told not to employ the permit holder. Thus, the policy applied to this population group leaves them in the twilight zone of the law – their employment is forbidden by the law, but the law is not enforced. Their employers are neither fined nor prosecuted; yet they cannot obtain official authorization from the state to employ them either. Thus their status as cheap, temporary labor devoid of rights becomes entrenched. Furthermore, this policy leads to the concentration of asylum seekers in areas that are home to weaker local population groups, and overburdens infrastructure in the area.[98]

Abuse of asylum seekers at PIBA offices

As discussed, asylum seekers and those eligible for "temporary protection" receive temporary stay permits pursuant to Article 2(a)(5) of the Entry into Israel Law. These permits are granted only for short periods of time, and their holders must periodically attend PIBA offices to renew them. One who fails to renew their permit on time will have difficulty convincing employers – current or potential – that the policy of non-enforcement applies to them. For this reason, they might lose their ability to make a living. Moreover, since Amendment 4 to the Prevention of Infiltration Law was enacted in December 2013, anyone who fails to renew the temporary stay permit on time is liable to be detained.

As such, asylum seekers rely on valid temporary stay permits to avoid arrest and to subsist. They are entirely dependent on PIBA in this matter, a body that has assumed the liberty to abuse them at "designated" offices in Bnei Brak, Be'er Sheva, Eilat, and recently

97 Kav LaOved Case, Footnote 81 above.

98 The Hotline for Refugees and Migrants, No Safe Haven: Israeli asylum policy as applied to Eritrean and Sudanese Citizens, pp. 13-14, (December 2014).

also in Hadera. Until mid-2013, asylum seekers and those eligible for "temporary protection" were required to renew their permits at PIBA offices situated throughout the country. Since then, the number of offices at which this service is available has been reduced. The specialized offices for renewing temporary stay permits are characterized by their appalling conditions, humiliating treatment of those seeking services, and the imposition of impossible demands. The offices are designed to achieve a number of objectives. First, this is another very effective way to embitter the lives of asylum seekers and to make them despair of staying in Israel. Second, and in line with the attitude that it is legitimate to treat asylum seekers this way, PIBA seeks to segregate asylum seekers from others receiving services at its offices. Third, in this way PIBA can man these specialized offices with the designated officials authorized to "summon" asylum seekers to Holot. This despite the fact that some of those who report to the PIBA designated offices are legally exempt from being sent to Holot.

Reducing the number of offices at which asylum seekers can renew their permits has created total chaos. The offices selected to deal with renewing these permits are not designed to handle so many applicants. Asylum seekers and those eligible for "temporary protection" are forced to show up by dawn just to claim a spot. Hundreds of people wait outside these offices every single day – in the heat and cold – some with physical disabilities, suffering from diseases, or taking care of young children. However, waiting outside the office for an entire day does not guarantee the renewal of a permit, and some asylum seekers must come back and wait at the office multiple times. The treatment of asylum seekers in these offices is degrading, and the atmosphere is difficult, tense, and disrespectful. The various demands placed as conditions for renewing temporary stay permits include documents that are impossible to obtain, and responding to intrusive, vexing and deliberately confusing questions designed to trip them up. Hearings are conducted rudely and in a humiliating and offensive manner. This is true even in the most difficult cases, such as for individuals who were tortured en route to Israel, and who must recount severely traumatic events during the hearings. This is also true in hearings for couples. In such cases, asylum seekers may be asked questions so intimate they deviate from any reasonable standard. These hearings severely violate the asylum seekers' privacy, and are held in the presence of many other PIBA officials and asylum seekers.[99]

99 See, Hotline for Refugees and Migrants, "Streamlining the Process": On the Mistreatment of Asylum Seekers by the Immigration Authority When They Renew Their Restricted Release Permits, (6.3.2014), http://hotline.org.il/en/publication/streamlining-the-process/; Hotline for Refugees and Migrants, "The Failure Policy": Mistreatment of Refugees and Migrants When They Renew Their Permits, (10.12.2014), http://hotline.org.il/publication/entrapmentpolicy, [Hebrew}.

Stateless Persons

Introduction

Stateless persons have no country to which to return. They live in Israel without legal status and thus risk being arrested as unauthorized residents. Due to their lack of status, stateless persons often go without identity documents, the right to work, health insurance, welfare rights, the opportunity to marry, obtain a driver's license or open a bank account. In addition, they cannot leave the country in which they live, and if they do manage to leave, they will find it very difficult to return without authorization.

Despite the similarities outlined in the Convention Relating to the Status of Refugees and the Convention Relating to the Status of Stateless Persons (which drew inspiration and guidance from the Refugee Convention),[100] PIBA has failed to establish a similar mechanism for processing applications for status of stateless persons. The situation of stateless persons is often as severe or worse than that of refugees. Being stateless is a permanent condition, while being a refugee can be temporary. After turmoil in a refugee's country of origin comes to an end, a refugee may return and regain their previous citizenship. Stateless persons have no country to return to.

No one is able to estimate the number of stateless persons living in Israel. Stateless persons living in Israel can be roughly divided into a number of groups: Bedouins living in the Negev who do not have citizenship; people who immigrated to Israel and lost their citizenship from their country of origin (these are people who never received Israeli citizenship or gained it, but then lost it) and; children who were born in Israel, but never received citizenship and have no other citizenship.

100 UNTS, Vol. 36, p.117, 8, (opened for signature in 1954).

Bedouins without citizenship

Due to the disorder in matters of registration during the British Mandate and the early years of the State of Israel, coupled with the limited access Bedouins have to state authorities, there are many Bedouins living in the Negev who were not registered and were thus never given status in Israel. This pertains mostly to Bedouins from the Azazme tribe. In 1959, many members of this tribe who did not have citizenship were expelled to Sinai, while others fled. In 1967, following Israel's occupation of the Sinai, some of these Bedouins were given the right to return to Israel and those who did settled in the Negev. Human rights organizations estimate that today there are a few hundred Azazme Bedouins living in the Negev without legal status. However, there is no official number or estimate.

The Ministry of Interior refuses to count the number of Bedouins who do not have citizenship and to address their problems in a systematic way. Instead, they are only prepared to take individual applications for status. The process for individuals to apply for status is complicated and entwined in cumbersome bureaucracy. As a condition for examining applications, the Ministry of Interior requires Azazme Bedouins to go through a legal procedure to prove their identity. This means that Bedouins who do not have any citizenship or identity documentation must turn to the courts with evidence that they are who they say they are, and receive a ruling to that effect, merely as a precondition for having their application for any sort of legal status in Israel reviewed. This is a costly process that requires addressing the court, which many Bedouins are not capable of doing on their own. Nevertheless, the Supreme Court has refused to intervene against this policy.[101]

Immigrants to Israel who lost their citizenship

Another group of people living in Israel without status immigrated here and gained legal status in Israel, and consequently, had to renounce their former citizenship. At some point they lost their status in Israel and thus became stateless persons. There are also people who emigrated from the former Soviet Union or Yugoslavia. They never received citizenship from any specific country after their former countries collapsed, and because of this became stateless persons. In addition, there are people who came to Israel as tourists or entered without permits, and who are not citizens of any country or for whom there is no country that is willing to take them in.

101 Administrative Appeal 10667/05 Sarahin v. Minister of Interior (Nevo, 10.5.2006).

For years the Ministry of Interior refused to deal with stateless persons. There were cases where people were arrested for staying in Israel without authorization and, after long months of detention, released when it became clear that it was impossible to deport them. They were left in Israel, but were not given any status.

In January 2007, the court ruled on a petition submitted by the Association for Civil Rights in Israel regarding the status of stateless persons living Israel and the Ministry of Interior's refusal to deal with the situation. The court ordered the Ministry of Interior to encourage stateless persons to apply for legal status in Israel before detaining them. It held that because deportation is impossible, detaining such stateless persons is pointless and redundant. The court instructed the Ministry of Interior to formulate a procedure for dealing with stateless persons, which would grant them temporary resident status, and define what information stateless persons need to provide in order to determine if their countries of origin would take them back.[102]

The guideline published by the Ministry of Interior obligates stateless persons to provide documents that they often have no way of obtaining. The regulation delineates a lengthy and prolonged process, but it extends only so far as obtaining a work permit and does not address health insurance or social rights. In addition, it establishes that PIBA will only consider granting temporary residency after ten years. In reality, stateless persons are restricted by this guideline forever since, even if they are given status, they are often required to renew it every year. This guideline applies explicitly only to those who entered Israel at some point, and thus excludes stateless children born in Israel and stateless Bedouins. It also excludes those who entered Israel without a permit and not through a regulated border ("infiltrator" in the wording of the guideline).[103]

102 Administrative Petition (Tel Aviv) 2887/05 Elkasayev v. Minister of Interior (Nevo, January 29, 2007).

103 Procedure for handling those claiming to be stateless persons, Regulation 10.1.0015 (Updated on: 16.4.2015), http://www.the Population and Immigration Authority.gov.il/Regulations/10.1.0015.pdf, [link in Hebrew].

Children born without status

According to the Ministry of Interior, if a child is born in Israel to two parents who are both Israeli citizens, or if the mother is an Israeli citizen, the child will be registered and given citizenship upon birth. If the father is an Israeli citizen, but the mother is not and she does not have legal status in Israel, the Ministry of Interior refuses to acknowledge the father as a parent and demands a genetic test to prove paternity. According to the law in Israel, genetic testing to prove parenthood can only be conducted after a court decree, but the expensive cost of the testing must be covered by the parents. This means that in order for a child to be recognized and obtain status in Israel, parents must personally cover the costly legal fees and genetic testing. However, until the parents apply to the court to request recognition of their child and the lengthy process is completed, the child remains stateless, with all of the accompanying implications. The court ruling, which ordered the Ministry of Interior to request genetic testing only in cases where there is no other evidence, is not currently being followed.[104]

In recent years, PIBA has also made it difficult for children of migrant workers to receive proper documentation of births. The lack of proper documentation is likely to make it difficult to register the birth of the child in the parents' countries of origin and effectively leaves the child without citizenship. PIBA refuses to register fathers' names on the confirmations of birth it issues, and as long as the parents reside in Israel without legal status, it conditions granting this confirmation on the parents signing a statement admitting to unauthorized residence in Israel. This practice results in some children in Israel being left without proper documentation. Responding to a petition submitted to the Supreme Court on the issue, PIBA announced that it will cease to grant any form of documentation to children whose parents are not citizens or residents and that from now on the birth notice provided at the hospital on a handwritten form will have to suffice. The petition on this issue remains in progress.[105]

104 HCJ 10533/04 Weiss v. Minister of Interior (Nevo, 28.6.2011).

105 HCJ 1528/13 Etni v. Minister of Interior.

Victims of Human Trafficking, Slavery and Forced Labor

According to estimates by human rights organizations, there are several hundred to several thousand victims of human trafficking, slavery and forced labor in Israel today. In 2006, a law banning all kinds of human trafficking was passed in Israel.[106] Furthermore, Israel is a signatory to the UN Protocol on Human Trafficking and other international treaties connected to eradicating crimes of human trafficking and slavery.[107]

The human trafficking phenomenon in Israel began with victims being trafficked for the purposes of prostitution. They were mainly brought to Israel from Eastern Europe. This phenomenon was almost entirely eradicated by state authorities. However, over the last two years, there have been signs of its return. Since the requirement for citizens of Moldova and Ukraine to receive visas prior to their arrival in Israel was lifted, it has become easier to bring female victims of human trafficking for the purposes of prostitution through official border crossings. The authorities' perception that trafficking in women has been eliminated hampers any ability to track the phenomenon's resurgence.

Holding employees in conditions of slavery – a crime that overlaps with human trafficking – is common in cases in which the employment regulations determined by PIBA do not sufficiently protect workers. For instance, requiring workers to live at the employer's home or business or conditioning their residence permits on working for specific employers, can allow for their exploitation, including being held in conditions of slavery. In many cases, victims of slavery have been found among migrant workers in the agricultural and caregiving sectors. Other cases have been found of fishermen being held in slavery conditions on boats,[108] and recently of deaf migrants being enslaved as mendicants.

Since 2009, asylum seekers from Africa have been arriving in Israel via the Israel-Egypt border. They have been subjected to kidnapping, trafficking and torture, including for the sake of ransom.

Despite the years that have passed since Israel began dealing with victims of trafficking and slavery, and despite the fact that PIBA has had contact with many of the victims, it continues to fail to identify victims and deal with them. It also continues to fail to

106 Prohibition of Trafficking in Persons Law (Legislative Amendments), 5767-2006.

107 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime UNTS, Vol. 2237, p. 319, (opened for signature in 2000).

108 See, Hotline for Refugees and Migrants, Slavery at Sea: Slavery in the fishing industry in Israel, (16.7.2014), http://hotline.org.il/publication/slaveryatseaheb/ [link in Hebrew].

identify new or renewed phenomena of human trafficking. As explained above, the employment mechanisms established by PIBA are not designed to protect migrants and many times do not allow them access to assistance. In many cases, PIBA staff work towards deporting migrants expeditiously instead of investigating their cases. For example, over the last year, PIBA has deported women from Eastern Europe despite their being arrested at strip clubs, without the Ministry of Justice or the Israel Police having any knowledge on the matter. Since 2008, human rights organizations have been denied entry into prisons and detention centers in which migrants are held, which makes identifying victims all the more difficult.

Victims of human trafficking are eligible for one-year temporary residence and work permits for the purposes of rehabilitation. Following a struggle, PIBA agreed to recognize some asylum seekers as victims and provide some with permits. However, it did not adapt the permits to their circumstances, and hence created a situation in which asylum seekers who do not leave Israel after one year of rehabilitation, find themselves back in the community without work permits and ineligible for assistance.

Arrest and Detention at a "Holding Facility"

Introduction

For many years, the Population Immigration and Border Authority (PIBA) has used detention as a central means for dealing with non-citizens residing in Israel: migrant workers, asylum seekers, individuals eligible for "temporary protection" and individuals who arrived in Israel with a visa or permit which then expired. Unlike criminal detention, which falls under the power of a judicial authority, detention of individuals defined as "unlawfulresidents" or as "infiltrators" is pursuant to orders issued by an administrative authority, without the procedural protections which detention by power of a judicial authority guarantees. PIBA views detention as the norm, and release from detention as the exception. For this reason, in Israel, unlike in other countries, there is no system in place for creating and offering alternatives to detention, either for adults or for families including children.[109]

Detention pursuant to immigration legislation is designed to serve a single purpose: completing deportations in cases where an effective expulsion procedure has been performed within a short time period. However, in recent years the detention procedure has increasingly been used to fulfill other aims, such as deterrence, prevention of "settling down," extorting "consent" to deportation to a third country, punishment and more.

The detention of "unlawful residents" takes place pursuant to two normative arrangements – the Citizenship and Entry into Israel Law, whose detention provisions apply to any person residing in Israel without a permit, and the Prevention of Infiltration Law, which applies to those who enter Israel not through an official border crossing. In this chapter, we will examine the major drawbacks of detention practices under these laws.

109 See, The Hotline for Refugees and Migrants, "Israeli Children" in Association for Civil Rights in Israel and Doctors for Human Rights, Forbidden Child: Alternatives to Detention for Children of Migrants in Israel (January 2014), http://tinyurl.com/p7o4vn7 [link in Hebrew].

Detention by power of a Border Control Officer administrative order

As said, detention under the Citizenship and Entry into Israel Law and the Prevention of Infiltration Law is detention by administrative order. That order is issued by a Ministry of Interior official known as the Border Control Officer. A person detained under the Entry into Israel Law is supposed to be brought before the Border Control Officer within 24 hours from the time of his/her detention, while a person detained under the Prevention of Infiltration Law is supposed to be brought before the Officer within five days. The Border Control Officer is meant to conduct a hearing, exercise his discretion and determine whether there are grounds for release as determined by these laws.

In practice, however, the procedure for obtaining an administrative detention order is almost automatic. The only question examined by the hearings is whether the person is residing in Israel with or without authorization (or if they entered Israel unauthorized, in cases of hearings under the Prevention of Infiltration Law). The hearings are often held without translation, and are nearly always held without legal representation for the detainee.

Theoretically, a person brought before the Border Control Officer for a hearing is entitled to be represented by an attorney or other representative.[110] In practice, such representation is not made possible in most cases. Most detainees have no representation at the time of arrest, but even in cases in which they have representation, PIBA refuses to wait, even for a short time, for their attorney to arrive at the location of the hearing.

Although both laws determine grounds for release from custody, the only issue the Border Control Officer actually examines is whether the person holds a valid residence permit. It has often been expressed to detainees who tried to present justifications for releasing them that there is no point in bringing up such claims with the Border Control Officer, because in a few days they will be brought before the Detention Review Tribunal (see below), where they can try to plead their case.

110 In the past, the Ministry of Interior refused to allow legal representation in proceedings before the Border Control Officer. Only following a petition to the High Court of Justice did the Ministry of Interior announce that it would allow representation at hearings. HCJ 1912/06 Hotline for Migrant Workers v. Ministry of Interior (Judicial Authority Website, 11.8.2008).

Detention Review Tribunals

Under the Entry into Israel Law, a person against whom a custody order has been issued must be brought within four days before a quasi-judicial body known as the Detention Review Tribunal for uunauthorized residents. Similarly, a person arrested under the Prevention of Infiltration Law must be brought within ten days before a Detention Review Tribunal for infiltrators. Detainees may be represented at the tribunal by attorneys or, pro bono, by non-attorneys.

Over the years, the Tribunals have operated without any external or substantive sign of being a quasi-judicial body, and have not followed the basic rules required of an entity whose role is to adjudicate on matters that relate to a person's fundamental right to individual liberty. In the past, hearings were held at these tribunals without translation, detainees' attorneys were not informed that hearings on their cases were scheduled to take place, the Ministry of Interior's arguments were submitted in writing without being conveyed to the detainees and without allowing them to respond, rulings were not published, detainees were not brought before the tribunal by the date specified by law, and so on. Over the years some of these failings have been corrected, if slowly. However, the tribunals' proceedings are not devoid of problems still today.

In 2014[111] the Hotline for Refugees and Migrants published a detailed report about the failures in the Detention Review Tribunals' conduct. Here, we will only mention the essential failures.

Although the Detention Review Tribunals deal with a core human rights issue, they are not provided with the ancillary powers with which courts that handle matters of detention are. Accordingly, in many cases they stand helpless against the Ministry of Interior. The Ministry of Interior applies pressure on the Detention Review Tribunals not to release certain people, frequently ignores the Tribunals' decisions and does not present its arguments to the Tribunal on the date on which it is required to do so. The Tribunals, for their part, do not respond by using the only tool at its disposal – releasing individuals for whose cases the Ministry of Interior has not upheld its obligations – but rather allows the Ministry of Interior to drag its feet and violate its orders. This conduct provides further incentive to the Ministry of Interior to continue behaving in this manner.

Furthermore, the Tribunal lacks the authority to order government bodies to perform the various actions that it requires in order to decide to release an individual from custody. It lacks the authority, for instance, to order the police to investigate when there is suspicion of human trafficking and lacks the authority to order the Ministry of Interior to complete its review of a request for asylum by a person held in custody for an extended period of time. All that the Tribunal is authorized to do is request, sometimes

111 Hotline for Refugees and Migrant Workers, The Detention Review Tribunals (December 2014), http://hotline.org.il/en/publication/the-detention-review-tribunals/.

almost to beg, the various government authorities to assist in performing specific actions. When the authorities do not respond to its requests, all that it can do is approve the custody orders for those who probably have cause to be released.

Despite the gradual improvements to the Tribunal's organizational infrastructure, they still do not function as quasi-judicial bodies. The Tribunal's "halls" are caravans located inside detention facilities, and they are actually no more than offices with a plastic table and chair to serve the detainee. The Tribunal's judges have no recording equipment, and they are forced to both listen to the detainee's, or his/her representative's, arguments and type what is being said at the same time. Moreover, while judicial and quasi-judicial courts hear cases transparently, from verbal hearings where both parties are present to written arguments presented by one party to another, this is not how it happens in the Tribunal. A large degree of the contact between the Tribunal and the authorities that serve as parties in its hearings, especially the Israel Prison Service and the Ministry of Interior, take place verbally, either in person or over the telephone, they are not recorded and therefore not exposed to the oversight of the second party to the case – the detainee him/herself.[112]

In addition to the above, PIBA assumes the liberty to flout, or delay the performance of, Tribunal decisions. More than once, in cases in which the Tribunal ruled in favor of releasing a person from custody, PIBA, while deliberating whether or not to appeal the Tribunal's decision to the district court, continued to illegally detain those scheduled for release. PIBA's approach, when it is considering or planning to file an appeal against the decision to release, is first of all to continue detaining the person, even if it possesses no ruling or stay order against the release.

Extended periods of detention with no intent to deport

According to Israeli case law and international law, the purpose of detention under immigration legislation is to complete deportations in circumstances when it is possible to do so.[113] Nevertheless, in recent years PIBA has utilized the legal tools surrounding deportation legislation for extended periods of time, even when deportation itself is not on the horizon.

One of the grounds for release established by the Entry into Israel Law is the passage of

112 Several years ago, the district court held as unacceptable the manner in which the court receives "messages" or "notes" with the Ministry of Interior's arguments, to which the detainee has no access. See, Administrative Petition (Center) 25582-05-10 Buma v. Ministry of Interior (Nevo, 15.12.2011).

113 See HCJ 4702/94 Al Tai v. Minister of Interior, IsrSC 49(3) 843, 851 (1996); Civil Appeal 9656/08 State of Israel v. Sa'idi (Nevo, 15 Dec 2011).

60 or more days from the initial date of arrest. According to the Supreme Court ruling on the matter, although it is not a mandatory authority, in general a detainee must be released 60 days after the date of arrest, unless one of two conditions established in the law are present (the first condition relates to deportation being prevented or delayed due to non-cooperation from the detainee, and the second is for a detainee whose release could endanger national security, public safety or public health). Detention for a period exceeding 60 days is permitted only if there is a "public interest of real weight," with the burden of proof given to the state, and even in this case, detention may not be extended beyond that which is reasonable.[114]

Despite the existence of this rule, "unlawful residents" are often held in custody for prolonged periods. Sometimes the individuals in question are awaiting review of their application for status in Israel. In other cases, the individuals cannot be deported due to an absence of travel documents or the lack of diplomatic relations between Israel and their countries of origin. Holding such individuals in detention is contrary to the provisions of the Entry into Israel Law and the aforesaid principle, according to which the only reason for holding a person in custody is for the purpose of deportation.

In recent years, the Prevention of Infiltration Law has been used to detain individuals for reasons other than their deportation from Israel. In 2012, Amendment 3 to the Prevention of Infiltration Law was passed, which allowed the detention of "infiltrators" for a period of three years, even in the absence of an effective expulsion order. This law is used mainly in relation to those for whom the policies of "temporary protection" or "non-expulsion" apply, i.e. Eritrean and Sudanese citizens who are not deported from Israel (see above). Through the legislative process, it was explicitly stated that the purpose of such prolonged detention is to serve as a deterrent to potential "infiltrators" by incarcerating those whom it is widely understood the state cannot deport. Over a thousand people, including victims of torture, victims of human trafficking and women with children, have been detained under this legislation, with no real possibility of release on the horizon.

In September 2013, the Supreme Court struck down the legal provision which allowed detention for a period of three years. The court highlighted, among other things, the principle that the purpose of deportation-related detention is the performance of the expulsion itself, and that in the absence of an effective expulsion order, unauthorized residents cannot be held in detention.[115]

In Amendment 4 to the Prevention of Infiltration Law, enacted in December 2013 following the annulment of detention provisions set forth in Amendment 3, the period of detention was established at one year (Amendment 4 added, for the first time, the ability to keep "infiltrators" in a "holding facility," which we will discuss later). This order

114 MAA 173/03 State of Israel – Ministry of Interior v. Salameh (Nevo 9 May 2005); MAA 7267/09 Abdulai v. Ministry of Interior (21 Dec 2009).

115 Adam Case, Footnote 92 above.

was also rejected by the Supreme Court in September 2014, once again on the grounds that detention accompanying a expulsion order can only serve as a tool for carrying out a deportation.[116]

The Ministry of Interior and Knesset did not give up, and amended the Prevention of Infiltration Law for the third time in December 2014. In this amendment, the period of detention was for three months. This time, the Supreme Court upheld the constitutionality of the provision, but ruled that the law should be interpreted so that if it turns out after a period of time less than three months that the state cannot practically carry out the deportation procedures, the detainee must be released before the three-month period expires.[117]

Currently, the period after which there is grounds for release from detention is 60 days under the Entry into Israel Law and three months under the Prevention of Infiltration Law. However, the Ministry of Interior recently announced a policy of indefinitely detaining those for whom "temporary protection" or "non-expulsion" policies apply. The Ministry argues that this policy is not constrained by the aforementioned laws, claiming that such individuals refuse to cooperate with their deportation.

The background for this policy are agreements(most likely oral) struck by Israel with Uganda and Rwanda. PIBA began to offer detainees held in the "Holot" facility (see below) to leave Israel for either of these countries, clarifying to them that failure to consent would be considered "non-cooperation" with the deportation process, and that it can therefore hold them in indefinite detention under the Entry into Israel Law. PIBA refuses to disclose the agreements, which it seems to have drawn up with Uganda and Rwanda, and refuses to admit, outside of one-party (ex parte) hearings in court, that these two countries are in fact involved in such agreements.[118]

According to testimonies from migrants who agreed to be sent to Uganda or Rwanda, Israel's agreements with those countries do nothing to protect basic human rights. In these two countries, individuals arriving from Israel are not allowed to gain the necessary legal status to remain there and subsist. Those who go to Rwanda are shortly thereafter smuggled into Uganda. A portion of those sent to the two countries were detained once again on the grounds that their presence was unauthorized. Many among them were forced to continue their wandering and to move to countries like Ethiopia or Libya. And for some, who cannot return to their country of origin, no choice remains besides continuing their journey by attempting to sail to Europe, despite all the risks that entails. A petition filed against the imprisonment of those refusing to be

116 Eitan Case, Footnote 88 above.

117 Desta Case, Footnote 79 above.

118 Regarding the content of the agreements with Uganda and Rwanda, there was a confidentiality agreement, signed by the prime minister with the justification that revealing said agreements would damage Israel's foreign relations. A petition to disclose information pertinent to this matter was rejected by the Supreme Court. Administrate Request 5614/15 Tsegate v. the State of Israel (Nevo, 8 Sept 2015).

sent to Rwanda or Uganda was rejected by the district court in Be'er Sheva[119], and at the time of this report's publication, the case is pending an appeal to the Supreme Court.[120]

Conditions of detention

It is standard in many Western countries for detention centers, which hold "unlawful residents" awaiting deportation or the completion of the identification procedures of their cases, to be substantively different from prisons and jails designed to hold criminal suspects or convicted criminals. This stems from the approach that does not view "unauthorized residents" as a criminal population group. In Israel, this is not the case.

For the past two decades, detainees have been interned pursuant to the Entry into Israel Law and the Prevention of Infiltration Law in facilities in which the conditions are not substantively different from that of prisons, and they are occasionally even held in actual prisons. Apart from three facilities (Yahalom located at Ben Gurion Airport, which holds those denied entry into Israel and mothers and children prior to deportation from Israel, which is operated by PIBA; Tzohar in the Negev, which in the past held men, women and unaccompanied minors, which was operated by the Immigration Police which no longer exists; and the Michal facility, which in the past held women and unaccompanied minors, which was also run by the Immigration Police), all the detention facilities which held "unauthorized residents" over the years have been run by the Israel Prison Service and governed under the protocol for prisons.

At the end of the 1990s and for the first few years of the 2000s, women awaiting deportation were held at the Neve Tirzeh Prison and men at the Ma'asehu Prison. Later, the women were also transferred to Ma'asehu, and today men and women are held at the Giv'on prison in Ramle. The conditions are, as said, the conditions of a prison. The detainees at Giv'on Prison are held in locked cells at night and during certain hours of the day, and even at times in which their cells are not locked, they are not permitted, at all, to leave the wings in which they are held.

In addition to detention in these prisons, between 2005 and 2007, asylum seekers from Sudan and Eritrea were held in the Ketziyot Prsion in the Negev. Ketziyot is a prison in which, at the time, most inmates were Palestinians who were designated as security detainees or prisoners. The surveillance in the prison was very strict. aAccommodation at Ketziyot was in tents, exposing detainees to the harsh weather conditions of the region, in both summer and winter. Every wing of the prison was surrounded by concrete walls and barbed wire.

119 Administrate Petition (Be'er Sheva) 5126-07-15 Tsegate v. Ministry of Interior (Nevo, 8 November 2015).
120 Administrative Appeal 0000000/15 Tsegate v. Ministry of Interior. To be complete after the petition is presented.

In 2007, the Saharonim detention facility was established, which is still in use today. Saharonim is specialized for "infiltrators," though it too has the characteristics of a prison. It is also operated by the Israel Prison Service and governed by Prison Service protocols. Between 2007 and 2013, when some of the provisions from Amendment 3 to the Prevention of Infiltration Law were struck down, a fluctuating number of women and children were also held in the facility. At first, women and children were held in mobile air-conditioned units, but after a while the mobile units were transferred for use of the Prison Service staff, and the women and children were transferred to the tents, where they were exposed to the harsh heat and cold of the region. Then, in 2013, the women and children were transferred to new wings built in the facility. The transfer to these new wings solved, to a certain extent, the problem of exposure to the elements, but it also meant life in an enclosed space much more similar to life in prison.

After it was established, PIBA became responsible for operating the Yahalom (Hebrew acronym for the Transportation, Escort and Custody Unit) Facility at Ben Gurion Airport. The facility is supposed to be used for short-term detention for those denied entry into Israel, or those who stand to be deported in the near future. However, since March 2011, parents with children have been held there prior to deportation. In practice, it is not uncommon for parents with children to be held there for extended periods, sometimes for months, in conditions which have been subject to serious criticism.[121]

Detention in "open holding facilities"

As said, after detaining "infiltrators" for more than three years was declared unconstitutional, Amendment 4 to the Prevention of Infiltration Law was enacted. The new provision authorized, for the first time, the authorities to declare a facility to be a "holding facility" and to detain individuals for whom there is some difficulty to deport. In December 2013, immediately after Amendment 4 was enacted, the Holot facility was opened, and most of the Sudanese and Eritrean citizens who had been held at Saharonim until then, were transferred there. In addition, PIBA began summoning asylum seekers who had lived for years in Israel to Holot, uprooting them from their lives to send them to the facility.

The regulations that relate to Holot have also seen a number of incarnations. In the first stage, those who were taken to Holot were held for an indefinite period. In accordance to the law as it was written then, the detainees were forbidden from leaving the facility between 10pm and 6am. For the rest of the day, even though they were permitted to leave the facility, they were required to report there three times every day. The

121 Minutes from the Knesset State Control Committee hearing from 27.2.2012; Minutes from the Knesset Rights of the Child Committee from 21.5.203; State Comptroller, Annual Report 63(c) from 2012 and Accounts from the 2012 Fiscal Year, pp. 1908-1910, http://tinyurl.com/p249oeb, [link in Hebrew].

regulation established by Amendment 4 was struck down by the Supreme Court,[122] and in its stead a new regulation was legislated in December 2014, which allowed detention in the facility for a period of up to 20 months with the obligation to report reduced to just once a day. This regulation was also struck down by the Supreme Court in August 2015 due to the length of detention permitted at the facility. The court suspended the annulment of the law for a period of six months, and ruled that during this time, the maximum period of detention in the facility would be one year.[123]

The declared aim of detention at Holot is to prevent the "settling down" of "infiltrators" in Israel. The detainees at Holot are citizens of Sudan and Eritrea, two countries to which Israel does not deport, so detention in the facility cannot be to prevent "settling down" in as much as that means staying in Israel, but rather it is at best an attempt to distance the asylum seeker population from Israeli society, to separate them from Jewish Israelis, and to isolate them.

The true purpose of the facility, in addition to isolating asylum seekers from Israeli society, is to apply pressure on them to leave the country "by will" by breaking their spirits. This was made clear in comments made by successive interior ministers at the time of legislation for the two previous amendments to the Prevention of Infiltration Law, and in comments made by bureaucrats and politicians who were involved in the legislation process. The most recent court ruling on the matter of the Prevention of Infiltration Law, nevertheless quotes the government representative in the hearing, who in response to the question whether she would commit not to taking action to break the spirits of detainees at the facility she said "of course, of course and of course." However in practice, the actual detainment in the facility could break the spirit of any individual. Furthermore, serious pressure is applied on the detainees at Holot to "consent" to leave the country whenever they have contact with the authorities in the facility – whether when applying for "leave" from the facility, or whether when seeking to apply to be recognized as refugees, and so on.

Every aspect of the detainees' lives is policed at the facility. They are constantly exposed to the Prison Service's authority to search them. They are not entitled to receive guests inside the facility. They are locked in the wings in which they live for eight hours of the day. They are not permitted to bring food into the facility and they are also subjected to all sorts of strange prohibitions as to what sort of items they are allowed to bring into the facility.

Detainees at Holot are not entitled to work and they receive measly "pocket money" which makes it very hard for them to leave the facility given the cost of public transport. Through their detention at the facility, detainees undergo a process of infantilization – they are transformed from independent adults who lived with dignity outside of the facility, into people who are treated like children, who have a curfew, must be obedient,

122 Eitan Case, see Footnote 88 above.
123 Desta Case, see Footnote 79 above.

have no privacy, and who are not able to take control of their own daily lives or social relations. The social and cultural activities in which they are able to participate are limited to "group activities" organized by the facility's operators.

Detainees at Holot, or those who are summoned there but fail to report, are subject to a regime of punitive administrative detention. The Prevention of Infiltration Law allows for the confinement of Holot detainees for periods from 15 to 120 days at the facility for various "infringements." Violating the discipline rules at the facility, being late or failing to report for daily roll call, damage to person or property, working, leaving the facility after the permitted hours or failing to report at the facility, are each likely to lead to confinement for various periods of time subject to an official's administrative ruling. For those who are not detained at Holot – non-renewal of a residence permit or violating the geographical boundaries conditioned to residency, can also lead to confinement.

"Suitability" interviews for reporting at Holot

The Prevention of Infiltration Law exempts certain groups from having to report at Holot – minors, women, those over the age of 60, parents with child dependents, those for whom detention in the facility is likely to cause unavoidable harm to their health, and victims of human-trafficking, slavery and forced labor. In addition, the Ministry of Interior exempts those who have Israeli partners from reporting to the facility.

PIBA conducts interviews with asylum seekers in order to determine their "suitability" for having to report at Holot. These interviews become invasive in situations in which a person claims to be in a relationship. Couples are rudely questioned about their relationships, in a humiliating, offensive manner. For instance, asylum seekers testified to being asked questions about the way that they perform sexual intercourse, the color of their partner's underwear, and other intimate details.[124]

Periodic reporting of those released from detention

Those who have been released from detention are, most of the time, required to report from time to time to a PIBA office as a condition for their release. In the past, released detainees were required to report to the PIBA office in Holon, but since May 2014, the location has been moved to the PIBA's operating area at Ben Gurion Airport.

124 Footnote 105 [refer to Hotline's "Policy of Failure" report mentioned in earlier footnotes].

In order to reach PIBA's offices, those who arrive at Ben Gurion Airport on public transport are forced to walk for twenty minutes along the main road. This walk is required in all weather conditions – pouring rain or sweltering heat. The cost of arriving there on public transport is significant, primarily due to the fact that for some required to report the non-enforcement policy to which we referred earlier does not apply, and they are not able to work. Even those who are able to work are forced to miss a full day of work each time they are required to report.

Those who do report to the location are forced to wait for many hours in the facility, sometimes even when they are accompanied by children. For many months, they were forced to wait outside, without bathrooms or access to drinking water. Only following the submission of a petition to the Supreme Court were toilet and drinking water facilities installed. During the hearing of the petition regarding the requirement to report to this facility, which is still pending, the Supreme Court justices expressed "discomfort with the current situation," and ordered the Ministry of Interior to find practical solutions to the problems that arise from reporting to the facility.[125]

Violence of PIBA inspectors

In the past, the Israel Police, and within it the Immigration Police, was the body entrusted with surveillance and detention of those suspected of residing in Israel without authorization. Later, these authorities were concentrated in the hands of a unit of inspectors named the "Oz Unit" which was subordinate to the Ministry of Interior. The Immigration Police and the Oz Unit have since ceased to exist. Since then, the Enforcement and Foreigners Administration was established within PIBA, to which Ministry of Interior inspectors are now subordinate.

Findings published recently by the Association for Civil Rights in Israel indicate a problematic organizational culture with respect to the conduct of these inspectors. The findings report incidents of verbal and physical violence during acts of arrest and deportation, xenophobic comments made by inspectors towards "foreigners" and racial identification ("profiling") during arrests. These findings also report incidents in which "suspects" surrounded by PIBA inspectors were hospitalized for medical treatment after being assaulted. They also report incidents in which the submission or review of complaints against inspectors were avoided by deporting the complainants of violence.[126]

125 HCJ 2638/15 Hotline for Refugees and Migrants v. Minister of Interior (Nevo, 7.9.2015)

126 The Hotline for Refugees and Migrants and the Association for Civil Rights in Israel, Who Inspects the Inspectors? Violence of Immigration Authority Inspectors against Migrants (October 2015), http://hotline.org.il/wp-content/uploads/2015/10/ImmigrationViolenceReportFinal.pdf, [link in Hebrew].

Delayed deportations for medical reasons

Among those without legal status in Israel who are subject to deportation, are sick people, who face serious health risks if they return to their countries of origin – sometimes due to a lack of available medical treatment in their country of origin; sometimes due to an inability to receive the existing medical treatment due to limitations, costs or other reasons; sometimes due to the difficulty of the travel itself; and sometimes due to other medical reasons. Following a petition by Doctors for Human Rights,[127] a guideline was formulated to grant legal status and prevent deportation for medical reasons. However, with time PIBA made the guideline's provisions stricter.[128]

PIBA assumed the liberty of enabling its inspectors to decide in certain situations, at their own discretion and without consulting doctors, whether or not circumstances contain medical reasons that justify non-deportation. PIBA stipulated in the guideline the requirement to present up-to-date medical documentation provided by public officials, which migrants without legal status and without state health insurance have difficulty obtaining, and often are simply unable to do so. The guideline further stipulates that those unable to produce such documentation within a short period of time will have their applications rejected out-of-hand. The guideline also stipulates that a chronic illness that does not place the applicant in a life-threatening position does not constitute justification for the provision of legal status in Israel or for delaying deportation; that economic considerations of the cost of treatment in Israel compared to the cost of treatment in the country of origin do not constitute sufficient grounds to provide a residence permit or delay deportation; and that as a rule, work permits will not be provided to sick people who cannot be deported, except in exceptional circumstances. These policies and the bureaucratic conditions contained in the guideline demonstrate that PIBA's top priority is deportation, and that it gives only the slightest consideration, if at all, to the human rights of the sick person, to his/her need for life-saving medical treatment, and to preventing serious harm.

And indeed, in practice, PIBA tends to reject applications pursuant to the guideline without consulting medical professionals and based on the general reasoning that applicants can receive medical treatment in their countries of origin for the right price. Even in cases where PIBA does consult a doctor, its tendency is not to check the applicant's condition and the opportunity for treatment in his/her country of origin, but rather whether it is possible to fly him/her back to that country.

127 HCJ 5565/05 Plonim v. Minister of Interior (Nevo, 25.9.2007)

128 Procedure for processing a request to delay expulsion/grant a B/2 visitor's visa for a limited period in the case of a medical emergency, (Regulation 5.2.0038 updated on: 28.4.2014), http://www.the Population and Immigration Authority.gov.il/Regulations/5.2.0038.pdf, [link in Hebrew].

Summary: Getting out of the Labyrinth

One of the hallmarks of a human society is its approach toward those it perceives as "strangers." The attitude toward "strangers" reflects the willingness of society to rise above perceived immediate sectarian interests and to show empathy and compassion for the "Other." If the way the Population and Immigration Authority treats those who are not citizens of Israel, as described in this report, can teach us anything about ourselves, then it is not only "strangers" in Israel who face a difficult situation. Our own situation as a society is also far from encouraging.

This report has explained the serious harm caused by the conduct of the Population and Immigration Authority toward refugees, stateless persons, migrant workers, family members of Israeli citizens, non-Jewish permanent residents, the victims of human trafficking, and a growing circle of people, including Israelis who have contacts with these individuals. In order to ensure the minimal protection of the human rights of these populations, the Population and Immigration Authority and other official bodies should, at the very least, act in the following manner:

- The Population and Immigration Authority should publish its administrative guidelines in full on its website immediately whenever a new procedure comes into effect or an existing one is updated;
- Full, transparent, and accurate statistics should be published concerning the number of people included in the various groups processed by the Population and Immigration Authority, the number of applications it handles, and the outcome of its handling of applications;
- The budget and personnel allocated for processing applications for status in Israel should be increased and the employees of the authority should be made aware of their obligation to protect the dignity of every person requesting service;
- The Interministerial Committee for Humanitarian Affairs should maintain transparent procedures; allow those whose cases it hears to present their arguments in full; establish binding timetables for processing applications to the Committee; and define criteria for the examination of applications;
- Criteria should be established for determining when applicants are to be exempted from presenting certain documents – whether because the documents are not needed in order to process the application or because there is no realistic possibility to secure the documents;
- A single "gradual procedure" should be introduced and the length of the proceeding should be identical for all types of applications for the regularization of status in Israel on the grounds of an intimate relationship: applications from the spouses of Israeli citizens; applications from the spouses of permanent residents

in Israel; applications from the common-law partners of Israeli citizens; and applications from the common-law partners of permanent residents. The status granted during each phase of the "gradual procedure" should be identical for all types of applications to regularize status in Israel on the grounds of an intimate relationship. The status granted at the end of the "gradual procedure" to common-law partners and spouses should be identical, including the exemptions granted during the naturalization phase. The sincerity of the relationship should be examined fairly as part of the "gradual procedure;"

- Standards should be established for granting status in the event of the dissolution of the relationship, particularly in cases when the couple have children or when the relationship ended due to the death of the Israeli partner or as a result of violence;
- The restrictions on the regularization of status of minors accompanying persons who regularized their status in Israel on the grounds of an intimate relationship, or who received citizenship on the basis of the right of return, should be abolished;
- The temporary provision preventing the regularization of status of Palestinian family members of Israeli citizens and residents should be abolished. As long as the temporary provision remains in force, arrangements should be established to ensure that Palestinians living lawfully in Israel, and whose status is not "upgraded" in accordance with the temporary provision, enjoy the same social rights as residents of Israel;
- The permanent residency of residents of East Jerusalem should not be revoked;
- Arrangements "binding" migrant workers to their employers in any manner should be abolished;
- The procedures restricting the right of migrant workers in Israel to family life should be abolished, including the procedure providing for the revoking of a permit of a person who has a partner and the provisions of the procedure for a pregnant migrant worker requiring departure from Israel, in cases when the child's father is present in Israel;
- Visas and permits should not be given to migrant workers in Israel outside the framework of bilateral agreements;
- Migrant workers who have been in Israel for many years should be enabled to acquire permanent status;
- The Population and Immigration Authority should exercise its authority to revoke the permits of employers who violate the rights of migrant workers;
- The provisions of the Convention relating to the Status of Refugees should be formalized in primary legislation, or at least in regulations;
- A fair proceeding should be ensured for the examination of applications for asylum in Israel and a maximum timeframe should be established for processing

such applications;

- Asylum seekers should be granted permits ensuring their right to work lawfully during the waiting period pending a decision in their application;
- Provisions should be established regarding the procedure for applying a policy of "non-refoulement" or "temporary protection" to a particular group and regarding the annulment of such policy;
- Persons staying in Israel in accordance with the "non-refoulement" or "temporary protection" policy should be granted permits ensuring their right to work lawfully during the period in which this policy applies to them;
- The number of offices providing services to asylum seekers and to persons staying in Israel in accordance with the "non-refoulement" or "temporary protection" policy should be increased, as should the personnel attending to this population;
- Israel should respect the right to family life of asylum seekers and of persons staying in Israel in accordance with the "non-refoulement" or "temporary protection" policy;
- An administrative mechanism should be established for processing applications from Bedouin who lack status in Israel without the need for legal proceedings;
- The time that stateless persons are required to wait in order to receive status entitling them to social rights should be reduced, and a period should be defined at the end of which they will be able to acquire permanent status in Israel;
- Declarations of joint parenthood by fathers and mothers should be honored and the children and parents' details registered, even if one of the parents is not a citizen or a resident;
- Official documentation should be issued for children born in Israel without status, including the details of both parents, similar to the documentation granted to the children of citizens and residents;
- Steps should be taken to locate and identify victims of human trafficking, slavery, and forced labor and close attention should be paid to caring for their needs throughout the duration of their stay in Israel;
- The border control supervisors and the custody review tribunals should maintain due process when issuing custody orders and when undertaking the quasi-judicial review of detention. They should consider the existence of the grounds for release in the Entry to Israel Law and the Prevention of Infiltration Law, consider alternatives to detention, and use detention solely as a last resort;
- Children and persons who have no immediate prospect of being deported from Israel should not be held in custody;
- Holot Detention Center should be closed;

- Yahalom Detention Facility should be transferred to the management of the Israel Prison Service;
- Accessible reporting places should be established for persons released conditionally from detention, and it should be ensured that these places provide conditions maintaining the dignity of those required to report;
- Criminal and disciplinary action should be taken against inspectors of the Population and Immigration Authority who employ physical or verbal violence;
- Any person facing danger to their health should not be deported and should be granted a staying permit in Israel.

21 Kislev 5776

3 December 2015

To:

Attorney Oded Feller

Association for Civil Rights in Israel

Greetings,

Re.: Report on Immigration Policy

Ref.: Your letter dated 30 November 2015

We have read carefully the above-mentioned report and the following is our response:

1. The Population and Immigration Authority was established in 2008 in accordance with Government Resolution No. 3434 dated 13 April 2008, with the goal of enhancing the coordination between all the government units involved in regulating the legal status of residents, citizens, and foreigners and in enforcing the laws concerning the presence and employment of foreigners. Until that time, these areas of activity were dispersed among different bodies: the Ministry of the Interior; the Ministry of Industry, Trade and Labor; and the Israel Police. On the establishment of the Population and Immigration Authority, the various areas of activity and the associated powers were gathered under a single organizational umbrella.

2. Today, the Authority's goals may be defined as follows:

- Regulating the Aliyah and immigration policy of the State of Israel
- Regulating the employment of foreign workers
- Enhancing the Authority's enforcement capability
- Reducing the number of persons unlawfully present in Israel

- Implementing the Biometrics Law – transition to smart documentation
- Operating an efficient and advanced border control system at Israel's international border crossings
- Improving the service:
- Upgrading the service at the Authority's offices and desks
- Developing and inculcating advanced direct and technological means for providing a direct, available, and convenient service.

3. As a general rule, the State of Israel maintains a migration policy based on the definition of the State of Israel as a country of return. This perception has remained stable over the years and has also not been influenced by changes of power.

4. Until the 1990s, the settlement of foreign populations in Israel was an exceptional phenomenon. Since then, due to a combination of diverse reasons, an increase can be discerned in demand to settle in Israel among various populations that arrive in the country, including: foreigners who enter with a tourist visa and remain in Israel; foreign workers who have exhausted their period of work in Israel; relatives of Israeli citizens not entitled to status in accordance with the law; and so forth.

5. This reality raised the need to create numerous procedures in order to cope with daily issues and with applications for status from persons included in populations that do not meet the criteria for the receipt of status in the framework of the Law of Return. Status in Israel was regulated for the partners of Israeli citizens, the elderly parents of naturalized persons, accompanying minors, humanitarian instances of persons applying for status for exceptional reasons, and many others.

6. Issues relating to migration policy often top the public agenda and reflect the importance attached to these questions. Moreover, in recent years the Population and Immigration Authority has raised diverse issues in the field of migration for discussion and for decision making by the government. As a result, the government has adopted a series of decisions formalizing various specific migration issues, including the regulation of status of the children of persons unlawfully present in Israel and establishing quotas for bringing foreign workers. Decisions were also taken regarding the processing of infiltrators, including the establishment of holding facilities, the construction of a fence along the Israeli-Egyptian border, and the pursuit of discussions with third countries willing to admit the infiltrators.

7. The central character of the immigration issue is also reflected in significant steps taken in the legislative sphere. By way of example, this includes the Prevention of

Infiltration Law and the powers granted to inspectors in the Entry to Israel Law.

8. We will address below briefly and in a general manner several issues raised in the report:

- Addressing the phenomenon of infiltration – the Israeli government has adopted a series of decisions in recent years concerning the handling of the infiltration phenomenon. Various governmental agencies were charged with implementing these measures, including the Population and Immigration Authority. In 2012, following the progress in the construction of a land obstacle along the southern border, and on the adoption of the amendment to the Infiltration Law, which was amended shortly thereafter, the flow of infiltrators decreased significantly. Moreover, thanks to various efforts by the Population and Immigration Authority, there was a reduction in the rate of infiltrators released from custody who remained in Israel, by means of an interministerial, coordinated, and integrated plan. The opening of the open holding center Holot toward the end of 2013 constituted a significant milestone in attention to the phenomenon of infiltration into Israel. The opening enabled enforcement operations against infiltrators whose visas were invalid and alleviated the pressure in the centers of the cities. In addition, an increase was seen in the rate of those leaving Israel voluntarily.

In accordance with the law, government policy, and within the framework of the tools available to it, the Population and Immigration Authority will continue to act to reduce the number of infiltrators in Israel and to remove those remaining from the centers of the cities.

- Regulating the employment of foreign workers through bilateral agreements – in accordance with government policy, as reflected in Government Resolution No. 3453, adopted on 10 July 2011, the main tool for regulating the recruitment and employment of foreign workers in Israel in recent years has been through bilateral agreements. The principles of the bilateral agreements are based on the implementation of a transparent and controlled process including: the recruiting, screening, and training program for foreign workers by the countries of origin; preventing the payment of fees to intermediaries; preventing human trafficking; the return of workers to their countries of origin; and protecting the rights of foreign workers in Israel. In accordance with the government decisions, an interministerial team was established to supervise the process, guide the various ministries in implementing methods, and make recommendations to the minister of the interior regarding the countries of origin of foreign workers to be brought to work in Israel and regarding their recruitment, transfer, and reception in Israel.

In recent years several bilateral agreements have been signed and are currently being implemented, including with Thailand, Romania, Bulgaria, and Moldova.

It should be emphasized that the Authority works consistently to protect the rights

of foreign workers who come to Israel, including preventing harm to foreign workers during the recruitment and placement processes. For example, and contrary to the claim in the report that injuries to the rights of foreign workers can be expected to re-emerge, any arrangement between Israel and the country of origin of foreign workers will include reasonable mechanisms enabling inspection to prevent harm to workers, both during their recruitment and after their arrival in Israel. It should also be emphasized that alongside the efforts made by the government to recruit foreign workers to the building industry, with the goal of enabling professional and rapid construction in order to provide necessary housing solutions, the government works to encourage Israeli workers to enter this field on fair salaries and conditions.

- **Changes in the field of the employment of foreign workers in care giving following amendments to primary and secondary legislation** – in light of the difficulties that emerged regarding the employment of foreign workers in the care giving sector, Amendment 21 was enacted to the Entry to Israel Law, 5712-1952, following which regulations were amended and procedures revised relating to the control of the transfer of foreign workers between employers (patients), the definition of geographical areas of work, and the authority to nullify the visa and license of a foreign worker who has not been lawfully employed for 90 days. This enables the maintenance of the balance between the rights of foreign workers, on the one hand, and the needs of the employers of care givers, on the other.

- **Allocating permits for the employment of foreigners, Palestinians, and Jordanians in accordance with the government decisions and the quotas established from time to time in the various sectors**. The allocation is undertaken in a transparent manner in accordance with criteria determined in advance, thereby enabling control of employment and effective enforcement of labor laws on the employers of these workers.

- **Actions to enhance enforcement capabilities with regard to the employers of foreign workers** – contrary to the claim in the report that the Authority is "reneging" on its function in this regard, the Authority acts tirelessly on the issue and focuses on several channels: Enhancing the efficiency of the inspection and investigation method; improving intelligence information; sharing information with other governmental bodies; enhancing the deterrent capability (as part of the amendment of the Foreign Workers Law, 5751-1991, which came into force in June 2012, a minimum penalty was established for the unlawful employment of a foreign worker, and the penalty for an office-holder in a corporation who violates the Foreign Workers Law was increased, among other steps); and administrative enforcement with regard to building corporations, private bureaus, and the employers of foreign workers.

- **Humanitarian activities** – since the individual cases that come to the Authority's attention are so diverse, it is not always possible to provide a response within the framework of the existing procedures. However, since these decisions often have

a crucial impact on the individual's life, these cases are examined on humanitarian grounds by various committees, including:

The Interministerial Committee for Humanitarian Affairs: applications by foreigners to receive status in Israel.

The Extended Advisory Professional Committee – Care giving Sector: a special committee for processing particular problems of patients.

The Humanitarian Exceptions Committee – allocating a permit for the employment of one additional foreign worker in the agricultural sector for a farmer who has physical disabilities preventing him from working independently.

The Advisory Committee for Extending the Permits of Foreign Workers in the Care giving Sector on Special Humanitarian Grounds.

Additional humanitarian activities result from the commitment to international documents the State of Israel has accepted by virtue of ratification and/or signing, including the handling of asylum seekers and the handling of preventing human trafficking andcaring for its victims.

In addition, the Israeli government from time to time takes decisions on humanitarian grounds; the Authority is charged with executing some of these decisions. Among others, these include decisions concerning the bringing of the Falashmura and Bnei Menashe communities to Israel.

Contrary to the impression created by the report, the Authority acts constantly in the humanitarian realm and, when necessary, also provides a response for cases that do not ostensibly meet the conditions of the procedures for receiving status in Israel – all this on the basis of an individual and humane examination of the case.

In addition, the Authority is, of course, involved in numerous issues that are not directly related to the issues raised in the report, including: The implementation of the Biometry Law and the transition to smart biometric documentation; the introduction of an efficient and advanced control system at Israel's international border crossings; encouraging tourism to Israel; signing agreements for mutual exemption from visas; cooperation with international bodies, including the European Union and the OECD; global entry agreements; and improving the service and the efficiency of work of the Authority, as will be detailed below.

9. As we reviewed briefly above, the Authority is involved in implementing government policy on the issues for which it is responsible, on the basis of the implementation and enforcement of the relevant laws. Government policies and the implementation therefore are subject constantly to review the Supreme Court and, as necessary, adjustments are made – inter alia the amendment of the Infiltration Law. The Authority's procedures are also subject constantly to review the courts and in this field, too, updates are made from time to time, as necessary. Accordingly, there can be no dispute that the Authority acts lawfully.

10. A reading of the report shows that it effectively consists of accusations against the laws and governments of the State of Israel. As noted, however, the law is the law; government policy is subject to an examination by the Supreme Court; and the Authority's actions are subject to examination by the courts.

11. In effect, the report presents its authors' agenda– one that is legitimate, but absolutely contrary to the policy of recent governments.

12. For example, at this point in time, in the midst of the international migration crisis when many countries around the world are attempting to prevent waves of mass immigration to their territory, the report advocates actions that would effectively encourage mass immigration to Israel – as noted, in complete contradiction of government policy on the matter. Among other proposals, the report suggests that Holot holding center should be closed and that the status of many of the infiltrators should be regulated. During a period when the increasing involvement of residents of the territories who hold status in Israel has been exposed, the report seeks "not to revoke the permanent residency of East Jerusalem residents;" "to abolish the temporary provision preventing the regularization of status of Palestinian family members of Israeli citizens and residents;" to ensure that these persons will receive the same social rights as granted to Israeli citizens, and so forth.

13. As stated, the Authority will continue to implement government policy tirelessly, while providing an optimal service for all those who come through its gates and require its services, and while constantly improving this service.

14. The following objectives have been set in the field of improving the service, among others:

- Transferring approximately 30 percent of the actions undertaken in the offices (some 1.5 million actions a year) to remote service channels by improving the performances of the telephone hotline, upgrading the website, and developing a back office system for the remote processing of actions.

- Improving the service in the offices, with an emphasis on reducing waiting times, particularly by enhancing operational efficiency in the offices and increasing the efficiency of the system for issuing complex visas.

- Reducing the bureaucratic burden by cutting the number of appearances at the office in order to obtain services, examining procedures, and locating areas where they can be relaxed.

<u>The following initiatives have been introduced recently:</u>

- Expanding the telephone response at the National Service and Information Center

and reducing waiting times for reply.

- Inculcating a process for extending visas for foreign workers in the care giving and agricultural sectors without the need to come to the office

- Increasing the deployment of self-service stations

- The Authority has begun a process to inculcate a line management system in the offices, in order to reduce lines and manage them more efficiently.

- Actions to enhance the efficiency of the process for granting complex visas.

- Opening additional offices around Israel.

The Authority undertakes to continue to develop organizational infrastructures in order to improve the service, in accordance with the defined objectives. This includes: improving the technological tools for reducing waiting times on the telephone hotline and at the Authority's offices; including additional services in the basket of services that can be obtained remotely; adapting the visual appearance of the offices to the service perception; inculcating a line management system in all the Population Authority offices; implementing a solution for the delivery of biometric identity cards without the need to come to the offices for a second time; and providing training for all Authority employees in order inculcate the service perception.

It should be noted that any action to improve and enhance the efficiency of the service for residents of Israel that is ostensibly not connected to foreigners frees resources for attending to foreigners, too, so that at the end of the day these are also effectively actions for their welfare.

15. In conclusion, and as noted above, most of report seeks to implement a migration policy that is very far removed from the policies of recent governments in general, and the present government in particular.

Sincerely,

Population and Immigration Authority

This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of the Hotline for Regugees and Migrants and can in no way be taken to reflect the views of the European Union.