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# Israeli Policy Toward African Asylum Seekers and Unauthorized Migrants

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*This article sheds light on Israel's practices against African asylum seekers and unauthorized immigrants. Since the mid-2000s, Israel has received a large influx of undocumented people from African countries. In order to curb unauthorized border crossings, Israel reached an agreement with Egypt for the return of unauthorized border crossers into Egypt, started building a border fence, and increased the number of detention centers. The 2012 amendment to the 1954 infiltration law made it so that any irregular border crosser was considered an infiltrator and therefore, detained. In 2015, Israel announced its forcible relocation policy. After examining asylum and migration dynamics in Israel and the governmental responses, this article identifies the pivotal roles played by Israeli human rights organizations and the Supreme Court in thwarting the government's detention and forcible relocation policies.*

## Introduction

In Israel, the status of foreigners is determined by four laws: the Law of Return, the Citizenship Law, the Entry to Israel Law, and the Anti-Infiltration Law. According to the Law of Return, Jewish people who reside abroad are entitled to receive Israeli citizenship along with their children and grandchildren. The Citizenship Law regulates cases of family reunification. The Entry to Israel Law applies to the entry of tourists and migrant workers into the country. After Palestinian guerilla fighters (Fedayeen) launched attacks against Israel after crossing the Egyptian and Jordanian borders, Israel adopted the Anti-Infiltration Law in 1954. This law describes any person who enters Israel unlawfully from Lebanon, Egypt, Syria, Saudi Arabia, Jordan, Yemen, or Palestine as an infiltrator (Sabar & Tsurkov 2015).

In Israel's Declaration of Independence, the state of Israel is referred to as "the birthplace of the Jewish people and their ancient homeland". It is also stressed

that "Israel would open the gates wide to every Jew and confer upon the Jewish people the status of a fully privileged member of the comity of nations" (Provisional Government of Israel 1948). Following the Second World War, Israel witnessed an influx of Holocaust survivors as well as Jews from the Middle East and North Africa (Ziegler 2015). Between 1948 and 2000, approximately three million Jews migrated to Israel (Smooha 2002).<sup>1</sup> Even though Israel gives every Jew the right to return to the homeland, it does not aspire to be a country of international migration. As such, people who do not fit the criteria of the Law of Return are only granted short residency permits (Hotline for Refugees and Migrants 2019). In Israel's immigration policy, an exception was made for Falash Mura (Ethiopia's Jewish community).<sup>2</sup>

Even though Israel actively supported the formulation of the 1951 Refugee Convention and ratified it in 1954 (Yacobi 2016), it did not have a formal national asylum

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system prior to 2002. That said, Israel has not always adopted a closed-door policy toward asylum seekers. When Ethiopia descended into a civil war, Israel airlifted thousands of Ethiopian Jews to Israel in a covert military operation in 1991. Israel also accepted non-Jewish asylum seekers as a gesture of goodwill (Paz 2011). For example, between 1977 and 1979, it opened its doors to 360 Vietnamese boat people who fled the communist regime in Vietnam and granted them full rights and government-subsidized apartments (Weinglass 2015). In 1993, it granted refugee status to 84 Bosnian Muslims. In 1999, it granted refugee status to 112 Kosovar Albanians (Ziegler 2015) and in 2000 it gave shelter to nearly 6,000 members of the South Lebanese Army fighters (Christian militia who fought on the side of Israel against Hezbollah) along with their families after the country withdrew from South Lebanon (Herzog 2009). The country also accepted a small number of refugees from Iraq (Kritzman-Amir & Shumacher 2012).

Despite these historical examples, in recent years Israel has not adopted a particularly generous refugee policy. Of the 80,000 asylum applications the country received over the last 15 years, only one percent of applicants were given refugee status or other forms of protection (UNHCR 2020a). Israel offered group protection to citizens of Sierra Leone, Liberia, Ivory Coast, and South Sudan when those countries were embroiled in violence. However, these protections were short-term, as these people were asked to leave when humanitarian crises or civil wars in their respective countries ended (Wagenheim 2018).

Starting from the mid-2000s, for the first time in its history, Israel witnessed an influx of African asylum seekers and unauthorized immigrants. The Olmert government restricted their ability to live and work in central Israel and took action to expel children of illegal workers as well as their families. The Netanyahu government adopted a tougher stance by labeling them as terrorists and adopting exclusionary border practices. Under his government, legislative changes were made to prevent the entry of undocumented people and facilitate their deportation. With the 2012 amendments made to the 1954 Infiltration Law, anyone who entered Israel illegally was defined as an infiltrator and consequently detained and imprisoned.

This article sheds light on the clashes between the Israeli government's security-based approach towards African asylum seekers and unauthorized migrants and the humanitarian approach promoted by Israeli human rights organizations and the Supreme Court. After examining migration and refugee dynamics in Israel and the government's detention and forcible relocation policies, this article identifies the important roles played by Israeli human rights organizations and the Supreme Court in thwarting the government's exclusionary practices. This study contributes to the academic and political discourse by examining the nexus between the

government, NGOs, and the Supreme Court in Israel in the context of asylum and migration policies.

## **An Overview of Israel's Migration and Asylum Policies**

Until the 1990s, Israel did not incentivize international labor migration and there were only a small number of non-Jewish migrants in the country. This stems from the country's objective of maintaining the Jewish majority (Paz 2011). In order to fill its labor shortages, the country instead recruited Palestinian workers from the West Bank and the Gaza Strip. However, as Palestinians returned to their homes after work, they did not fit the category of labor migrants. There were up to 100,000 Palestinians working in the agriculture and construction sectors. However, following the 1987 Intifada, the country faced severe labor shortages in these sectors. From the 1990s onwards, the country started to recruit overseas workers from Romania, Thailand, and the Philippines (Raijman & Kemp 2002; Sabar & Tsurkov 2015). Furthermore, the official recruitment of labor migrants was followed by a flow of unauthorized immigrants, many of whom arrived in Israel and overstayed after their visas expired (Raijman & Kemp 2002).

Israel's economic prosperity during the 1990s attracted a large number of international migrants both from developing and undeveloped countries (Ben-Nun 2017). A relative tolerance was shown to labor migrants as well as unauthorized migrants due to labor shortages (Afeef 2009). At the beginning of the 2000s, foreign workers made up 10 percent of the labor force in Israel which created frustration in Israeli society as it led to an increase in the unemployment rate for Israeli citizens (Sabar & Tsurkov 2015). In 2002, the Inter-Ministerial Committee on Migrant Workers recommended decreasing the quota for migrant workers and the expulsion of 100,000 migrant workers by 2005. Following these instructions, then Prime Minister Ariel Sharon created an immigration directorate tied to the Ministry of Interior in order to tackle illegal immigration. He also went on to announce that 50,000 unauthorized migrants would be deported by 2003. Since it lacked sufficient staff, the immigration directorate relied on the Israeli Police for arrests and deportations, which led to violence. Israeli Police Chief, Shlomo Aharonishky, described these arrests and deportations as a military operation (Sabar & Tsurkov 2015, La'Oved 2003).

As underlined in the Introduction, Israel lacked national refugee legislation prior to 2002. Before 2002, the United Nations High Commissioner for Human Rights (UNHCR) registered and evaluated all asylum applications and gave their recommendations to Israeli officials who ultimately had the power to approve or deny these applications (Yaron et al. 2013). After the country engaged in large-scale deportations of

undocumented people in 2002, many unauthorized migrants started to seek asylum in Israel. From 2002 to 2003, asylum applications registered by UNHCR increased from 283 to 1,389. Against this backdrop, Israel developed refugee-related procedures for screening asylum seekers (Kritzman-Amir 2009). The National Status Granting Body (an inter-ministerial committee consisting of representatives from the Ministries of Justice, Foreign Affairs, and Interior) was established in 2002 and took over responsibility for evaluating asylum claims registered by UNCHR (Cue 2002; Afeef 2009; Kritzman-Amir 2009). In 2011, new units, established in the Population and Immigration Authority, were granted authority to register and interview asylum applicants (Kritzman-Amir & Shumacher 2012). Overall, according to Israel's current asylum system, the National Status Granting Body evaluates asylum applications and the Ministry of Interior has the ultimate authority for refugee status determination (Kritzman-Amir 2009; Sabar & Tsurkov 2015).

### **Israel's Exclusionary Practices against African Asylum Seekers and Unauthorized Migrants**

Starting from the mid-2000s, due to economic inequality, oppression, violence and conflicts in its neighboring states, Israel started to receive a large influx of African asylum seekers and unauthorized immigrants (Human Rights Watch 2008). Israel is seen as a last resort of destination for African people who lack the financial resources to go to Europe or the US (Furst-Nichols & Jacobsen 2011). Most Africans who come to Israel are Sudanese and Eritrean nationals. The Darfur conflict in Sudan and the oppression of unelected President Isaias Afwerki in Eritrea led many people to evacuate their homes and seek shelter in Israel. Israel's strict refugee policies have pushed many asylum seekers to avoid legal channels of entry. In addition to asylum seekers who undertake perilous journeys to escape the oppression and violence in their country of origin, many Sudanese and Ethiopians who resided in Egypt escaped to Israel due to limited freedom or to find better work opportunities (Human Rights Watch 2008a; Yacobi 2010; Graham 2018).

Sudanese people make up the largest number of foreigners in Egypt. After the 1976 Wadi El Nil agreement was signed between Sudan and Egypt, Sudanese people were given access to employment, health services, education, and property ownership. However, this agreement ended after Hosni Mubarak survived an assassination attempt in Addis Ababa in 1995. After this incident, the circumstances of Sudanese people living in Egypt significantly worsened. Even though Egypt and Sudan signed the Four Freedoms Agreement in 2004 that covers the areas of freedom of movement, residence, work, and property ownership between both countries, the agreement has not been

fully implemented. Many Sudanese live in Egypt without a formalized status. This predicament has forced many of them to flee to Europe and Israel (Karasapan 2016). Flows of Sudanese people from Egypt to Israel increased after an event in 2005, where peaceful Sudanese protesters were fired upon in front of the UNHCR offices in Cairo (the 2005 Mustapha Mahmoud Park Massacre). 56 people were killed and hundreds were wounded (Sabar & Tsurkov 2005).

While earlier Sudanese and Eritrean people who escaped to Israel lived in Egypt for many years, currently most of them come directly from Sudan and Eritrea, using Egypt as a transit country (Furst-Nichols & Jacobsen 2011). The porous nature of the Israeli-Egyptian border has also created permissive conditions for irregular migratory flows from Ghana, Kenya, Nigeria, and the Ivory Coast to Israel via Egypt (Yacobi 2010). Most Africans are smuggled from Egypt to Israel by Bedouin tribesmen (Sherwood 2012). Many of them witness abuse by Bedouins during their journey while some of them are held for ransom in the Sinai desert (BBC News 2011).

As explained earlier, Africans who came to Israel in the mid-2000s have found themselves in a political environment in which Jewish immigration is encouraged and non-Jewish immigration is strongly discouraged due to the unemployment dynamics in Israel (Sabar & Tsurkov 2015). Although Israel developed an asylum system in 2002, very few people have been granted refugee status. Individuals, whose asylum applications are approved, are only given temporary residence identity cards, rather than being granted permanent status (Yaron et al. 2013). The Ministry of the Interior, which occupies a central stage in the country's asylum system, has flexibility regarding the determination of refugee status. Even though the UNHCR no longer conducts interviews with asylum applicants, it is entitled to give recommendations to the Ministry of Interior for a fair asylum procedure. However, in practice, the Ministry rejects many asylum applications without even reviewing them (Furst-Nichols & Jacobsen 2011). The Israeli director of the UNHCR raised concerns pointing to the arbitrariness of the refugee determination process (Friedman 2010a).

Israel has systematically denied asylum applications from the majority of Sudanese and Eritrean citizens granting only a few temporary residencies (Human Rights Watch 2014; Human Rights Watch 2009; Yaron et al. 2013). Most asylum seekers were labeled labor immigrants and their refugee status was not recognized. It is important to note that Sudan gives its citizens who visit Israel prison sentences of up to ten years. Eritreans who are returned from other countries face detention, torture, and ill-treatment. Furthermore, people who escape indiscriminate conscription in Eritrea are imprisoned and face torture, ill-treatment, and forced labor (Human Rights Watch 2014).

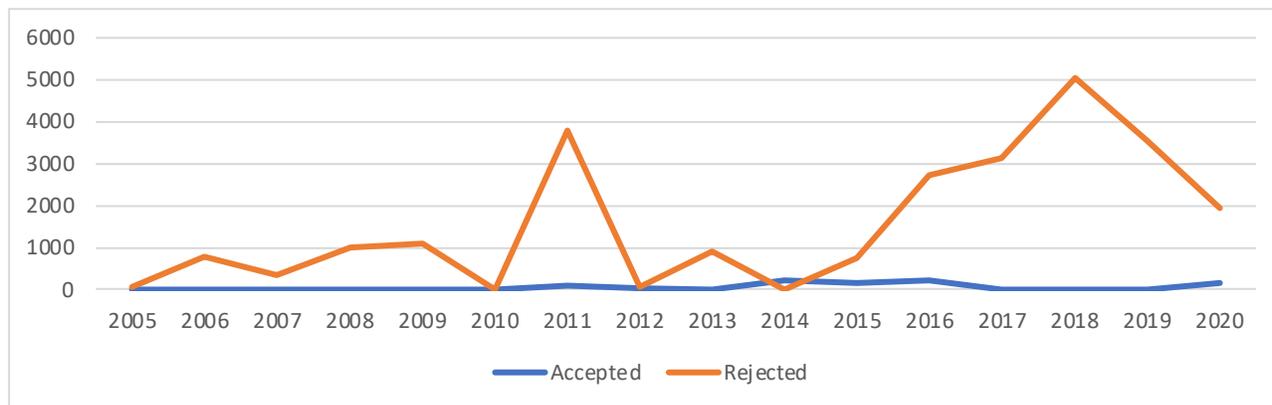


Figure 1. Accepted and Rejected Asylum Applications in Israel. Source: UNHCR (2020b)

Figure 1 shows the significant discrepancy between accepted and rejected refugee applications in Israel. This stems from the government policies to prevent asylum seekers from submitting asylum applications by finding slight inconsistencies in individuals' memory of irrelevant, minute details as justification to deny refugee status. This constitutes a stark contradiction to the principles of the UNHCR (Sabar & Tsurkov 2015).

Many Israeli state officials claim that the motive of Africans entering the country is not related to seeking asylum, but rather it is about employment (Human Rights Watch 2014). The irregular entry of African people to Israel was not only seen as an economic problem, but also a security problem related to concern about the ethnonational character of Israel (Paz 2011). Knesset Member Yaakov Katz (from the National Union Party) stated that "the Jewish people have spent 100 years building a Jewish state and in 10 years the infiltrators can wash it all down the drain" (quoted in Magnezi 2010). The mayor of Eilat, Meir Yitzhak Halevi, launched a media campaign to decry the influx of undocumented people from the Egyptian border and described Israel's attitude of inaction as "national suicide" (quoted in Friedman 2010b).

Against the backdrop of an increase in irregular flows along the border and heightened political tension, then Israeli Prime Minister Ehud Olmert and the Egyptian President Hosni Mubarak gathered to discuss border-related problems in 2007. Mr. Olmert requested that Egypt take action to prevent irregular border flows into its territory. Egypt agreed to take back irregular border crossers caught by Israel on the Egyptian-Israeli border. According to the agreement reached between both countries, in addition to irregular immigrants, asylum seekers would also be deported to Egypt without being able to make an asylum claim in Israel (Reliefweb 2007).

Moreover, Mr. Olmert insisted that Mubarak assure the safety of deported people from Israel to Egypt (Yacobi 2010). Yet, three days after the agreement, Egypt started to adopt a shoot-to-kill policy at its Israeli border. From 2007 to 2008, 32 Africans were killed by Egyptian

authorities in their attempts to reach Israel (Human Rights Watch 2008b). The Egyptian Foreign Ministry justified the shoot-to-kill policy, claiming that there is a flow of weapons at its Sinai border. An official from the Ministry underlined that, due to the Egypt-Israel Peace Treaty of 1979, the number of Egyptian border guards is limited. They further specified that if Egypt could increase the number of border units, then it would abandon the use of lethal force at its border (Human Rights Watch 2008a). Yet, the Human Rights Watch report indicates that unarmed asylum seekers and migrants were targeted by Egyptian border guards and Egypt's border shootings continued in the years to come. In 2010, the United Nations High Commissioner for Human Rights, Navi Pillay, said that she knew "of no other country where so many unarmed migrants and asylum seekers appear to have been deliberately killed in this way by government forces" (quoted in Human Rights Watch 2010).

Mr. Olmert's agreement with Egypt was heavily criticized across the political spectrum in Israel. The head of a legal aid center for refugees at Tel Aviv University, Anat Ben Dor, noted that irregular border crossers should not be deported to Egypt unless they are treated properly and according to the 1951 Refugee Convention guidelines. The Hotline for Migrant Workers, Israel's leading organization that work that assists refugees and migrant workers, pointed to the pattern of asylum seekers losing their lives in their countries of origin after they were deported by Egypt. Amnesty International's Israel department also criticized Israel's refusal to examine refugee claims carefully (Reliefweb 2007).

During this period, there were fervent debates in Israel about the country's refugee policies. Sixty-three Knesset members signed a petition asking Mr. Olmert to refrain from deporting African asylum seekers, stressing the "unimaginable" horrors they go through as well as Israel's obligations under the 1951 Refugee Convention. The petition stated that "the refugees who arrived here need protection and shelter. Their absorption as refugees is a moral duty, considering the history of

the Jewish people and the values of democracy and humanity" (quoted in Ynet News 2007). Zevulun Orlev, an MP from the National Religious Party, stated that "Jewish morals and Jewish history obligate us to treat refugees in peril with the utmost sensitivity" (quoted in Ynet News 2007). Similarly, Yuli Edelstein, an MP from the Likud Party, asserted that Israel should do all in its power to aid the Darfur asylum seekers "because they've been through a terrible massacre, and returning them to where they've fled from could cost them their lives" (quoted in Ynet News 2007). The parliamentarians who signed the petition recommended that Israel serve as a temporary asylum until asylum seekers are safely transferred to other countries (Ynet News 2007).

Despite calls to show compassion to refugees from across the political spectrum, Mr. Olmert likened the influx of asylum seekers to a tsunami, focusing on the necessity to take every measure to halt this influx (Paz 2011). In 2008, the Olmert government proposed a new anti-infiltration act to prevent the influx of Africans from Egypt to Israel. The proposed act brought immediate jail sentences for unauthorized border crossers. Pro-human rights and pro-migrant NGOs including the Association for Civil Rights in Israel, the Hotline for Migrant Workers, and the Aid Organization for Refugees and Asylum Seekers in Israel initiated a campaign by naming and shaming MPs who supported the anti-migrant legislation. Against the backdrop of the growing public reaction, the Olmert government withdrew the 2008 Anti-Infiltration Act (Ben-Nun 2017).

In 2009, the Olmert government initiated a policy to prevent asylum seekers from living in central Israel (Paz 2011). This is called the Gedera-Hadera policy (named after two cities designated as no-go areas for asylum seekers). Under this policy, asylum seekers and immigrants were required to sign documents, confirming that they would not live or work in central Israel. The government justified this policy by referring to the growing number of asylum seekers in Tel Aviv. The Olmert government also adopted an immigration policy based on the deportation of children of illegal immigrants along with their families. This policy was vehemently criticized by then President Shimon Peres. While visiting a school in Tel Aviv in which many children of foreign workers study, Mr. Peres expressed that "I felt they had an innate Israeliness, a love of Israel and desire to live here" (quoted in Miskin 2009). After eight human rights organizations signed a petition against the Gedera-Hadera policy, the government representative, Yochi Gnessin, defended the policy before the Supreme Court of Justice on the grounds that it was consistent with previous legislation (Izenberg 2009).

The Netanyahu government, which came to power in 2009, canceled the Gedera-Hadera policy and allowed illegal workers with children to remain in Israel for three months until the government developed a policy on the matter (Miskin 2009). The then Interior Minister

Eli Yishai justified the cancellation of this policy by arguing that it would have negatively impacted towns struggling economically (Eglash 2009). In 2010, in response to a protest in Tel Aviv against African refugees and immigrants, Netanyahu implored Israeli citizens not to take matters into their own hands, not to use violence, and not to become agitated, stressing that unauthorized immigration would be tackled within the framework of the law. He also mentioned that "the migrants, mostly from Sudan and Eritrea, are trying to enter Israel not only because of economic opportunity, but also because they know that in Israel they will be treated humanely" (quoted in Keinon 2010).

However, the Netanyahu government later switched to even more exclusionary practices against African asylum seekers and unauthorized migrants than its predecessor. In 2010, Netanyahu described a three-pronged strategy that consisted of heavy fines on employers of unauthorized immigrants, the construction of a border fence, and a detention center. In 2011, the deportation of unauthorized border crossers to Egypt was halted due to increased risks for the deported individuals, resulting from the political change in the country—although unofficial claims indicate that occasional deportations took place (Ziegler 2015). While adjusting its policies in light of the political changes brought on by the Arab Spring, the government maintained its exclusionary practices against African asylum seekers and immigrants and 2011 witnessed the burgeoning of detention centers across the country (Global Detention Project 2018). The electric fence on the Egyptian border was completed in 2014. While the border fence decreased unauthorized entries to Israel, there were occasions in which the fence was breached that eventually led authorities to lengthen and equip it with additional detection devices in 2016 (AFP 2017).

Netanyahu justified his government's exclusionary practices with a threat-oriented discourse. In 2010, he stressed that asylum seekers inflict cultural, social, and economic damage to Israel and pull the country towards the Third World (Goldstein 2010). In his later remarks, Netanyahu noted that unauthorized immigrants pose a threat to the security and identity of the Jewish state. He went on to say that:

If we don't stop their entry, the problem that currently stands at 60,000 could grow to 600,000, and that threatens our existence as a Jewish and democratic state... This phenomenon is very grave and threatens the social fabric of society, our national security and our national identity" (quoted in Sherwood 2012).

Interior Minister Eli Yishai went so far as to compare undocumented entries of African people to the Iranian nuclear threat (Efraim 2012). Similarly, Miri Regev, MP from the Likud party, compared African asylum seekers to cancer and later apologized for her remarks (Friedman 2012).

The Netanyahu government systematically ignored the humanitarian dimension of the influx of Africans into Israel and simplified the problem by labeling all Africans in Israel as "infiltrators". The then Education Minister Naftali Bennett (leader of the far-right Jewish Home party) warned the government not to turn Israel into "a paradise for infiltrators" (Stoffel 2018). Israeli Justice Minister Ayelet Shaked implied that Africans constitute an economic burden to Israel by stating that "the state of Israel is too small and has its own problems. It cannot be used as the employment office of the African continent" (quoted in Wagenheim 2018).

In 2018, Netanyahu went so far as to describe African undocumented immigrants as a greater threat than Sinai terrorists and stressed the importance of the border fence with Egypt to keep out African immigrants (Staff 2018). In sharp contrast to the discourse that links Jewish values with refugee protection, Netanyahu argued that exclusionary border practices are the only way to keep Israel a Jewish state (Staff 2018). In a similar vein, Population, Immigration, and Border Authority Director Shlomo Mor-Yosef, blatantly stated that "we don't encourage immigration of non-Jews" (quoted in Wagenheim 2018). Even two weeks before the 2021 Israeli elections, Netanyahu defended the border fence by saying, "I prevented the overrunning of Israel, which is the only first-world country that you can walk to from Africa. We would have had here already a million illegal migrants from Africa, and the Jewish state would have collapsed" (quoted in Harkov 2021).

The Netanyahu government's exclusionary discourse and practices against African asylum seekers and unauthorized immigrants took place concomitantly with the Likud party's stronger alliance with radical Jewish nationalism and the ultraorthodox, and Netanyahu's strategies of promoting social divisiveness: Jews vs. Arabs; religious vs. secular; native Israelis vs. asylum seekers (Stein & Zimmermann 2021). These discursive and legislative practices are aligned with Netanyahu's vision of the future of Israel, in which only Jews have political power (Peleg 2019). Netanyahu's nationalist, populist policies culminated in the 2018 Nation-State Law that stated that only Jewish people have the right to exercise national self-determination in Israel. The following sections explain how Israeli human rights organizations and the Supreme Court of Justice played important roles in thwarting the government's detention and forcible relocation policies against African asylum seekers and unauthorized immigrants.

## Case Study and Methodology

This study examines the adoption and the reversal of Israel's exclusionary practices against African asylum seekers and unauthorized immigrants through process tracing. Process tracing refers to "the analysis of evidence on processes, sequences, and conjunctures of

events" in a way that unpacks causal processes (Bennet & Checkel 2015, 7). The main idea of process tracing is concatenation, which 'is the state of being linked together, as in a chain or linked series' (Waldner 2012, 68). Specifically, through process tracing, this article identifies the ways in which NGOs and the Supreme Court influenced policy changes in the domains of asylum and migration in Israel. The empirical analysis is built upon a variety of sources: official reports of the UNHCR, Human Rights Watch, humanitarian NGOs in Israel, newspapers, academic articles, and books.

## Israel's Detention Policy

In 2012, the Knesset amended the 1954 Infiltration Law, as a result of which all unauthorized border crossers were labelled as "infiltrators". According to this law, Israeli authorities could detain unauthorized border crossers, including asylum seekers for three years before their deportation. Human Rights Watch, an international NGO, condemned the law on the grounds that it violates international refugee standards and criminalizes asylum seekers (Human Rights Watch 2012). Human rights organizations in Israel submitted a petition to the Supreme Court of Justice to overturn the 2012 Anti-Infiltration Act (The Association for Civil Rights in Israel 2012).<sup>3</sup>

The government defended its position by referring to the national security rationale. In 2013, the Supreme Court ruled that the 2012 Anti-Infiltration Act contradicted the Israeli Basic Law of Human Dignity and Liberty (Ben-Nun 2017). It unanimously revoked the 2012 Anti-Infiltration Act on the grounds that the detention of those deemed as infiltrators without trial for three years was unconstitutional. Edna Arbel, Justice of the Supreme Court, countered the government's security-based argument by referring to Israel's international obligations under the 1951 Refugee Convention (Ben-Nun 2017). She further noted that:

We are driven towards complex confrontations with this issue of the migrants. We must remember that when faced with this issue, we are not confronted with people coming to harm the population of the State of Israel, but rather with a miserable population, who is arriving to our shores from a destitute humanitarially stricken region, a population which conducts a miserable and poverty- stricken life in Israel too (quoted in Ben-Nun 2017, 182).

After the Supreme Court ruling, the Knesset passed a new amendment, shortening the detention period to one year. However, it also passed legislation that gave a green light for the establishment of the notorious Holot detention center in the Negev region for unauthorized border crossers. The detention center would be under the authority of the Israeli Prison Service (UNHCR 2020c). According to this legislation, after unauthorized border crossers are jailed without trial for one year,

they will be automatically transferred to Holot and then deported. In 2014, following another appeal by the aforementioned human rights organizations, the Supreme Court ruled the new amendment unconstitutional with a majority vote and ordered the shutdown of the Holot detention center within 90 days (Hotline 2019). Justice Uzi Vogelman, who voted for the revocation of the government's legislation underlined that "[t]he incarceration of cross border infiltrators whose deportation is not immediately foreseeable, for a period of one full year—not as a punishment to any act on their behalf, and without any ability of their own to promote their release—harms their rights severely (Ben-Nun 2017, 216).

With a new amendment made to the Anti-Infiltration Law in 2014, the Knesset reduced the detention period to three months. While automatic transfer to Holot was maintained, the mandatory residence at Holot was reduced to 20 months (UNHCR n/a). Human rights organizations in Israel submitted another legal petition to the Supreme Court to invalidate Knesset's amendment (Hotline 2014). While the Court found the three-month detention period constitutional, it ruled that 20-month mandatory detention at Holot was disproportionate and invalid (UNHCR n/a).

Following the Supreme Court's objection, the Knesset reduced the detention period at Holot to 12 months in 2015. In the same year, the Ministry of Interior issued an amended regulation that reduced the detention duration at Holot to less than 12 months, depending on the person's age, medical condition, and asylum application prior to 2015. In 2016, the Population and Immigration Authority in Israel announced that Darfuri people would no longer be brought to Holot (UNHCR 2020c). Overall, against the backdrop of the protests of human rights organizations and the Supreme Court rulings, the government shut down the Holot detention center in 2018. By 2018, all detention centers for asylum seekers and irregular immigrants (including Dekel, Givon, and Kziot detention centers) were shut down (Global Detention Project 2018). The following section examines Israel's forcible relocation policy.

### **Israel's Policy of Forcible Relocation**

Israel has a policy of voluntary return for all foreign nationals who entered the country illegally. The Assisted Voluntary Return Department within the Population and Immigration Authority examines the applications and assists eligible applicants with purchasing plane tickets, obtaining travel documents, avoiding detainment. Eligible applicants are granted \$3,500 USD. The department collaborates with international organizations, airline companies, and foreign diplomatic missions for the voluntary return of irregular entrants to Israel (Population and Immigration Authority 2019). Between 2013 and 2017, approximately

4000 Eritrean and Sudanese nationals participated in Israel's Voluntary Return Program (Birger et al. 2018). The participants noted that in addition to the difficulty integrating into the Israeli society and the lack of education and economic opportunities, the Israeli government's promises persuaded many people to participate in the program (Fennig 2021). For example, a voluntary return program participant interviewed by Fennig states that:

The Israeli government does everything it can to create pressure, everything except for physically forcing you to leave. And, at the same time, they give you hope in what will happen after you leave. They say 'we will give you papers, we will give you money, we have people over there that will help you'. They try to paint this rosy picture and show us that we will be better off than we are now (quoted in Fennig 2021, 7).

Many studies indicate that participants of the Voluntary Return Program were sent to either Rwanda or Uganda. Most importantly, after they were sent to the third country, most of them were denied protection and legal status and became vulnerable to human trafficking (UNHCR, 2018; Birger et al. 2018; Avraham et al. 2015). A Voluntary Return Program participant expresses his experience in the following words:

When we arrived in Kigali I showed them documents. The security removed all documents and they said just wait there. Then they took us, me and three Eritreans to a guesthouse which couldn't get out of, we stayed there for two days. I asked to the guard if I can go outside. He said I can't because I don't have documents. I said, but the documents are with you, you took them. He said no, I didn't take them it was someone else at the airport. So what do you mean, I am not legal? Yes, you don't have passport, you don't have any documents, so you are not legal and you can't go outside, maybe the police will arrest you (Fennig 2021, 8).

Israel swiftly established diplomatic relations with the Republic of South Sudan when the country was established in 2012. Shortly afterward, the Population and Immigration Authority in Israel called on people from South Sudan to return to their country, offering 1,000 Euros with a warning that if they refused, they would be arrested and deported. Following this, many deportations took place with no opportunity given to deportees to make asylum applications (Ziegler 2015). In 2013, the Population and Immigration Authority in Israel started to pressure Sudanese and Eritrean asylum seekers to return either to their country of origin or to third countries (Rwanda and Uganda) by offering them financial incentives (Hotline 2019). In 2015, the government officially announced its policy of forced relocation. From 2015 to 2018, 56 people were forcibly deported to third countries (Hotline 2020). In 2017, the Supreme Court's ruling stressed that the agreement with third countries should only be limited

to voluntary relocation. In view of this ruling, the government attempted to include forcible relocation in the agreement made with the third countries. UNHCR expressed concern regarding Israel's forced relocation policy (UNHCR 2020c).

In 2018, the Israeli government announced that it would pay \$3,500 USD to sub-Saharan African asylum seekers (identified later as Rwandans and Ugandans) including a free airline ticket if they voluntarily returned to their home country or a third country. This move was declared illegal by the UN and canceled shortly after its announcement (Graham 2018). In the same year, the government announced a new forced relocation procedure which stipulated that single Eritrean and Sudanese men who did not make an asylum application or whose asylum request was rejected, along with those whose asylum requests submitted after 2018, should leave Israel within 60 days. Undocumented people in the Holot center were given only 30 days. The deportations were to start on April 1st, 2018. The government announced plans to deport asylum seekers to Rwanda and Uganda. Official announcements that the procedure might be extended to families increased concerns (UNHCR 2018, 2020c).

Following the official announcement regarding deportations, a number of mass public protests erupted across the country. Prominent writers including David Grossman, Amos Oz, A.B. Yehoshua, Meir Shalev, and Etgar Keret implored Netanyahu to cancel the government's deportation plans, calling him to act "morally, humanely, and with compassion worthy of Jewish people" (quoted in Lior 2018a). Numerous psychologists wrote letters to Netanyahu, stressing the possible harmful impacts of deportations on asylum seekers. A great many doctors wrote letters to the Population and Immigration Authority, demanding an immediate halt to deportations. A group of pilots declared on social media that they would not forcibly deport Africans, calling the stance of the government "barbarism" (Lior 2018b). Several school principals wrote letters to Netanyahu and the Education Minister protesting the government's plans. They called for a humane solution, stressing that deportations violate human rights, Jewish values, and conventions that Israel signed, such as the Refugee Convention (Lior 2018b; Haaretz 2018).

Haaretz Editorial (2018) described the government's deportation plans as Netanyahu's moral descension. Hundreds of academics, film stars, and television personalities also condemned the government's plans and called for the integration of African asylum seekers into Israeli society. A group of rabbis initiated an activist program asking Israelis to take an example from the Dutch people who helped Anne Frank and her family during World War II (Haaretz 2018). Many Israeli rabbis said they would hide African asylum seekers in their homes (Birnbaum 2018). Rabbi Susan

Silverman launched the Anne Frank Home Sanctuary Movement (Miklat Israel) for hiding asylum seekers facing deportation. Seven Holocaust survivors also spoke out against the government's deportation policy and expressed their intention to hide asylum seekers in their homes (Lidman 2018). Rabbi Avidan Freedman, a Religious Zionist educator and activist, and many others, accused the government of creating the refugee and migrant problem for political gain (Wagenheim 2018).

The Center Organizations of Holocaust Survivors in Israel stated its firm opposition to the deportations of African asylum seekers from Israel. Colette Avital, chairwoman of the Center, underlined that these practices lacked compassion. She went on to say that "we as Holocaust survivors think it's sad that we—precisely those who should have learned the lessons of our history—are behaving in this way toward a handful of people who are not endangering either Israel's demography or its future" (Gontarz 2018). Netanyahu also faced harsh criticisms from the Jewish diaspora. The Jewish Agency for Israel (the world's largest Jewish nonprofit organization) selected Isaac Herzog (Netanyahu's political rival) as its chairman and put pressure on Netanyahu to give refugee status to more than five hundred children who are affiliated with the Jewish Agency and to adopt a transparent reviewing process for all asylum seekers (Wagenheim 2018).

On March 15th, 2018, the Supreme Court suspended the deportation of Eritreans and Sudanese asylum seekers. In the aftermath of the Supreme Court's ruling, detainees who refused to relocate to Rwanda or Uganda were released (UNHCR 2020c). On April 2nd, 2018, the Israeli government and UNHCR signed a framework of common understanding on the situation of Eritrean and Sudanese asylum seekers in Israel. According to this agreement, UNHCR would assist in the departure of some Eritrean and Sudanese asylum seekers to Western countries with resettlement, family reunification, private sponsorship, and humanitarian admission schemes. In return, Israel would give appropriate legal status and rights to those remaining in the country. More specifically, in line with the agreement, 16,000 African asylum seekers would be resettled in Western countries, while the remaining 23,000 would be allowed to remain in Israel. Yet, a day later, the Netanyahu Government canceled the agreement (Zieve 2018).

Overall, the Israeli government's policies of forced deportation and open-ended detention failed. In April 2018, Israeli authorities acknowledged before the Supreme Court that third countries did not accept asylum seekers deported by force. Currently, Eritrean and Sudanese asylum seekers who intend to leave Israel are allowed to seek refuge in Uganda. However, Israeli authorities are barred both from detaining and forcibly deporting them (Hotline 2019). The Netanyahu government did not find a long-term solution to the situation of African asylum seekers.

Even though the Israeli government canceled the 2018 agreement with UNHCR, the UNCHR continued to resettle asylum seekers outside of Israel. In 2018, the UNCHR resettled 145 Eritreans and one Sudanese. In the following year, these numbers increased to 115 and six respectively. In total, between 2015 and 2020, UNHCR could only resettle 829 asylum seekers outside of Israel (UNHCR 2021). Due to limited resettlement options, UNHCR further supports refugee resettlement out of Israel through family reunification, humanitarian visas, and a Canadian private sponsorship program. In 2019, UNHCR supported the application of 450 refugees for admission under the Canadian private sponsorship program.

While a few hundred Darfurians were granted residency on humanitarian grounds, the same privileges were not granted to Eritreans and Sudanese (Sabar & Tsurkov 2015; Berman 2012). Furthermore, Eritrean and Sudanese asylum seekers who crossed the border from Egypt were automatically granted a three-month "conditional release" visa that prevents them from making a refugee application. According to the UNHCR statistics, as of 2020, there are 56,477 "persons of concern" (plus approximately 8,500 children) in Israel. The highest number of people of concern are listed as Eritreans and Sudanese, followed by Russians, Ukrainians, and Georgians (UNHCR 2020a).

## Discussion and Conclusion

Israel was built as a Jewish-democratic state.<sup>4</sup> Both early and recent legislative documents portray Israel as a state of Jewish return rather than an immigration state (Kritzman-Amir 2009). In this context, Israeli immigration and citizenship norms privilege the return of Jews to the country while discouraging and excluding Arabs from neighboring countries as well as Palestinians from the West Bank and Gaza (Kritzman-Amir 2009). Even though Israel did accept non-Jewish asylum seekers in the past, it does not have a good record on wider humanitarian issues of granting refugee status to those who are not Jewish. This ties in with a general debate about the nature of the Jewish State and the desire by many on the right not to see the Jewish identity of the state being weakened.

From the 2000s onwards, for the first time in its history, Israel witnessed large-scale asylum and migration inflows from African countries. Asylum and migration influx to Israel is inextricably linked to repression, conflict, war, economic inequality, and environmental disasters that instigate global mass migration (Kritzman-Amir & Shumacher 2012). Compared to other countries in the Middle East, Israel's share of the burden for African refugees and migrants is relatively small (Kritzman-Amir & Berman 2010). Yet, the Israeli government adopted inflammatory rhetoric and exclusionary practices against them. By labeling both African asylum

seekers and unauthorized migrants as infiltrators, the government framed them as an existential threat to Israel (Tirosh & Klein-Avraham 2019). The term "infiltrator" was primarily denoted to armed Palestinians who entered Israel illegally from Arab countries to stage attacks in the 1950s. As such, it has powerful connotations, bringing to mind grave national security issues and terrorism (Kalir 2015). The government's asylum and migration discourse and policies tapped into the otherization and the dehumanization of Africans by the mainstream media (Tirosh & Klein-Avraham 2019), the growing public anxiety against asylum seekers and migrants,<sup>5</sup> the rise of the far-right in the country, and a global trend towards exclusionary border practices and securitization of "the other" (Kapur 2003).

From the 2000s onwards, Israel's political arena has witnessed fierce clashes between the Israeli governments that supported exclusionary practices against African asylum seekers and unauthorized migrants and the NGOs and the Israeli Supreme Court who promoted humanitarian principles. In other words, the threat-oriented discourse has clashed with a human rights discourse that stressed Israel's legal and moral obligations (Kalir 2015). By analyzing the processes between the adoption and the cancellation of Israeli governments' asylum and migration policies, this article illustrated important roles played by Israeli humanitarian NGOs and the Supreme Court in affecting policy change. Humanitarian NGOs played an important role in the reversal of the 2008 Anti-Infiltration Act proposed by the Olmert government by engaging in advocacy campaigns of naming and shaming. Detention and forcible relocation policies adopted by the Netanyahu government were also thwarted through the active involvement of humanitarian NGOs and the Supreme Court.

Taken together, this study provides an insight into NGO and judicial power in influencing asylum and migration policy in Israel. The current study opens up various future research avenues. The COVID-19 pandemic has hit African asylum seekers and immigrants hard. Tens of thousands have lost their jobs and are at risk of losing their homes. Unlike Israeli citizens, African asylum seekers and immigrants are not eligible to apply for unemployment benefits after they lose their jobs (Bernard 2020). NGOs, including Hotline and Aid Organization for Refugees and Asylum Seekers in Israel (ASSAF), began to provide aid to refugees (Bernard 2020). UNHCR Israel launched a \$840,000 USD cash assistance program during the pandemic in an effort to support thousands of vulnerable asylum seekers (UNHCR 2020d). Future studies could analyze the implications of the pandemic on African asylum seekers and migrants in Israel. Since the beginning of the Ukrainian war, Israel has allowed the entry of an unlimited number of Ukrainians who have relatives in Israel, while limiting the number of non-Jewish refugees who can be admitted to 5,000. A comparative analysis

of Israeli policies regarding African and Ukrainian asylum seekers also offers a fruitful avenue for future research (Rubin 2022).

## Notes

- 1 Yet, in Israel, these people are considered returnees, not immigrants (Smootha 2002).
- 2 Falash Mura people are of Jewish descent, but they are not eligible for the Law of Return since most of them converted to Christianity in the 19th century. In 2010, the Israeli government approved an immigration scheme for 8,000 Falash Mura in Ethiopia (BBC 2010).
- 3 NGOs in Israel who signed the petition include: the Clinic for Migrants' Rights at the Academic Center of Law and Business in Ramat Gan, the Refugee Rights Clinic at Tel Aviv University, the Association for Civil Rights in Israel, the Hotline for Refugees and Migrants, Aid Organization for Refugees and Asylum Seekers in Israel, the African Refugee Development Center.
- 4 This led some scholars to describe Israel as an "ethnicdemocracy" (See for example, Smootha 2002).
- 5 According to the poll conducted by the Israeli Democracy Institute in 2012, 52 percent of the population agreed with the anti-migrant and anti-asylum discourse (Kalir 2015). In addition to pro-refugee protests, anti-refugee protests were held in Israel (Kalir 2015). The local population complained about crime and violence from the refugees and called for the government to deport them or find some other solution. I would like to thank my colleague Dr. Zoe Levornik for making this point.

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