No Asylum for 'Infiltrators': The Legal Predicament of Eritrean and Sudanese Nationals in Israel

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At a glance

This article explores the precarious status of Eritrean and Sudanese nationals in Israel. Having crossed the Israeli-Egyptian border without authorisation and not through an official border crossing, Israeli law defines such individuals as 'infiltrators', a charged term which dates back to border-crossings into Israel by Palestinian *Fedayeen* in the 1950s. Eritreans and Sudanese nationals constitute over 90 percent of 'infiltrators' in Israel.[1] Their livelihood is curtailed through hostility, sanctions, and detention, while (at the time of writing) Israel refrains from deporting them to their respective countries of origin, recognising that such forced removal could expose them to risks to their lives and/or freedom. Notably, Israel was the 10th state to ratify the 1951 Refugee Convention,[2] and has acceded to its 1967 Protocol[3] which removed the 1951 Convention's temporal and geographic restrictions, yet it has not incorporated these treaties into its domestic law nor has it enacted primary legislation that sets eligibility criteria for 'refugee' status and regulates the treatment of asylum-seekers. Israeli law also fails to accord subsidiary protection status to persons that the state considers to be non-removable, whether or not they satisfy

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1 46,437 'infiltrators' resided in Israel in 12/2014: 73% (33,999) Eritreans, 19% (8,772) Sudanese. Population, Immigration and Borders Authority, *Foreigners in Israel – 2014 Summary* (January 2015) Table A.3; available at: http://www.piba.gov.il/PublicationAndTender/ForeignWorkersStat/Documents/sum2014_final.pdf. In 2014, 6,414 Africans, including 4,112 Sudanese, 1,691 Eritreans, and 611 from other African states, left Israel; their destinations remain officially undisclosed. Ibid Table A.2. Eritrea, despite its modest population size, is currently one of the world's largest refugee-producing states; see: http://www.unhcr.org/pages/49e4838e6.html). Sudanese nationals in Israel include Darfuris as well as of persons displaced from the Nuba Mountains and Blue Nile regions; UNHCR data available at: http://www.unhcr.org/pages/49e483b76.html. For a description of dire political and social circumstances in Eritrea and Sudan, see HCJ 7146/12 *Adam v The Knesset* [6] (Arbel J); unofficial English translation available at: http://www.refworld.org/cgibin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=5277555e4. According to NGO reports, many Eritrean and Sudanese nationals were trafficked and tortured *en route* to Israel and other states. See eg Human Rights Watch, *I wanted to lie down and die* (2014); available at: http://www.hrw.org/sites/default/files/reports/egypt0214_ForUpload_1_0.pdf.

2 Convention Relating to the Status of Refugees, Geneva, 28 July 1951, 189 UNTS 137, entered in force 22 April 1954 (ratified by Israel 1 October 1954).

3 Protocol Relating to the Status of Refugees, New York, 31 January 1967, 666 UNTS 267, entered in force 4 October 1967 (ratified by Israel 14 June 1968).

the definition of a 'refugee' under the 1951 Convention.[4] Absent legal recognition of 'refugee', 'asylum-seeker', and 'beneficiary of subsidiary protection' statuses, Eritreans and Sudanese nationals are left in legal limbo for an indefinite period *qua* irregular non-removable persons. This article takes stock of their legal predicament.

Introduction

The analysis proceeds in five parts. Part A situates the non-regularisation of asylum in Israel in a historical-political context, and sheds light on the role of international law obligations in Israeli jurisprudence, particularly in relation to the application of *non-refoulement*. Part B explores the precarious legal status of Eritreans and Sudanese 'infiltrators' in Israel. The state's Refugee Status Determination (RSD) process (which, until 2013, they could not access) sports a dismal 0.25% recognition rate. Meanwhile, as non-removable 'infiltrators', Eritreans and Sudanese nationals are subject to a rights-restrictive Conditional Release Visa (CRV) regime, and to (seemingly inconsistent) policies regarding their access to employment. Prospects for regularisation of their status are dim. Part C describes how the Knesset, Israel's parliament, on three occasions (in 2012, 2013 and 2014) enacted legislation mandating various forms of detention of 'infiltrators'. The Israeli Supreme Court, sitting as a High Court of Justice (HCJ), quashed the first two enactments for disproportionately violating the constitutional rights to liberty and human dignity to which 'every person' is entitled under Israeli law.[5] A petition against the third enactment is pending.[6] The State's overt aims in pursuing the policies explored in Parts B and C are to encourage 'infiltrators' to depart (which includes offering them financial incentives) and to discourage new 'infiltrators' from arriving. Part D demonstrates how the legal treatment of 'infiltrators' dovetails with a prevailing political discourse which considers the 'infiltration' phenomenon to pose demographic, national, and personal security threats. Part E concludes by submitting that regularisation of asylum in Israel is long due.

4 1951 Convention, art 1A(2) defines a refugee as a person who 'owing to a well-founded 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 to or, owing to such fear, is unwilling to avail himself of the protection of that country'. *Compare* Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) OJ L 337/9, 20 December 2011, entered in force 9 January 2012, ss 2(f), 15.

5 The Israeli Supreme Court has two main functions. Basic Law: The Judiciary, 5744-1984. First, it serves as Israel's highest Appellate Court, hearing appeals against rulings of the District Courts. Ibid s 15(b). Second, it sits as a HCJ. In the latter capacity, the court may 'order state and local authorities and the officials and bodies thereof and other persons carrying out public functions under law to do or refrain from doing any act in the lawful exercise of their functions or, if they were improperly elected or appointed, to refrain from acting'. Ibid s 15(d)(2). In 1995, the HCJ pronounced its authority to quash or 'strike down' primary legislation found to violate Israel's Basic Laws, which form part of Israel's (incomplete) Constitution. CA 6821/93 *Bank Hamizrahi v Migdal Cooperative Village,* (IsrSC) 49(4) PD 221 (9 November 1995); English translation available at: http://versa.cardozo.yu.edu/opinions/united-mizrahi-bank-v-migdal-cooperative-village.

6 Prior to the quashing in 2013 and 2014 of legislation concerning 'infiltrators' (see part C), the HCJ has invalidated primary legislation on ten occasions. In all but one case, the impugned provisions concerned rights of Israelis; the exception was HCJ 8276/05 *Adalah et al v Minister of Defence et al* (IsrSC)(12 December 2006) (quashing legislation exempting the state from incurring liability for civilian property damaged in the course of operations carried out by Israeli forces during the 'Second Intifada'). English translation available at: http://versa.cardozo.yu.edu/opinions/adalah-legal-center-arab-minority-rights-israel-v-minister-defense.

A. Context: non-regularisation of asylum in Israel

(1) From non-incorporation to failed regularisation

Israel's 'dualist' legal approach to treaty application stipulates that its treaty obligations are not directly enforceable in Israeli courts unless and until the Knesset incorporates them into law.[7] Nonetheless, Israeli courts have long opted for a treaty-compatible interpretation, absent primary legislation dictating otherwise.[8]

As noted above, in addition to its non-incorporation of the 1951 Convention and its 1967 Protocol, Israel has refrained from adopting primary legislation regulating the grant and withdrawal of refugee status, treatment of asylum-seekers, and the status of persons protected from forcible removal. On 19 July 2010, the Israeli government decided that it would be 'ill-advised to adopt legislation regarding refugees and asylum-seekers'.[9] The decision did not mention the possibility of recognising a 'beneficiary of subsidiary protection' status.

On 11 October 2010, Members of 19th Knesset (MKs) from Kadima, the then main opposition party, tabled 'The Immigration to Israel Bill'.[10] The Bill proposed comprehensive immigration reform in three categories: family unification,[11] labour migration,[12] and refugees and asylum-seekers.[13] In relation to the latter, the Bill adopted as its baseline the 1951 Convention 'refugee' definition,[14] whilst granting the Minister of the Interior discretionary power to recognise as refugees persons fleeing persecution on grounds of gender, disability and sexual orientation, as well as persons facing real risk to their life due to a state of war, natural disaster, or a plague in their country of origin.[15] Regrettably, the Bill endorsed the introduction of quotas,[16] and summary refusal of applications if an asylum applicant is a national of an 'enemy state', of 'an area controlled by an enemy', or of a 'risk area'.[17]

Notably, the Bill offered recognised refugees as well as other migrants an (albeit lengthy) route to long-term settlement and, ultimately, to naturalisation.[18] The adoption of legislation to that effect would have signalled a potential change in Israel's longstanding approach to non-Jewish immigration (see section 2).[19] Nevertheless, the Bill failed to secure government support, and was not tabled for preliminary reading. No similar bill was introduced during the 20th Knesset.

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7 Suzi Navot, *The Constitutional Law of Israel* (Kluwer 2007) 33, [23].

8 The 'presumption of interpretive compatibility' mandates that, absent explicit incompatibility between Israeli law and Israel's international obligations, Israeli legislation ought to be given an obligation-compliant interpretation. See eg CrimFH 7048/97 *Anon v MoD* (IsrSC) 54(1) PD 721, [20] (per Barak CJ) ('it is presumed that the purpose of the law is, inter alia, to accord with international law and not to contradict it…[t]here is a "presumption of compatibility" between public international law and local law') (author's translation) (citing HCJ 279/51 *Amsterdam v Minister of Finance* (IsrSC) 6 PD 954, 966).

9 See appendix to decision no 2014 of the 32nd government's titled 'decisions regarding entry and immigration to Israel' (19 July 2010): summary of the immigration forum activities, part 6 (recommendations), s D(8) (infiltrators, asylum-seekers and refugees).

10 5571-2010 (P/18/2647).

11 ibid ss 3–11.

12 ibid ss 12–21.

13 ibid ss 22–32.

14 ibid s 24.

15 ibid s 25. Rather than follow contemporary jurisprudence which considers the term 'particular social group' in art 1A(2) of the 1951 Convention to include persecution on grounds of sexual orientation and gender, the proposed bill defines recognition on such bases as a matter of discretion.

16 ibid ss 24, 25.

17 ibid s 32(4). The other disqualifications are based on individual risk. For a discussion of 'enemy nationals' see Part B.

18 ibid ss 30–31.

19 See eg OAA (Jerusalem) 35344-03-10 *Galaan v Ministry of the Interior* [24] (positing that 'Israel is not an immigration state but a *shvut* (repatriation) state…the Ministry of Interior's long-standing policy has generally been to grant indefinite leave to remain in rare cases, exercising its authority as the state's 'gate-keeper').

(2) Immigration to Israel: Jews and Palestinians

Israel's Declaration of Independence defines it as a Jewish State, and pronounces that the state shall be open to 'Jewish immigration (*Aliya* in Hebrew, literally ascension) and the ingathering of the exiles'.[20] Since its founding on 14 May 1948, Israel has aimed to maintain a Jewish majority, alongside the State's Arab minority. There are two tracks under Israeli law for entry, settlement, and citizenship. The first track grants Jews as well as 'a child and a grandchild of a Jew, the spouse of a Jew, the spouse of a child of a Jew and the spouse of a grandchild of a Jew, except for a person who has been a Jew and has voluntarily changed his religion' a nearly unqualified right 'to come to Israel as *Oleh*' pursuant to the issuance of an appropriate visa,[21] and to then have Israeli citizenship 'conferred' upon them.[22] The second track subjects all other immigrants to rigorous immigration control.[23]

In the aftermath of the Second World War, Holocaust survivors immigrated to then British Mandate Palestine and, following its establishment, to the State of Israel. Concomitantly, Jews from the Middle East and North Africa were absorbed in Israel, some of whom had fled persecution in their countries of origin. However, qua *Olim*, Jews were neither legally defined by Israeli law as 'refugees' nor treated as such by the state.[24] Nevertheless, in the 1950s, Israeli officials invoked the state's absorption of Jews from the Middle East and North Africa to support the claim that Jewish repatriation to Israel constituted complete performance of Israel's international obligations: according to this argument, by absorbing Jewish refugees, Israel was contributing its share to resolving global refugee problems.[25]

Concurrently, since its founding, Israel remains in a perpetual (legal) 'state of emergency'.[26] Israeli legislation designates some of its neighbours as well as other Arab and Muslim states as 'enemy states'.[27] Security concerns are paramount for Israelis, and they affect policies regarding immigration from neighbouring states in general and of Palestinians in particular.[28] Israel's ratification of the 1951 Convention should be appraised in light of art 1D, excluding from its applicability 'persons who are at present receiving from organs or agencies of the United Nations

20 14 May 1948 (English translation: http://www.jewishvirtuallibrary.org/jsource/History/Dec_of_Indep.html).

21 Law of Return 5710-1950 (as amended in 1970) ss 1 and 4A. Section 2 enunciates that an Oleh visa will be granted to 'every Jew who has expressed his desire to settle in Israel unless the Minister of the Interior is satisfied that the applicant (1) 'is engaged in activity directed against the Jewish people' or (2) 'is likely to endanger public health or the security of the State' or (3) 'is a person with a criminal past, likely to endanger public welfare'.

22 Nationality Law 5712-1952, s 2(a).

23 The Entry to Israel Law 5712-1952 and the Nationality Law (ibid) generally regulate immigration control. For a theoretical analysis see Chaim Gans, *A Just Zionism* (Oxford University Press 2008) ch 5.

24 See eg Carole Basri, 'Jewish Refugees from Arab Countries: An Examination of Legal Rights – A Case Study of the Human Rights Violations of Iraqi Jews' (2002–2003) 26 Fordham International Law Journal 656. But see the enactment of the Day of Commemoration of the Departure and Expulsion of Jews from Arab Lands and from Iran Law, 5774-2014; s 1(a) establishes 30 November as an annual day of commemoration (the adoption of UN General Assembly Resolution II/181 'Partition Plan for Palestine' on 29 November 1947 prompted clashes between Jews and Arabs in British Mandate Palestine which started the following day).

25 See Rotem Giladi, 'A Historical Commitment? Identity and Ideology in Israel's Attitude to the Refugee Convention 1951–1954' (2014) The International History Review (available online at: http://www.tandfonline.com/doi/full/10.1080/07075332.2014.946949#abstract).

26 The British Mandate era Defence (Emergency) Regulations 1945; available at: https://archive.org/stream/DefenceEmergencyRegulations1945/DefenceEmergencyRegulations1945_djvu.txt. The defence regulations are renewed periodically by the Knesset Security and Foreign Affairs Committee.

27 Tally Kritzman-Amir, '"Otherness" as the Underlying Principle in Israel's Asylum Regime' (2009) 42 Israel Law Review 603, 605.

28 See, *inter alia*, Citizenship and Entry into Israel Law (Temporary Order), 5763-2003 which restricts family unification between Palestinian citizens of Israel and their non-citizen spouses. The HCJ rejected (by a majority of 6–5) a constitutional challenge in HCJ 466, 5030/07 *Galon et al v Attorney General et al* (IsrSc)(11 January 2012). Unofficial summary in English is available at: http://www.hamoked.org/files/2012/115063_eng(1).pdf.

other than the United Nations High Commissioner for Refugees (UNHCR) protection or assistance'. When Israel ratified the 1951 Convention, it was aware that the Convention would normally not apply to 'Palestine refugees' in its neighbouring states who receive assistance from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).[29]

(3) The origins of the term 'infiltrator' in Israeli law

Border-crossings into Israel intensified in the 1950s, prompting the Knesset to enact the Law for the Prevention of Infiltration (the 1954 Law).[30] The legislative aim was to address the phenomenon of Palestinian *Fedayeen*, militant elements within the Palestinian refugee population attempting to enter Israel to stage terrorist attacks.[31] The legislation imposed custodial sentences ranging between five and fifteen years, as well as fines, on 'infiltrators' and on those assisting them.[32] The term 'infiltrator' therefore carries a highly negative meaning in Israel associated with threats to national security.

Section 1 of the 1954 law defines as an 'infiltrator' any person who 'knowingly and unlawfully entered Israel' and is either 'a national or citizen of Lebanon, Egypt, Syria, Saudi-Arabia, Trans-Jordan, Iraq, or the Yemen', or 'a resident or visitor in one of those countries or in any part of Palestine outside Israel', or 'a Palestinian citizen or a Palestinian without nationality or citizenship or whose nationality was doubtful and who…left his ordinary place of residence of residence in the area which has become part of Israel for a place outside Israel'.[33] Section 10 of the 1954 Law ('presumption of infiltration') stipulates that an individual who has entered Israel without permission or who is in Israel unlawfully is deemed to be an 'infiltrator' as long as he or she has not proved the contrary. Hence, Eritrean and Sudanese nationals, having entered Israel without permission through Israel's border with Egypt, where they were 'visitors', are presumed to be 'infiltrators'. The 'resurrection' in 2012 of the 1954 Law to facilitate detention of 'infiltrators' (discussed in Part C) entrenches the attribution of this pejorative term to Eritrean and Sudanese nationals.[34]

(4) Asylum to non-Jews: An abridged history

Israel has granted asylum to non-Jewish, non-Palestinian persons on several (isolated) occasions. In 1977, Menachem Begin's government offered asylum to Vietnamese 'boat people' who were picked up by an Israeli cargo near Japan.[35] In 1993, during the conflict in the Balkans,

29 See eg *Revised Note on the Applicability of Article 1D of the 1951 Convention relating to the Status of Refugees to Palestinian Refugees* (UNHCR, October 2009); available at: http://www.refworld.org/docid/4add77d42.html.

30 5714-1954; English translation: http://www.jewishvirtuallibrary.org/jsource/History/1954law.pdf.

31 Protection of the Borders Bill (Offences and Jurisdiction), Explanatory Notes (25 May 1952), Government Bills No 161, p 172; available at: http://www.nevo.co.il/Law_word/law17/PROP-0161.pdf (Hebrew).

32 1954 Law, ss 2–7.

33 Section 2a of the law was amended in 2007 to include Iran in the list of states. See Law for the Prevention of Infiltration (Crimes and Jurisdiction) (Amendment No 2) 5767-2007.

34 Law for the Prevention of Infiltration (Crimes and Jurisdiction)(Amendment No 3 and Temporary Order) 5772-2012 (Amendment No 3). Note also the subsequent enactments in 2013 and 2014: Law for the Prevention of Infiltration (Crimes and Jurisdiction) (Amendment No 4 and Temporary Order) 5774-2013 (Amendment No 4); Law for the Prevention of Infiltration and Securing the Departure of Infiltrators from Israel (Legislative Amendments and Temporary Orders) 5775-2014 (Amendment No 5).

35 *Remarks by PM Begin on the White House lawn*, 19 July 1977; text available at: http://tinyurl.com/kt4nnzy. A second group of refugees fleeing the Communist regime were granted refuge in 1979. See Ben Herzog, 'Between Nationalism and Humanitarianism: The Glocal Discourse on Refugees' (April 2009) 15 Nations and Nationalism 185, 193.

a group of 84 Muslim Bosnians were offered asylum in an Israeli kibbutz.[36] In 1999, Israel gave asylum to 112 Kosovar Albanians.[37] In May 2000, former fighters of the South Lebanese Army (a Christian-dominated militia group that had fought alongside Israeli soldiers) sought protection in Israel for themselves and their families following Israel's withdrawal from South Lebanon.[38]

Notably, these ad-hoc instances of asylum-granting have not led to the enactment of legislation regulating asylum. Section 6 demonstrates that the mass border-crossing from 2006 onwards has not prompted a different response. Indeed, in 2007, when the Israeli government granted temporary residence permits to 492 Darfuris, PM Ehud Olmert announced that others who 'infiltrate to seek employment will not be permitted to stay'.[39]

(5) The 2009 RSD Procedure: Towards regularisation of asylum?

In 2008, the Olmert government created the Population, Immigration and Borders Agency (PIBA) as a branch of the Ministry of Interior (MoI).[40] On 1 July 2009, a newly established RSD unit assumed full responsibility for the asylum process.[41] As of 2 January 2011, the process is conducted pursuant to the 'Procedure for Handling Political Asylum-seekers in Israel' (RSD Procedure).[42] The RSD Procedure stipulates that asylum applications will be assessed 'according to Israeli law' and 'with regard' to the obligations that Israel has undertaken under the 1951 Convention and the 1967 Protocol.[43] The RSD Procedure's articulation of the principle of *non-refoulemt*, stating that '[t]his procedure does not derogate from the case law, according to which no person is to be expelled to an area in which there is prospective threat to his life' is notably incomplete, omitting reference to threat to *freedom*. Moreover, the qualified approach that it adopts towards Israel's international obligations ('regard' rather than adherence) is significant, not least as nowhere is there a reference in the RSD Procedure to the specific terms of the 'refugee' definition in art 1A(2) of the 1951 Convention. Finally, the reference to 'political asylum' in the title is indicative of a restrictive approach to the refugee definition.

A noteworthy incompatibility of the RSD Procedure with the 1951 Convention concerns the 'enemy nationals' exception in s 10 thereof, which pronounces that 'the State of Israel reserves the right not to absorb into Israel and not to grant permits to stay to asylum-seekers

36 ibid (citing Fran Markowitz, 'Living in limbo: Bosnian Muslim refugees in Israel' (1996) 55 Human Organization 127, 132).

37 Ministry of Foreign Affairs Press Release, 'Israel to Absorb 100 Kosovo Refugees' 8 April 1999; announcement available at: http://tinyurl.com/kvy929e. See also Herzog (n 35).

38 See eg Ben Herzog, 'The Road to Israeli citizenship – the case of the South Lebanese Army (SLA)' (2009) 13 Citizenship Studies 575.

39 Decision No 2394 of the 31st government ('announcing 'the establishment of an inter-ministerial forum to handle the provision of assistance to asylum-seekers in Israel') (23 September 2007). The forum was chaired by the MoI head of Population Bureau, and was instructed to 'coordinate the handling of persons who have entered Israel illegally through its border with Egypt'.

40 Prior to 2001, there was no operative RSD mechanism in Israel. Between the years 2001–2009 (a trickle of) asylum-seekers had submitted their applications to the UNHCR office, which conducted RSD and made recommendations to a governmental committee which, in turn, advised the minister with whom the final decision rested. Sharon Harel, 'Israel's Asylum Procedure: The Process of Transferring the handling of asylum requests from UNHCR to the State of Israel' in Tally Kritzman-Amir (ed), *Lewinsky Corner of Asmara: Social and Legal Aspects of the Israeli Asylum Policy* (Van Leer 2014) 43 (Hebrew).

41 Decision No 3434 of the 31st government ('Establishing a Population, Immigration, and Borders Agency') (13 April 2008).

42 http://www.piba.gov.il/Regulations/Procedure%20for%20Handling%20Political%20Asylum%20Seekers%20in%20Israel-en.pdf. Application form: http://www.piba.gov.il/AuthorityUnits/Documents/RSD_application.pdf.

43 For comprehensive appraisal of the procedure, see Yonatan Berman, 'Detention of Refugees and Asylum-seekers in Israel' in Kritzman-Amir (n 40) 147 (Hebrew).

who are nationals of an enemy state or a hostile state', and that 'a determination to that effect may be made at the authorities' discretion'. By contrast, art 3 of the 1951 Convention prohibits discrimination between refugees 'as to race, religion or country of origin'.[44] While the 1951 Convention recognises that individual applicants can, and indeed should, be excluded from protection if they satisfy one of the exclusion clauses,[45] disqualification of applicants cannot be done purely on the basis of their nationality. Indeed, an asylum-seeker's well-founded fear of persecution may ultimately stem from the same action which has caused Israel to view their state as an enemy or hostile state.

In relation to asylum-seekers in Israel, Sudanese law considers the presence of Sudanese nationals in Israel to be a criminal offence,[46] so Sudanese nationals could be subject to criminal prosecution if the Sudanese authorities found out upon return that they had resided in Israel. Thus, rather than being potentially excluded from the RSD process,[47] Sudanese nationals *in Israel* should arguably be considered refugees *sur place*.[48]

(6) *Non-Refoulement* in Israeli jurisprudence

In 1995, the HCJ defined the scope of the principle of *non-refoulement* in Israeli jurisprudence. The case concerned indefinite detention of Iraqi nationals who had been caught crossing the Jordan River into the Israeli-occupied West Bank, coming within the purview of the 1954 Law. The court held that *non-refoulement* is *not* limited to persons qualifying as 1951 Convention refugees: rather, it 'applies in Israel whenever a public authority exercises its deportation powers'. The judgment maintained that the principle prohibits the deportation of individuals when such deportation may expose them to risk to their life or freedom either in their country of origin or in a third state, if sufficient assurances were not obtained that the third state would not *refoule* the deportee to their country of origin.[49] The HCJ ordered the state to assess whether

44 The provision may also be incompatible with Convention (IV) Relative to the Protection of Civilian Persons in Time of War, art 44, Geneva, 12 August 1949, 75 UNTS 287, entered in force 21 October 1950 (ratified by Israel 10 July 1951) (enunciating that 'the Detaining Power shall not treat as enemy aliens exclusively on the basis of their nationality *de jure* of an enemy State, refugees who do not, in fact, enjoy the protection of any government.') After the outbreak of the Second World War, German and Austrian Jews fleeing Nazi persecution were often interned as 'enemy nationals'. For discussion, see Michael Kagan, 'Destructive Ambiguity: Enemy Nationals and the Legal Enabling of Ethnic Conflict in the Middle East' (2007) 38 Columbia Human Rights Law Review 263, 309. The provision may also breach the Convention on the Elimination of all forms of Racial Discrimination, art 1(3), New York, 7 March 1966, 660 UNTS 195, entered in force 4 January 1969 (ratified by Israel 3 January 1979).

45 1951 Convention, art 1F.

46 The Israel Boycott Act of 1958, Laws of the Sudan vol 4 (5th edn) 216.

47 While PIBA has not yet applied the 'enemy nationals' exception, the initial denial of access to RSD and subsequent rejection of asylum applications submitted by Sudanese nationals are noteworthy. See Part B.

48 See eg Andreas Zimmermann, 'Art 1A para 2' in Andreas Zimmermann (ed) *The 1951 Convention relating to the Status of Refugees and its 1967 Protocol: A Commentary* (Oxford University Press 2011) 281, 324–335.

49 HCJ 4702/94 *Al Tai v Minister of the Interior et al* (IsrSC) 49(3) PD 843 [7–9]. Israel ratified several international treaties which have been interpreted to prohibit *refoulement* in defined circumstances. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, New York, 10 December 1984, entered in force 26 June 1987 (ratified 3 October 1991), art 3; Covenant on Civil and Political Rights, New York, 16 December 1966, entered in force 23 March 1976 (ratified 3 October 1991), art 7. See also Reuven (Ruvi) Ziegler, '*Non-Refoulement* between 'Common Article 1' and 'Common Article 3' in David J. Cantor and Jean-Francois Durieux (eds), *Refuge from Inhumanity? War Refugees and International Humanitarian Law* (Brill, 2014) 386 (arguing that, the undertaking in Article 1 Common to the four 1949 Geneva Conventions to 'ensure respect' requires non-belligerent States not to *refoule* persons 'taking no active part in hostilities' back to territories where they may be exposed to real risk of violations of Article 3 Common to these conventions). The latter *non-refoulement* obligation is pertinent, *inter alia*, in relation to the treatment of persons displaced from Syria. Recent data regarding displacement from Syria is available at: http://data.unhcr.org/syrianrefugees/regional.php.

there were viable prospects for deporting the Iraqi detainees, and to consider alternatives for detention.[50]

As noted above, crossings into Israel through the (then unfenced) Israel-Egypt border, which began in 2006, increased steadily until the fence was essentially completed in the autumn of 2012. In order to address the phenomenon, the Olmert government adopted the 'Coordinated Return' Procedure (also referred to as 'Hot Return'). According to this procedure, the IDF or the Israeli Border Police would hand 'infiltrators' caught near the Egyptian border over to the Egyptian authorities (after cursory questioning) provided that they were not deemed to pose a security risk to Israel. The then Egyptian president Housni Mubarak has supposedly committed verbally to guarantee the safety of returnees and to refrain from *refouling* them to their states of origin,[51] a commitment which he has not acknowledged.[52]

On 28 August 2007, after 44 Sudanese nationals were *refouled* to Egypt and their whereabouts became unknown, five organisations filed a petition demanding that the HCJ declare the 'Coordinated Return' Procedure to be illegal, and require the state to permit border-crossers to meet UNHCR representatives should they wish to apply for asylum. Critically, petitioners demanded that Israel should assess the expected risk to a prospective deportee as per the *Al Tai ratio* before such deportation takes place.[53] The HCJ consistently refrained from issuing an injunction halting 'coordinated returns' based on the state's periodic updates concerning changes made to the procedure.[54]

In 2011, the HCJ dismissed the petition in light of the state's decision to suspend the procedure due to the geopolitical changes in Egypt generally, and in the Sinai Peninsula in particular, following the overthrow of Mubarak.[55] The HCJ held that 'we assume that, should it be decided to reinstate the policy of returning aliens to Egypt and, accordingly, to reinstate the Procedure, it will be done in accordance with the generally accepted standards of international law, including the provision of appropriate guarantees, in order to safeguard the well-being of the returned persons with a high level of certainty.'[56]

The HCJ has not rendered a substantive judgment regarding the appropriateness of the 'Coordinated Return' procedure: rather, it noted that state authorities face the 'difficult task' of 'finding a solution that would reduce unauthorised entry whilst acknowledging the need to give appropriate consideration to the status of persons entitled to asylum'.[57] The 'Coordinated Return' Procedure has not been reinstated, and the vast majority of border-crossers in the years 2006–2012 have not been *refouled*. Instead, they have been and remain subjected to the CRV rights-restrictive regime, explored below.

50 *Al Tai* (ibid).

51 Israeli Ministry of Foreign Affairs Press Release, 'PM Olmert holds discussion on Infiltration to Israel via the Egyptian Border', 1 July 2007; available at: http://tinyurl.com/nstyukj.

52 Haim Yacobi, 'Let me go to the City: African Asylum-seekers, Racialization and the Politics of Space in Israel' 24 Journal of Refugee Studies 47, 53. According to NGO reports, despite the supposed assurances, Egypt has *refouled* asylum-seekers to their countries of origin. Human Rights Watch, 'Egypt: Investigate Forcible Return of Refugees to Sudan', 30 May 2008; available at: http://www.hrw.org/english/docs/2008/05/30/egypt18977.htm; Amnesty International, 'Forcible return/Fear of torture to other ill treatment up to 1,400 asylum-seekers from Eritrea', 12 June 2008; available at: http://www.amnesty.org/en/library/asset/MDE12/011/2008/en/86d3c040-393f-11dd-bff301e6dc6e1f44/mde120112008eng.pdf.

53 HCJ 7302/07 *Hotline for Migrant Workers et al v MoD et al* (IsrSC) (7 July 2011) [3]; English translation available at: http://elyon1.court.gov.il/files_eng/07/020/073/n32/07073020.n32.htm.

54 ibid [6].

55 ibid [9–11].

56 ibid [12], noting 'many changes and improvements' that 'have been made [to the Procedure] over the years'.

57 ibid [13].

Critically, in September 2012, the HCJ refrained from determining whether rejection at the border breaches *non-refoulement*.[58] Hence, considering the fact that there are no facilities for submitting asylum applications at any of Israel's border crossings, Israel's borders are effectively 'sealed off' for new asylum-seekers.[59]

B. Eritrean and Sudanese nationals in Israel: precarious existence

(1) RSD for Eritreans and Sudanese nationals: from inaccessibility to futility

Israel has been maintaining a policy of non-(forcible) *refoulement* of Eritrean and Sudanese nationals, notwithstanding the above-mentioned incidents of 'hot returns'. Israeli officials have sometimes referred to the state's policy as 'temporary protection' and at other times as 'non-return' though neither term is defined by Israeli law.[60]

Initially, the policy applied to the whole of the Sudan; however, following the establishment of the Republic of South Sudan (with which Israel quickly established diplomatic relations[61]), the MoI issued a statement in January 2012 offering 'the people of South Sudan' the opportunity to repatriate by 1 April 2012 and receive a 1,000 Euros or be forcibly removed.[62] Notably, the UN appealed at that time that States refrain from returns to South Sudan until the situation in that State stabilises;[63] the call has been heeded by most states hosting persons from South Sudan.[64] Nevertheless, following an unsuccessful challenge to the MoI decision,[65] deportations were carried out without giving deportees an opportunity to submit asylum applications,[66] and despite complications concerning the attribution of South Sudanese nationality (giving rise to questions regarding the effective protection of the new state).[67]

58 HCJ 6582/12 '*We Refugees' v Minister of Defence* (IsrSC) (9 September 2013); see also Reuven (Ruvi) Ziegler, 'Trapped between the Fences', Oxford Human Rights Hub (10 September 2013); available at: http://ohrh.law.ox.ac.uk/?p=270. *Cf* UNHCR, 'Conclusion on Safeguarding Asylum', Conclusion No 82 (XLVIII) (1997) 'reiterates…(d)(iii)the need to admit refugees into the territories of States, which includes no rejection at frontiers without fair and effective procedures for determining status and protection needs'.

59 2,759 'infiltrators' crossed Israel's border before 31 December 2006. The respective figures for subsequent years: 5,074 in 2007; 8,789 in 2008; 5,235 in 2009; 14,689 in 2010; 17,296 in 2011; 10,441 in 2012; 120 in 2013; and 45 in 2014. *Foreigners in Israel* (n 1), Table A.1.

60 The state has initially referred to its policy regarding Sudanese and Eritreans as 'temporary protection', but has subsequently substituted it for 'non-return'. See eg AAA 8908/11 *Assefu v MoI* (IsrSC) (17 July 2012).

61 MFA, *Israel and South Sudan Establish Diplomatic Relations*, 28 July 2011; available at: http://mfa.gov.il/MFA/PressRoom/2011/Pages/Israel_South_Sudan_diplomatic_relations_28-Jul-2011.aspx.

62 PIBA, *A Call for the People of South Sudan*, 31 January 2011; available at: http://www.piba.gov.il/SpokesmanshipMessagess/Documents/2012-2192.pdf.

63 See eg OCHA, Emergency Relief Coordinator Valerie Amos Press Briefing on South Sudan 2 February 2012; http://reliefweb.int/sites/reliefweb.int/files/resources/ERC%20press%20remarks%20South%20Sudan%202%20Feb1012.pdf/.

64 Regrettably, the dire situation in South Sudan persists; see eg the latest United States extension of Temporary Protection Status for 'nationals of South Sudan' and for 'persons without nationality who last habitually resided in South Sudan', 2 September 2014; available at: http://www.uscis.gov/news/dhs-announces-18-month-re-designation-and-18-month-extension-temporary-protected-status-south-sudan.

65 AA (Jerusalem) 53765-03-12 *Assaf et al v MoI* (7 June 2012).

66 Laurie Lijnders, 'Deportation of South Sudanese from Israel' (September 2013) 44 Forced Migration Review 66; available at: http://www.fmreview.org/en/detention/lijnders.pdf.

67 *See generally* Michael Sanderson, 'The Post-Secession Nationality Regimes in Sudan and South Sudan' (2013) 27 IANL 204.

PIBA initially denied Eritrean and Sudanese access to the RSD Procedure, prioritising applications of persons who could be deported if their application was unsuccessful.[68] The policy changed in 2013 following the enactment of Amendment No 3 (see Part C). By February 2015, 2,408 Eritreans applied for asylum. Decisions have been rendered in 1,001 cases: only *four* (0.16%) applications have been successful.[69] Sudanese nationals have submitted 3,165 asylum applications: the vast majority of those applications are pending. Decisions have been rendered in only 45 cases: 40 applications were denied, and the 5 successful applicants were part of the group of 492 Darfuris to whom the Olmert government decided to grant residence permits in 2007 (see Part A). Thus, so far, the RSD procedure has resulted in *zero* successful applications by Sudanese nationals. By contrast, globally, in the first half of 2014, 84 percent of Eritrean nationals who had applied for asylum were recognised either as 1951 Convention refugees or as persons eligible for subsidiary forms of protection; the respective figure for Sudanese nationals is nearly 56 percent.[70]

The fate of asylum applications by other nationals is hardly any better: Nigerian nationals submitted 1,457 applications, of which only *four* applications have been successful, and 421 applications are pending.[71] The overall data suggests that, since the establishment of the RSD unit, 17,778 applications have been submitted, of which only 45 applications (0.25%) have been successful.[72] Notably, in 2011, the ECtHR refused to permit 'Dublin transfers' to Greece, noting that '[a]n asylum system [such as Greece's] with a rate of recognition not exceeding one percent is suspect *per se* in terms of the fairness of the procedure'.[73] NGO reports have critiqued the implementation of the RSD Procedure generally[74] and in relation to Eritrean and Sudanese nationals in particular.[75]

'Infiltrators' who have not applied for asylum, 'infiltrators' whose asylum applications are pending (sometimes languishing for years), and rejected applicants who cannot be deported are in the same 'legal boat': they are subject to the rights-restrictive CRV (see section 2) and

68 Kritzman-Amir (n 27) 617–20.

69 HCJ 8665/14 *Desete et al v The Knesset et al* (pending)(IsrSC) (state response, submitted 16 February 2015); available at: http://www.acri.org.il/he/wp-content/uploads/2015/02/hit8665meshivim2-5-0215.pdf (Hebrew).

70 UNHCR, *Mid-year Trends* 2014 (June 2014) Annexes, Table 9; available at: http://www.unhcr.org/statistics/mid2014stats.zip. Compare the judgment in *AA (Non-Arab Darfurians – relocation) Sudan v SSHR* SG [2009] UKAIT 00056 (per Allen J) (holding that all non-Arab Darfuris are at risk of persecution in Darfur and cannot reasonably be expected to relocate elsewhere in Sudan claimants who establish that they are non-Arab Darfuris and do not fall within the exclusion clauses will therefore qualify for asylum'). Compare also the judgment in *MA (illegal exit – risk on return) Eritrea v SSHD* CG [2011] UKUT 00190 (IAC) (per Storey J) reiterating that 'a person of or approaching draft age (i.e. aged 8 or over and still not above the upper age limits for military service, being under 54 for men and under 47 for women) and not medically unfit who is accepted as having left Eritrea illegally is reasonably likely to be regarded with serious hostility on return as present evidence the vast majority of such persons are likely to be perceived as having left illegally and this fact, save for very limited exceptions, will mean that on return they face a real risk of persecution or serious harm').

71 *Desete* (n 69) (state's response from 16 February 2015).

72 ibid.

73 *MSS v Belgium and Greece* App no 30696/09 [2011] ECHR 108 (Sajo J, Concurring Opinion, [II]).

74 Hotline for Migrant Workers, *Until Our Hearts are Completely Hardened: Asylum Procedures in Israel* (March 2012); available at: http://hotline.org.il/en/publication/until-our-hearts-are-completely-hardened-asylum-procedures-in-israel/ (describing structural flaws in RSD system, including unsatisfactory access to translation, failure to convey information about the procedures, superficial and unsubstantiated Country of Origin Information, over-emphasis of peripheral details in asylum interviews in order to identify perceived contradictions, and a systemic culture of mistrust).

75 Hotline for Refugees and Migrants, *No Safe Haven: Israel's Asylum Policies as applied to Eritrean and Sudanese Citizens* (December 2014); available at: http://hotline.org.il/wp-content/uploads/No-Safe-Haven.pdf.

detainable. Asylum applicants are 'privileged' over other 'infiltrators' only insofar as, whilst their application is assessed, their protection from removal is formally guaranteed.[76]

Because 'refugee' status is not recognised as such in Israeli primary legislation, s 7(f) of the RSD Procedure stipulates that successful asylum applicants shall be granted 'temporary residence' permits, valid for one year,[77] which entitle them to welfare and medical services and permit them to work legally. The PIBA director can extend temporary residence permits for an additional year, and subsequently for two and then three additional years.[78] The RSD Procedure does not offer refugees a path to settlement, contrary to the spirit of art 34 of the 1951 Convention[79] and, indeed, to the proposal in the 'Immigration to Israel Bill' which was discussed in Part A.

(2) The Conditional Release Visa (CRV) regime: life in the legal margins

The accepted interpretation of the 1951 Convention considers refugee status to be declaratory.[80] It stands to reason that individuals should not be harmed by the fact that their receiving State has decided to deny them access to RSD or delays the assessment of their asylum applications, offering them instead protection from forced removal coupled with a diluted gamut of rights. However, all 'infiltrators' regardless of whether they apply for asylum, hold a CRV, issued in accordance with s 2(a)(5) of the Entry to Israel Law. The issued permit is a 'temporary visiting permit granted to a person staying in Israel without permit against whom a removal order has been issued – until his removal from Israel'.[81]

The CRV is *not* a residence visa; its holder is not entitled to social security benefits and to non-emergency medical treatment to which residents have access.[82] In the main, 'infiltrators' rent flats in the neglected neighbourhoods of south Tel Aviv where they can afford to pay rent, putting pressure on public services, and exacerbating friction which leading politicians have cynically exploited (see Part D).[83]

Current PIBA regulations stipulate that CRVs are issued for up to one month. Thus, 'infiltrators' residing in Israel since 2006 or 2007 would have possibly had to renew their

76 RSD Procedure s 5(a). *Cf* Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals OJ L 348, 24 December 2008, entered in force 13 January 2009, preamble, [9]: 'A third-country national who has applied for asylum in a Member State should not be regarded as staying illegally on the territory of that Member State until a negative decision on the application, or a decision ending his or her right of stay as asylum seeker has entered into force'.

77 Entry to Israel Law 5712-1952, s 2(a)(3).

78 ibid s 11(d).

79 Article 34 of the 1951 Convention calls Contracting States 'so far as possible' to facilitate 'the assimilation and naturalisation' of CSR1951 refugees. Whilst the provision does not require naturalisation of refugees, states should, *inter alia,* give 'favourable consideration to requests for naturalization received from refugees'; see Ad Hoc Committee on Statelessness and Related Problems, *Memorandum by the Secretary-General* (1950), UN Doc E/AC.32/2, at 50. Indeed, a state that fails to provide a path to naturalisation would at the very least be expected to provide a cogent explanation; see eg James C Hathaway, *Rights of Refugees under International Law* (Cambridge University Press 2005) 989.

80 UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (Geneva, revised 2011) [28]. According to the 1951 Convention, refugees should enjoy, *inter alia*, access to social security and medical services to the same extent as citizens, and should be permitted to work in a similar manner as other foreigners who reside legally in the state (arts 23–24 and 17–19, respectively).

81 5712-1952.

82 Patient's Rights Law 5756-1996, s 3(b): 'in a medical emergency, any person is unconditionally entitled to receive urgent treatment'.

83 State Comptroller, *Foreigners not Subject to Deportation* (May 2014); unofficial English translation available at: http://assaf.org.il/en/sites/default/files/Comptroller%20report%20%28English%29%20Mai%202014.pdf.

permits *over 50 times*.[84] At the time of writing, only three PIBA offices where permits can be renewed operate throughout the country (in Bnei-Brak, Beer-Shva, and Eilat); 'infiltrators' residing in Northern Israel have to travel frequently to Bnei-Brak, in the centre, to renew their permits.[85] According to an NGO report from February 2015, PIBA officers arrest 'infiltrators' for failing to present a valid CRV, while CRVs are often not renewed unless they can produce a work payslip (notwithstanding the official prohibition on employment) or a lease agreement.[86]

Despite moderately successful legal battles, such as a petition requiring the municipality of Eilat to admit Eritrean and Sudanese children to the state-maintained school system, rather than relegating them to separate makeshift schools,[87] the legal status of 'infiltrators' remains precarious. Meanwhile, the state encourages 'voluntary departure' of 'infiltrators'. On 31 March 2015, PIBA announced a new procedure whereby (some of the) 'infiltrators' held at Holot pursuant to Amendment No 5 (see Part C) who have not formally applied for asylum will be given 30 days to leave to an (undisclosed) third state. Should they refuse to leave voluntarily, 'infiltrators' will be deemed to be non-cooperative, which could result in their detention at Saharonim (the 'closed' detention centre).[88]

(3) The employment conundrum: inconsistent or calculated policy?

'Infiltrators' are legally prohibited from working: their CRV explicitly states that 'this temporary permit is not a work permit'.[89] Concomitantly, as noted above, qua non-residents, 'infiltrators' are also not entitled to benefits and welfare services. On 13 July 2010, a district court held that CRV holders should be allowed to work, lest they become destitute;[90] the district court was applying the *ratio* in *Gamzu*, where the HCJ held that state policy leaving a person in destitution violates their human dignity.[91] The following week, the Netanyahu government announced its intention

84 Procedure No. 5.2.2013, 'Renewal of Residence Permits for Infiltrators', s 4(g); available at: http://www.piba.gov.il/Regulations/76.pdf (Hebrew).

85 Pre-detention hearings are also being held at these offices. PIBA, 'Eritreans and Sudanese – Attention' (12 January 2015); notice available at: http://www.piba.gov.il/PublicationAndTender/pr/Pages/301214.aspx.

86 Hotline for Refugees and Migrants, 'Israel prevents refugees from renewing visas, then jails them for it' (8 February 2015); available at: http://hotline.org.il/en/israel-prevents-refugees-from-renewing-visas-then-jails-them-for-it/.

87 OAA 29883-07-11 (Beer-Sheva) *Manajan et al v Eilat Municipality et al* (2 August 2012). The Pupil's Rights Law 5761-2001 s 3 enunciates that 'every child and adolescent in the State Israel is entitled to education'; s 5 prohibits discrimination, *inter alia*, 'on grounds of country of origin' in (a) 'registration, admission, and removal from an educational institution'.

88 PIBA, 'An initiated procedure for removing infiltrators from Holot to a third state' (31 March 2015); available at: http://www.piba.gov.il/SpokesmanshipMessagess/Pages/310315.aspx (Hebrew); Decision No 3936 of the 32nd government ('Building a Detention Centre and Halting the Illegal Infiltration into Israel') (11 December 2011), s 6 (ordering the director general of the PM office to coordinate the government offices' work in advancing negotiations for safe repatriation of infiltrators residing in Israel or their removal to third states, including encouragement of voluntary departure, and to report every 90 days to the security cabinet). See also *Adam* (n 1), [27] (Arbel J) (noting the state's efforts to reach agreements with third states) and [8] (reiterating the applicability of the *non-refoulement* principle to transfer agreements). A recent NGO report exposes maltreatment of Sudanese and Eritrean nationals who left Israel (supposedly voluntarily) to two third countries – Rwanda and Uganda. See Hotline for Refugees and Migrants, 'where there is no free will' (April 2015) available at: http://hotline.org.il/wp-content/uploads/2015/04/free-will-web-pdf.

89 A sample permit: http://msc.wcdn.co.il/w/w-300/1576490-5.jpg.

90 AAA (Centre District) 35858-06-10 *Seiko et al v MoI* (13 July 2010).

91 LCA 4905/98 *Gamzu v Yishaiyahu*, 55(3) PD 360, 375-376 (IsrSC). Compare *R (Limbuela) v Secretary of State for the Home Department)* [2005] UKHL 66 (holding that the UK government policy of withdrawing support from late asylum applicants whilst denying them access to employment constitutes 'inhuman or degrading treatment' within the meaning of Article 3 of the European Convention on Human Rights, Rome, 4 November 1950, entered in force 3 September 1953). See especially [56], [58] (per Lady Hale) (referring to 'the imposition by the legislature of a regime which prohibits asylum-seekers from working and further prohibits the grant to them, when they are destitute, of support', and maintaining that 'it is necessary…to ask whether the treatment to which the asylum-seeker is being subjected by the entire package of restrictions and deprivations that surround him is so severe that it can properly be described as inhuman or degrading treatment').

to penalise employers for employing 'infiltrators',[92] and in November 2010, it decided that enforcement would commence in 2011.[93] Responding to a petition to the HCJ, the state declared that enforcement regarding the employment of 'infiltrators' who cannot be removed would not commence prior to the completion of the construction of a detention centre, and that a 30-day notice will be given to the petitioners in order to enable them to initiate fresh proceedings.[94] Dismissing the petition, the HCJ lamentably refrained from rendering judgment on the merits.

The prohibition on gainful employment is *de jure* and *de facto* enforced only on persons held in detention at the Saharonim 'closed' facility or at the Holot open facility (see Part C) to whom the state provides welfare and medical services, as it does in prisons. Despite the above pronouncement, no notice has been given in relation to enforcement of the prohibition on the vast majority of 'infiltrators' who are not detained, in-work, and without statutory benefits. However, it is now a criminal offence for 'infiltrators' to transfer money abroad whilst they remain in Israel[95] thereby supposedly reducing the 'incentive' to come to Israel.[96]

'Infiltrators' are also prevented from receiving severance pay or pensions to which other workers are entitled. Instead, their employers will have to deposit a sum equivalent to 16% of the employee's salary in a separate account, and a further 20% on behalf of their employees; failing to do so will result in hefty fines.[97] The deposited money will be 'released' only upon the employees' departure, leading to an effective reduction in disposable income and to further destitution.[98]

At first glance, the enactment of legislative measures which impose restrictions on remittances and establish mandatory deposit schemes appears to be inconsistent with a prohibition on employment. However, the State is well aware that an *enforced* prohibition would leave 'infiltrators' in abject poverty and would exacerbate their predicament, as well as that of their Israeli neighbours'. Hence, the rationale for these policies is arguably more sinister: to entrench a perception of CRV holders as 'labour infiltrators' (see Part D) rather than as persons in need of protection, by creating a false dichotomy between, on the one hand, migrants who seek work, and on the other hand genuine refugees who seek protection *rather than* work; the cumulative effect of these policies denies 'infiltrators' access to benefits which other workers enjoy, making their employment conditions more onerous.

C. Detention of 'infiltrators': the 'resurrection' of the 1954 Law

(1) 'Round One': the enactment and quashing of Amendment No 3

On 10 January 2012, the Knesset (by a margin of 37 to 8) enacted Amendment No 3, effective from 1 June 2012,[99] which 'resurrected' the 1954 Law.[100] The amendment authorised near

92 Decision No 2014 of the 32nd government ('Decisions regarding entry and immigration to Israel') (19 July 2010) s 2(d).

93 Decision No 2507 of the 32nd government ('Building a holding centre for individuals infiltrating through the Egyptian border and enforcing the prohibition on their employment') (28 November 2010).

94 HCJ 6312/10 *Kav La-Oved et al v MoI* (16 January 2011) (IsrSC).

95 Law for the Prevention of Infiltration (Offences and Jurisdiction)(Temporary Order) 5773-2013, s 7A.

96 Explanatory notes (23 July 2012), Government Bills No 718, p 1368.

97 ibid s 5 (Amendment No 17 of the Foreign Workers Law 5751-1991, s 2(a) (Temporary Order).

98 Amendment No 5, s 4 (Amendment No 18 of the Foreign Workers Law 5751-1991).

99 See n 34.

100 See also Yonatan Berman and Reuven (Ruvi) Ziegler, 'Immigration Detention in Israel' in Amy Nethery and Stephanie J Silverman (eds), *Immigration Detention: The Migration of a Policy and its Human Impact* (Routledge 2015) ch 16, sec IV (exploring pre-2012 Israeli immigration detention practices).

automatic detention of prospective and current 'infiltrators' for three years[101] regardless of whether they are removable. Detention could potentially turn indefinite for persons coming from regions where 'hostile activity against Israel' is considered to be taking place.[102] In light of the designation of Sudan as an 'enemy state' under Israeli law (see Part A), it would not have been implausible to expect such a determination to be made.[103] According to the legislation, detention could have been averted in a closed list of exceptional cases.[104] The legislation mandated that 'infiltrators' applying for asylum could be detained throughout their RSD process, unless their application had been lodged but disregarded for over three months, or if its assessment had begun but a decision had not been rendered for nine months.[105] A failed application would result in continued detention.

In October 2012, five detainees and five organisations petitioned the HCJ. They submitted that Amendment No 3 violates their constitutional right to personal liberty, enunciated in s 5 of Basic Law: Human Dignity and Liberty, stipulating that 'there shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise'[106] Petitioners also argued that detaining persons who cannot be *refouled* violates their constitutional right to human dignity, which mandates that 'there shall be no violation of the life, body, and dignity of any *person* as such', and that 'all *persons* are entitled to protection of their life, body and dignity' (my emphases).[107]

On 16 September 2013, a nine-judge panel of the HCJ quashed Amendment No 3.[108] The judgment maintained that 'the scope of the constitutional right to liberty and human dignity applies to any Israeli citizen, as well as to the stranger, infiltrator, or refugee who has entered Israel, whatever the circumstances'.[109] According to the judgment, Amendment No 3 failed to satisfy the proportionality requirement in s 8 of Basic Law: Human Dignity and Liberty which pronounces that 'there shall be no violation of rights under this Basic Law except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required'.

(2) 'Round Two': the enactment and quashing of Amendment No 4

In its judgment, the HCJ set a 90-day transition period during which the state had to release 1,811 detainees held in Saharonim pursuant to Amendment No 3. The state swiftly moved to enact new legislation before the expiration of the transition period. On 10 December 2013, the Knesset (by a margin of 30 to 15) enacted Amendment No 4.[110] The legislation set two fundamental arrangements. The first (s 30A) applied to prospective 'infiltrators' and mandated their near automatic one-year detention in Saharonim. The second (Chapter D) authorised

101 Amendment No 3, ss 30A(b), (c)(3).
102 ibid s 30A(d)(3).
103 Amendment No 3 was enacted as a 'temporary order' with a three-year 'sunset clause', as were subsequent enactments; ibid s 9. Nevertheless, it is not uncommon for a 'temporary order' to be repeatedly renewed, not least in areas relating to national security and immigration. See eg Citizenship and entry into Israel law (temporary order) 5763-2003, which has been extended until 30 April 2015, *the 16th such extension*.
104 ibid ss 30A(b)(1-4) (subject to the qualifications in art 30A(d)(1-3)).
105 ibid ss 30A(c)(1-2) (subject to the above qualifications).
106 5752-1992; English translation available at: http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm.
107 ibid ss 2, 4.
108 For a critical appraisal of this judgment, see Reuven (Ruvi) Ziegler, 'Quashing Legislation Mandating Lengthy Detention of Asylum-Seekers: A Resolute Yet Cautious Israeli Supreme Court Judgment', 22 September 2013; available at: http://migreflaw.wordpress.com/2013/09/22/blogpost-on-the-israeli-supreme-court-judgment.
109 *Adam* (n 1) [113] (Arbel J).
110 See n 34.

the *indefinite* holding in the Holot 'open' facility of all 'infiltrators' that the MoI deemed to be 'difficult' to deport. Notably, existing Israeli law authorised detention for up to 60 days of a person whose removal is imminent in order to secure or facilitate such removal.[111] Indeed, the amendment's explicit legislative aim was not to tackle risk of absconding or difficulties in establishing identity in view of an impending removal,[112] but rather to prevent absorption and assimilation into Israeli society by physically separating 'infiltrators' from Israelis.[113] Amendment No 4 did not specify the criteria for determining which 'infiltrators' would be sent to Holot.[114]

Notwithstanding its title ('residence centre'), there is little doubt that Holot functioned as a *de facto* detention centre: the requirement that detainees report for three daily counts (morning, midday, and evening)[115] has meant that there was virtually nowhere for them to go. Holot is located in the Negev desert, close to Israel's southern border, in the middle of a military fire training zone, and far from any civilian settlement. The legislation mandated the closure of Holot from 10 pm to 6 am,[116] and leaving Holot for more than 48 hours required a special permit.[117] Violations of the above residence conditions would have potentially resulted in detention at the (adjacent) Saharonim 'closed' detention facility, for periods ranging between one and twelve months.[118] The legislation prohibited persons held in Holot from working.[119] The Israeli Prisons Service (IPS) was put in charge of Holot;[120] it was authorised to conduct searches on anyone entering the facility,[121] to regulate permitted and prohibited objects,[122] and to provide welfare and medical services, as it does in its managed prisons and detention centres.[123]

On 22 September 2014, the same panel of the HCJ that quashed Amendment No 3 annulled Amendment No 4.[124] This time, the judgment was not unanimous. Six justices (Uzi Vogelman, Miriam Naor, Edna Arbel, Yoram Danziger, Salim Joubran, Esther Hayut) upheld the petition regarding s 30A, while three justices (Chief Justice Asher Grunis and Justices Neal Hendel and Yitzhak Amit) dissented. A closer reading of the earlier judgment in *Adam*[125] reveals that, Justice's Hendel's dissent in relation to s 30A could have been anticipated, as he had dissented from the operative part of the otherwise unanimous judgment.[126] Similarly, the then Chief Justice Grunis asserted in his concurrence that a re-enacted law authorising significantly shorter detention

111 Entry to Israel Law 5912-1952, ss 13A, 13F.

112 *Cf* Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common Standards and Procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24 December 2008, entered in force 14 January 2009, art 15.

113 Amendment No 4 (explanatory notes), 20 November 2013, Government Bills No 817, p 122.

114 Note that, on 17 December 2014, the Director General of PIBA set out temporal criteria for selecting prospective detainees, subject to humanitarian exceptions: Sudanese who have 'infiltrated' prior to 31 May 2011, and Eritreans who have 'infiltrated' prior to 31 May 2009; available at: http://www.piba.gov.il/SpokesmanshipMessagess/Documents/criteria_holot.pdf (Hebrew).

115 Amendment No 4, s 32H(a).

116 ibid s 32H(b).

117 ibid s 3e2H(c).

118 ibid s 32T.

119 ibid s 32F.

120 ibid s 32C.

121 ibid s 32L-N.

122 ibid s 32J(a)(2), (4).

123 ibid s 32E(a).

124 HCJ 8425/13 *Gebrselassie el al v Knesset et al* (IsrSC) (22 September 2014); partial unofficial summary in English available at: http://www.refworld.org/pdfid/54e605334.pdf. For a critical appraisal of the judgment, see Reuven (Ruvi) Ziegler, 'Second Strike and you are (finally) out? The Quashing of the Prevention of Infiltration Law (Amendment No. 4)', 29 September 2014; available at: http://migreflaw.wordpress.com/2014/09/29/publication-the-israeli-supreme-courts-decision-on-detention-of-asylum-seekers/.

125 *Adam* (n 1).

126 ibid [1] (Hendel J).

than under Amendment No 3 would pass constitutional muster.[127] In contradistinction, Justice Amit's dissent was premised on what he considered to be a relevant distinction between s 30A and the quashed Amendment No 3: while the former applied only prospectively, towards a non-specific group of persons who have not yet transgressed the state's borders, the latter applied also retrospectively to 'infiltrators' who entered Israel prior to its passage.[128]

Seven justices, including Justice Amit, annulled Chapter D in its entirety for violating the constitutional rights to liberty and human dignity. Chief Justice Grunis and Justice Hendel, dissenting, considered only the provision authorising three daily counts to be disproportionate and thus unconstitutional; they would have removed the midday headcount, leaving intact the morning and evening headcounts as well as the rest of the arrangements of Chapter D.

(3) 'Round Three': the enactment (and future quashing?) of Amendment No 5

The HCJ declared s 30A void with immediate effect. In contradistinction, the HCJ held that the provisions regulating the 'open' facility would remain in force for a 90-day transition period (save for removing the midday headcount which all judges agreed was unconstitutional). MKs harshly criticised the judgment,[129] and the Knesset Internal Affairs and Environment Committee held an emergency session; its chair, MK Miri Regev (Likud), concluded that the government must promptly draft modified legislation.[130] On 8 December 2014, hours before dissolving in preparation for early elections (arranged for 17 March 2015), the Knesset (by a margin of 47 to 23 with 3 abstentions) enacted Amendment No 5.[131]

Amendment No 5 stipulates that prospective 'infiltrators' who enter Israel and cannot be deported will be automatically detained at Saharonim for three months.[132] Current 'infiltrators' as well as prospective 'infiltrators' (following their initial detention at Saharonim) may be held at Holot for 20 months,[133] and would then be released as 'infiltrators' without regularisation of their legal status. Holot residents are required to report for a headcount between 10 and 11 every night, after which time the centre is closed until 6 am.[134] Unlike under Amendment No 4, the period of residence at Holot is now finite; nevertheless, Amendment No 5 preserved Holot's detention-like characteristics, including its management by the IPS,[135] which may conduct searches on persons entering and leaving the facility.[136] Critically, the fact that detainees are barred from working[137] and the facility's remote location[138] render the possibility of leaving the facility during daytime rather futile.

127 ibid [5] (Grunis CJ).
128 *Gebrselassie* (n 124) [7] (Amit J). Compare ibid [9] (Arbel J) (maintaining that prospective 'infiltrators' would enjoy the constitutional rights to liberty and human dignity once they come under the state's jurisdiction, and hence the legislation raises the same constitutional challenges).
129 See Aviel Magnezi, 'High Court: Infiltrators cannot be held for three years' *Ynetnews*, 16 September 2013; available at: http://www.ynetnews.com/articles/0,7340,L-4430459,00.html.
130 Transcript available at: http://www.knesset.gov.il/committees/eng/committee_eng.asp?c_id=5 (Hebrew).
131 See n 34.
132 ibid s1 (amending s 30A of the 1954 Law).
133 ibid (amending s 32D).
134 ibid (amending s 32H).
135 ibid (amending s 32C).
136 ibid (amending ss 32J-O).
137 ibid (amending s 32F).
138 Weather conditions at *Holot* are extreme throughout summer and winter: an urgent petition in January 2015 forced the state to install air-conditioners. See HCJ 177/15 *Hotline for Refugees and Migrants et al v IPS Chancellor* (4 February 2015).

A petition challenging the constitutionality of Amendment No 5 is pending before a modified panel of the HCJ; a hearing took place on 3 February 2015.[139] Petitioners argue that the real legislative aim is to encourage the 'voluntary' departure of 'infiltrators' by breaking their spirit.[140] The State argues that detention creates a 'normative' barrier that supplements the physical barrier on the Egyptian border, and prevents infiltrators from establishing their lives in Israeli cities.[141] According to the State's response, in February 2015, 1,476 Sudanese and 464 Eritreans were held at Holot, 1,198 of whom had entered Israel more than 6 years previously and 865 of whom had been held at Holot for over 9 months.[142]

D. The 'Infiltrators' in the public discourse

(1) The prevailing narrative: a 'security-demography' nexus

The state's rights-restricting legislative and regulatory policies are arguably affected by and, in turn, influence the political discourse surrounding the 'infiltration' phenomenon. While it is beyond the remit of this article to provide a full account,[143] it is suggested that the 'illegality', 'otherness', and 'dangerousness' of 'infiltrators' are constituted, perpetuated and enhanced through equating them with Israel's worst security perceived (Iran) and demographic (Palestinian) threats, and through negating the possibility that their asylum claims are meritorious.

The first discursive theme emphasises the threats that 'infiltrators' pose to *national security and identity*. It was noted in Part A that, the term 'infiltrator' associates Eritrean and Sudanese nationals with a national security threat which, in turn, feeds into demographic anxieties related to the preservation of Israel as a Jewish-majority State. MK Tsipi Hotovely (Likud) asserted in the Knesset debate on 9 January 2012 concerning Amendment No 3 that '[a]nyone who wants to make our country a country that is not Jewish should continue supporting these people who infiltrate the state of Israel illegally'.[144] In a cabinet meeting on 20 May 2012, the then PM Benjamin Netanyahu (Likud) warned that 'the problem that currently stands at 60,000 illegal infiltrators could grow to 600,000 illegal infiltrators, and that threatens our identity as a Jewish and democratic state'.[145] The then Interior Minister, MK Eli Yishai (Shas) asserted in an interview in the 'Maariv' newspaper that 'the infiltrators, along with the Palestinians, will quickly bring us to the end of the Zionist dream', making the (factually wrong) claim that 'most of the people who come here are Muslims who think that this country doesn't belong to us, the white man'.[146] In a later interview for 'Ynet', Yishai 'warned' that 'the infiltration threat is just as severe as the Iranian threat', noting that he has 'asked the Treasury for a budget increase to build more detention facilities', and promised that 'until I can deport them I'll lock them up to make their lives miserable'.[147]

139 *Desete* (n 69).

140 ibid (petitioners' response to the state's supplementary affidavit). See also *Gebrselassie* (n 124) [107–113] (Vogelman J) (addressing the petitioners' claim that a covert aim of Amendment No. 4 was to 'break the spirit' of 'infiltrators'). According to the state's supplementary affidavit, p 8, ibid, 1285 'infiltrators' held at various detention centres left Israel in 2014 alone. Voluntariness of departure under such circumstances is questionable.

141 ibid (State's supplementary affidavit).

142 ibid.

143 For a fuller account of the discourse, see eg Elizabeth Tsurkov, 'Cancer in our Body' (Hotline for Migrant Workers, June 2012); available at: http://hotline.org.il/wp-content/uploads/IncitementReport_English.pdf.

144 Transcript available at: www.knesset.gov.il/plenum/data/00249412.doc (Hebrew).

145 Government Secretary's announcement following the government weekly meeting on 20 May 2012, available at: http://www.pm.gov.il/PMO/Secretarial/Govmes/2012/05/govmes200512.htm (Hebrew).

146 Shalom Yerushalmi, 'Eli Yishai in a special interview: it is us or them', *Maariv*, 1 June 2012; available at: http://www.nrg.co.il/online/1/ART2/373/346.html (Hebrew).

147 Omri Ephraim, 'Yishai's next phase: detention of Eritreans and Sudanese' *Ynet*, 16 August 2012; available at: http://www.ynet.co.il/articles/0,7340,L-4269522,00.html (Hebrew).

The second discursive theme exploits *personal insecurity* in socio-economically weaker neighbourhoods, especially in South Tel Aviv, by aggrandising incidents of criminal behaviour, and attributing them to the 'infiltrator' population. May 2012 saw some of the worst incitement. On 21 May 2012, MK Danny Danon (Likud) asserted in a Knesset Committee hearing that '[a]n enemy state of infiltrators has been established in Israel'.[148] On 23 May 2012, in a demonstration at Hatikva neighbourhood in south Tel Aviv, MK Michael Ben-Ari (National Union) said that '[f]or three years women have not been able to go to the market without having their purses stolen; girls can't play; young men cannot find jobs', leading attendees in chants 'Sudanese to Sudan!'[149] MK Miri Regev (Likud) chanted that 'the Sudanese are a cancer in our body'.[150] Demonstrators then raged through the streets of south Tel Aviv, assailed persons who looked like 'infiltrators' including some Jewish-Israeli citizens of Ethiopian decent, set bins on fire, and threw bricks and bottles at businesses.[151]

The third discursive theme concerns the use of the term *'labour infiltrators'* which serves to entrench a perception that border-crossers are work migrants rather than genuine refugees, whilst reiterating their supposedly malign intent. In October 2010, leader of the opposition Tzipi Livni (Kadima) (which proposed the 'Immigration Bill to Israel') opined, regarding 'the infiltrators who cross the Egypt border', that 'a small number of them are real refugees, but the majority are work infiltrators'.[152] In November 2010, PM Netanyahu, touring the Israeli-Egyptian Border, opined that ''[l]ess than 1% of the infiltrators are refugees; more than 99% of them are seeking work'.[153] The fact that, until 2013, Eritrean and Sudanese were denied access to RSD highlights the political willingness to make unfounded statements which plant the seeds for freedom-curbing legislation.

(2) Counter-discourse: particularism and universalism

It was noted in Part C that the number of MKs voting against detention legislation has steadily increased: 8 MKs voted against Amendment No 3; 15 MKs voted against Amendment No 4; and 23 MKs voted against Amendment No 5. Now, it is not implausible that some MKs have adopted a fresh approach to the 'infiltration' phenomenon; nevertheless, the more likely explanation lies in the reluctance of certain MKs to re-enact offending legislation in perceived defiance of HCJ judgments. Indeed, the 2013 elections, which had led to a change in the makeup of the Israeli coalition government, had not significantly affected state policies towards 'infiltrators'.

Nevertheless, a counter-discourse challenging the 'infiltrators' terminology is also present. The predicament of asylum-seekers is linked to the plight of Jews who had been fleeing persecution in the late 1930s yet were not granted entry visas, most infamously in the 1938

148 Knesset Migrant Workers Committee, Minutes, 21 May 2012; available at: http://www.knesset.gov.il/protocols/data/rtf/zarim/2012-05-21.rtf (Hebrew).

149 Ben-Ari's speech is available at: https://www.youtube.com/watch?v=h5TWelXlOWs.

150 Regev's speech is available at: https://www.youtube.com/watch?v=PRlL10ErBV0.

151 A video capturing scenes from the riots is available at: https://www.youtube.com/watch?v=jGJVX6jYjI0. See also Barak Kalir, 'The Jewish State of Anxiety: Between Moral Obligation and Fearism in the Treatment of African Asylum-seekers in Israel' (2014) 41 Journal of Ethnic Migration Studies 1.

152 Livni's comments were reported by Yair Altman, 'Yishai: we'll fight for Jewish majority', *Ynetnews* 31 October 2010; available at: http://www.ynetnews.com/articles/0,7340,L-3977592,00.html.

153 *PM Netanyahu's Remarks on his Tour of the Israeli-Egyptian Border*, 28 November 2010; available at: http://www.pmo.gov.il/English/MediaCenter/Events/Pages/eventegypt281110.aspx.

Evian conference.[154] MK Sheli Yachimovich (Labour) offers an illustrative example. In the abovementioned 9 January 2012 debate, she stressed her family history as 'the daughter of Holocaust survivors', noting that for her it meant that '[w]e have not only the duty but also a profound moral obligation, as a people, to give shelter to refugees'.[155]

A second strand of argument emphasises Israel's global commitment to refugees. During the above Knesset debate, MK Dov Khenin (Hadash) argued that 'Israel, after the Second World War and after the Holocaust, was one of the initiators of the International Convention for the Protection of Refugees. Israel is a signatory state of the convention, and has a duty in terms of international law'.[156] Khenin then asserted that 'we are talking about people who come in large part from Darfur, where there has been a genocide over the years, while there is a murderous regime in Eritrea from which people run away for their lives'.[157]

E. Looking forward?

In a judgment concerning restrictions on family unification, former Chief Justice Beinisch emphatically rejected the view that 'sovereignty absolves the state of any undertakings towards a person simply on account of their being a foreigner'.[158] This article explored the precarious legal status of Eritreans and Sudanese nationals in Israel; subject to the CRV regime which restricts their access to welfare and medical services and which denies them legal employment, exposed to detention practices befitting a security threat, and faced with an RSD process where the likelihood of a successful application is close to zero, they remain in legal limbo: they are non-removable persons with no prospects for regularisation of status. The March 2015 initiative, forcing 'infiltrators' held at Holot to 'choose' between detention and departure to an (undisclosed) third state, only serves to reinforce the sense of despair.

In 2012, Justice Hayut posited that '[t]he normative fog creates uncertainty that is extremely burdensome for the persons themselves, who sometimes remain in Israel for unlimited periods of time on the basis of the said policy'.[159] In 2013, she remarked that 'it is not impertinent to reiterate…that as the "temporary" policy of non-return adopted by the state toward some of these infiltrators becomes over the years less and less temporary, the need arises to fill it with normative content'.[160]

However, as Justice Jourbran noted in February 2015, 'this is a challenge which is inherent to the infiltrators issue, and which we [the HCJ] cannot overcome'.[161] Primary legislation is required. It is high time for regularisation of refugees, asylum-seekers, and beneficiaries of

154 Salomon Adler-Rudel, 'The Evian Conference on the Refugee Question' (1968) 13 Leo Beck Institute Yearbook 235. See also Yacobi (n 52) 55 (asserting that '[t]he Holocaust discourse remains central to the question of the Africans in Israel').

155 Transcript available at: www.knesset.gov.il/plenum/data/00249412.doc (Hebrew).

156 ibid.

157 *Compare* OAA 46427-07-11 (Tel-Aviv-Yaffo) *Martinez v State of Israel* (12 June 2012) (stating that 'the provisions of the Convention, which Israel pushed to formulate and undertook to uphold, cannot be ignored, with all that this implies'); *Eilat* (n 87) 'We are obliged to remember, never forget our own refuge in the not-too-distant past, the fact that Israel was one of the first countries to sign the 'refugee convention', as a state rekindled from a life of refugee and Holocaust').

158 OAA 1038/08 *State of Israel v Gavitz* (IsrSc) (11 August 2009) (Beinsich CJ) [unnumbered].

159 *Assefu* (n 60).

160 *Adam* (n 1) [3] (Hayut J). *Cf* OAA (Jerusalem) 8717/08 *Bayu v MoI* [24–25] (granting a temporary residence permit to a recognised refugee's partner, and maintaining that 'a state which recognises a person as a refugee owes that person a special duty to guarantee all their fundamental rights that will enable him or her to maintain a reasonable livelihood… including the fundamental right to family right, including cohabitation with a partner…a person may hold refugee status for considerable time, exemplified by the applicant's petition filed after 12 years' temporary residence').

161 AAA 6694/13 *Gidai v MoI* (IsrSC) (15 February 2015) [15].

subsidiary protection statuses in Israeli law. Israel's policy of rejection at the border means that the number of 'infiltrators' is finite; perhaps ironically, this may help garner the necessary political support for regularisation of asylum.

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