April 9, 2018

To: Dr. Avichai Mendelblit
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The State of Israel
Via Fax: +97226467001

Re: An Urgent Appeal to Refrain from Deporting and Detaining Eritrean and Sudanese Asylum Seekers as per the Transfer Agreements

We the undersigned, experts in international immigration and refugee law, would like to express our legal concerns regarding the plans to deport Eritrean and Sudanese asylum seekers from Israel.

It was brought to our attention that on January 1, 2018, the Israeli government announced plans to indefinitely detain or forcibly remove thousands of Eritrean and Sudanese asylum seekers to 'third countries' in Sub-Saharan Africa, allegedly Rwanda and Uganda, should they refuse to leave voluntarily (and receive a lump sum payment of USD 3,500) by March 31, 2018. We also learned that Israel's Population, Immigration, and Border Authority (PIBA) advertised 100 new posts for inspectors to work in the 'voluntary repatriation program' and others to enforce laws against asylum seekers and their employers (report), which indicates an intention to conduct a massive deportation and detention operation. **It is our legal position that this deportation plan is in violation of international refugee law and international human rights law.** We also understand that in the recent hearing on March 12, 2018 the High Court of Justice expressed concerns with the deportation plan, and issued an interim order preventing any forcible deportations from being carried out until further notice, indicating that the Court was not satisfied that the deportation plan meets legal standards. Finally, we followed the declaration of the Israeli Prime Minister and Minister of Interior that the third country agreements have fallen through, making it impossible to carry on with the deportations, and his announcement that Israel has reached an agreement with UNHCR to grant status to asylum seekers in lieu of the resettlement of some to Western democracies. We were surprised to learn that the Israeli government canceled this agreement, and alarmed to learn that the Israeli government nevertheless has taken the position that deportations have a high likelihood of occurring.

We are aware of the August 2017 Israeli Supreme Court decision in which the Court enjoined the state from indefinitely holding prospective deportees in detention until and unless they agree to leave, finding such consent to be *ipso facto* given *involuntarily*. Though the Court did not find fault with involuntary removal plans *per se*, its premise was that deportation is undertaken pursuant to agreement(s) with (undisclosed) 'third state(s)' and that the agreements that the state presented *ex parte* required consent of the persons removed. The Court refrained from prohibiting the removal on the basis of confidential agreements, and refrained from identifying these countries as unsafe for the deportees. We have also learned that the State of Israel has renegotiated the agreements with the 'third state(s)' to remove the requirement that the removals would be consensual. **We respectfully disagree with the Court's conclusion that the previous deportation plan rested on the safety of the 'third state(s)' and on the ability to monitor the agreement, and we have serious additional concerns about the current deportation scheme.**

1. **The Fairness of the Israeli Asylum System**

Israel defines all 37,288 Eritreans and Sudanese (mostly from Darfur, the Nuba region, the Blue Nile region and the Kordofan region) as 'infiltrators' who illegally crossed its border from Egypt. In contrast, UNHCR maintains that "the protection needs of the majority of Eritreans and Sudanese [in Israel]…are akin to the protection needs of refugees' and that UNHCR 'considers them to be in a refugee-like situation". The data presented (in Hebrew) by PIBA to the Israeli Parliament in December 2017 reveals that of 12,295 Eritreans and Sudanese who had submitted asylum applications, only 11 Eritreans and one Sudanese were recognized as refugees pursuant to a refugee status determination process: *fewer than 0.1%.* The Israeli Supreme Court has recently criticized PIBA for refusing to determine the status of some 2,300 Darfuri applicants, while the lower Appeals Tribunal, in granting status to some Darfuris, viewed this policy of refraining to determine personal eligibility for refugee status in the interim period as unacceptable. Such markedly low recognition rates differ significantly from those of other democracies.

In comparison, in EU member states, in the third quarter of 2017, recognition rates of Eritrean and Sudanese as refugees were 90% and 60%, respectively (for further discussion of Israel's asylum system, see the JIANL article and the Hotline for Refugees and Migrants' report). In applying a narrow interpretation of the term "refugee"-- and, as the appeals tribunal determined, placing different bureaucratic barriers to applying for asylum-- makes Israel a legal outlier, and raises serious doubts as to whether Israel's asylum system conforms with the 1951 Refugee Convention. As a single example, Israel's definition does not encompass draft evaders, a legal position that was recently criticized and rejected by the Jerusalem appeals tribunal. **An asylum system that rejects virtually all asylum seekers cannot be deemed as fair. UNHCR has also pointed to the fact that the Israeli asylum system's assessment of Sudanese and Eritreans' applications is neither fair nor effective.**

Finally, it is noteworthy that the new Israeli procedure will immediately affect those applying for asylum after January 1 2018 and may later be expanded to others whose applications are pending.

2. **The Ability of Israel to Monitor and Supervise the Transfer Agreements**

Although transfer agreements are not uncommon, the alleged agreements reached by Israel are unprecedented in three ways. *First*, we are unaware of any other case of a secret relocation/transfer agreement to a country *not the deportee's country of nationality*. *Second*, while typically such agreements aim to promote fair responsibility-sharing or prevent onward migration, these agreements do the exact opposite. They take refugees from Israel and place them in countries which are struggling to host and protect the growing numbers of refugees who have already reached them. Furthermore, reports regarding those previously removed to those countries show that these agreements frequently result in the onward migration of the relocated persons. *Third*, the practice regarding transfer agreements assumes that asylum seekers have spent little time in the transferring country and are unlikely to have established ties to its society. Even Dublin regulation III (concerning removal to another EU member states) sets out, in Article 29(1), a six month 'ceiling', after which transfer is not condoned. This is not the case with the Israeli transfer agreement. Since the erection of a physical barrier on the Egyptian-Israeli border in 2012, there have been virtually no new arrivals. Hence, the vast majority of Eritrean and Sudanese have resided

in Israel *for at least six years*, and in some cases closer to *a decade*, and have established significant ties with Israeli society. Under the alleged agreements, they are to be removed to third countries to which they are unlikely to have *any* links - Rwanda and Uganda.

Israel alleges that the transfer/relocation agreements it has reached no longer require the deportee's consent. In turn, both Rwanda, and Uganda (the 'third countries' earmarked to receive the deported asylum seekers) have denied the *existence* of such agreements. The Government of Rwanda tweeted that "…[it] has never signed any secret deal with Israel regarding the relocation of African migrants". The Ugandan State Minister for International Relations, Henry Okello Oryem, asserted that the agreements are "fake news" and denied having formal or informal agreements that would allow Israel to "dump their refugees here". While international refugee law does not enjoin states from sharing their responsibility for refugees through bilateral or multilateral agreements, we believe that such agreements may not deprive refugees of their internationally recognized rights. States that share some of their responsibility to refugees remain responsible for monitoring the situation of those transferred, per UNHCR guidelines. **We maintain that undisclosed agreements, the existence of which is denied by the parties themselves, cannot be properly supervised as required by international law. Commitments regarding the safety, security, and economic rights of deportees made in such agreements will be difficult if not impossible to enforce in light of these denials and the non-transparent nature of the agreements.**

This concern is also shared by a group of UN experts, who issued a statement on March 1, 2018 that "in light of the secrecy surrounding the third country destinations, the UN experts expressed concern that returnees might not be afforded adequate and effective protection."

3. **The Safety of The Designated Third Countries**

It is unclear what rights the deportees would be eligible for upon their removal. Israel alleges that deportees will have prospects of long-term residence in dignity in the 'third state'. Those statements are not supported by UNHCR. On November 17, 2017, UNHCR's Assistant High Commissioner for Protection, Volker Türk noted that:

> "[D]ue to the secrecy surrounding this policy and the lack of transparency concerning its implementation, it has been very difficult for UNHCR to follow up and systematically monitor the situation of people relocated to these African countries. UNHCR, however, is concerned that these persons have not found adequate safety or a durable solution to their plight and that many have subsequently attempted dangerous onward movements within Africa or to Europe".

On December 4, 2017, the Committee against Torture's Second Period Report on Rwanda expressed concern [46] "at the reported delays to register asylum seekers, placing them at risk of being deported" as well as at "the difficulties to access the asylum procedure faced by Turkish residents as well as Eritreans and South Sudanese relocated from Israel, some of whom have reportedly been forcibly expelled to neighbouring countries". It urged Rwanda to [47](b) "[e]nsure that all asylum seekers without restriction relating to nationality or profile of the claim

are issued with temporary residence permits and their claims are processed within the legal time-frame".

On January 9, 2018, following the announcement of Israel's new policy, UNHCR urged Israel, based on interviews conducted in Rome with 80 Eritreans who were deported to Uganda and Rwanda, to halt its deportation plans, noting that "forced relocation to countries that do not offer effective protection and the onward movement of these people to Libya and Europe is particularly worrisome."

Most troubling are findings in the report 'Better a prison in Israel than dying on the way', based on 19 interviews conducted in Germany and the Netherlands with Eritrean refugees who, like thousands of Eritrean and Sudanese, were pressured to 'voluntarily' depart Israel to Rwanda and Uganda in the years 2014-2016 and subsequently made it to Europe after a long and dangerous journey (see HRW report on Israel's coercive pressure to leave). Instead of being granted refugee status and work permits, as promised by the Israeli government, deportees were stripped of their travel documents (the only identifying document in their possession) upon arrival in Rwanda and Uganda. Exposed to robberies, threats and arrest, they undertook dangerous journeys through South Sudan, Sudan, and Libya in search of safety. Instead of finding safety, they met with trafficking, incarceration, the threat of forcible deportation to Eritrea, starvation, violence, slavery and torture in camps in Libya and a dangerous crossing of the Mediterranean Sea to Europe. Many of them received asylum in Europe after being rejected in Israel, a fact which seriously challenges the fairness of the Israeli asylum system.

It remains unclear what mechanisms are in place for Israel to monitor the safety and well-being of those deported. It appears that Israel is relying on reports from the governments of the third countries, and on reports received through a dedicated phone line to which the deportees can call with complaints. We believe these are insufficient monitoring mechanisms, and the information accumulated by both UNHCR and other researchers shows the systematic risks deportees actually face.

It is our collective expert opinion **that deportees from Israel face a risk of either direct or indirect *refoulement* in breach of refugee and international human rights law obligations on the state not to expel or return (*refouler*) a person to territories where his or her life or freedom would be threatened, or where there is a risk of being subjected to torture and cruel, inhuman or degrading treatment or punishment.** (See ***non-refoulement*** **principles in Article 33 of the Convention Relating to the Status of Refugees; Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and Articles 6-10, 12-13 of the International Covenant on Civil and Political Rights.)**

Moreover, as mentioned above, the Eritreans and Sudanese due to be (forcibly) deported from Israel have stayed in Israel legally for many years, holding state-issued renewable Conditional Release Visas (pursuant to Section 2(A)(5) of the Entry to Israel Act). It is our legal position that, given the length and conditions of their residence, Israel had implicitly recognized them as refugees and/or as entitled to international protection. Therefore, **deportees from Israel are entitled to Article 32 protection from expulsion *to any country* 'save on grounds of national**

security or public order'. This is a far stronger protection than *non-refoulement*, which requires individual assessment of the risk posed by the deportee.

4. **The Discriminatory Effect of These Agreements**

Finally, we are concerned with the fact that the agreements categorically discriminate between Eritrean and Sudanese and others in refugee-like situations, such as Burmese, Congolese, Ukrainians or Georgians. On March 1, 2018, a group of UN experts issued a statement urging the immediate halt of plans to deport Eritrean and Sudanese nationals. In this statement, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ms. E. Tendayi Achiume, deplored the discriminatory nature of the policy, saying that she is "deeply concerned that this policy specifically targets individuals from sub-Saharan Africa. By singling out Eritrean and Sudanese nationals, the policy clearly breaches the prohibition of discrimination on the basis of race and national origin." The experts said the policy perpetuates the stigmatization of non-citizens as "illegal infiltrators". "The use of such terms reinforces and further legitimizes discriminatory public discourse and racist attitudes towards migrants, refugees and asylum-seekers, especially those from sub-Saharan Africa," Ms. Achiume added.

Based on the above, we call on the state of Israel to refrain from carrying out the deportations and to release those who are being detained for refusing to cooperate with their prospective deportations. In carrying out these deportations, Israel will be in serious breach of its obligations under international refugee and human rights law.

Sincerely,

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