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**Comptroller report**

**Foreigners Not Subject to Deportation**

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Summary

Immigration is a global issue which many countries in the world have to address. Since the early 1990's the number of foreigners who reside in Israel illegally has increased significantly. This

group includes foreign workers who entered Israel legally but did not leave at the end of their legal stay; those who entered Israel on a tourist visa and did not leave at the expiration of their visa; and foreigners who did not enter Israel through official border crossings. In June 2013 these groups amounted to about 230,000 people, of which 54,000 are not subject to deportation.<sup>1</sup> This report concerns those foreigners who cannot be deported, mostly citizens of Eritrea and the Republic of the Sudan.<sup>2</sup> Many of them, but not all, meet the definition of ‘infiltrators’.<sup>3</sup> Israel implements a temporary policy of non-deportation of Eritrean citizens. This policy is based on particular circumstances and should be re-evaluated occasionally.<sup>4</sup> Separately, Israel refrains from sending back to their country foreigners from the Republic of the Sudan mostly because of the practical difficulties in deportation to a country with which Israel does not have diplomatic relations.<sup>5</sup> The state argues that this does not preclude actions to return these foreigners through other countries.

The entry and continued presence of tens of thousands of foreigners in Israel created a difficult reality that sets before the government challenges requiring treatment and response, including the situation which developed in the neighborhoods of south Tel Aviv (hereinafter –south Tel Aviv) over the years, where many of the foreigners reside.

## **Audit Methodology**

During February-September 2013 the Comptroller Office examined various aspects of the authorities’ treatment of foreigners, mostly from Eritrea and Sudan, who cannot be deported from Israel. The Audition included the Ministry for Social Affairs and Social Services (hereinafter, Ministry of Social Services) the Ministry of Health, the Prime Minister’s Office, (hereinafter, PMO) the Ministry of Justice, the Ministry of Public Security, (hereinafter, MPS), Israel Police, Ministry of National Infrastructures, Energy and Water Resources (hereinafter, Ministry of Energy), the Population, Immigration and Border Authority (hereinafter, Population Authority), Tel Aviv-Yafo Municipality (hereinafter, TLV Municipality) and the Israel Electric

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<sup>1</sup> See below for non-deportation policy.

<sup>2</sup> Also called sometimes North Sudan. With the foundation of South Sudan as an independent country, the two should not be confused.

<sup>3</sup> Infiltrators as defined in the Anti-Infiltration Law (1954). Currently those are mostly foreigners who entered Israel illegally through the border with Egypt and were caught.

<sup>4</sup> AP 8908/11 Asefo v. Ministry of Interior (published electronically 17.7.12)

<sup>5</sup> HCJ 7146/12 Adam et al v. Knesset et al (published electronically 16.9.13)

Corp (hereinafter, IEC). For the preparation of this report, the Comptroller's representatives also met with representatives of residents in several neighborhoods in south Tel Aviv-Yafo as well as with representatives of several organizations which work with foreigners (hereinafter, Organizations)

It is important to note that in May 2013 the State Comptroller office published a review under section 21(a) of the State Comptroller Law 5718-1958 [consolidated version]: Treatment of Minors without Civil Status in Israel (hereinafter, Minors' Report)<sup>6</sup> and a follow-up on some of the problems raised in it is attached to this report.<sup>7</sup> Therefore, this report will mostly concern Adults who are not subject to deportation.

### **Summary of Findings**

A majority of foreigners<sup>8</sup> reside in five neighborhoods in south Tel Aviv (Neve Sha'anana, Florentine, Shapira, Kiryat Shalom and Hatikva. hereinafter, south TLV neighborhoods). About 12% of the babies born in the city in the first six months of 2013 were born to foreign parents. According to the estimate of TLV Municipality, already in 2008 the foreign population formed a majority in the entire population of the south TLV neighborhoods, and by 2011 this community reached 61,000 people which were 61% of the entire neighborhoods population and about 13% of the city's population that year (see table 1).

The reality of life in the five south TLV neighborhoods, where many of the foreigners in Israel reside is complicated and difficult. It is a dismal situation. As described in the following, residents of these neighborhoods expressed grave concerns to their personal safety as a result of the foreigners' presence. There is no doubt that the lives of the local residents were greatly affected and their neighborhoods changed radically.

1. The significant rise in the size of the population in south Tel Aviv resulted in a rise in the demand for apartments for rent. Some of the demand was answered in two ways: splitting apartments into smaller units and overcrowding of foreigners in apartments that were designed for smaller numbers. The physical conditions in these neighborhoods, which include splitting apartments, illegal gas connections and dangerous connections to the electricity grid, according

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<sup>6</sup> State Comptroller Annual Report 63.3 (2013) p.1841

<sup>7</sup> See in this collection of reports, the report "Treatment of Minors without Civil Status in Israel" (Follow-up Findings) p.215.

<sup>8</sup> "Foreigners" in the sections on the neighborhoods of south Tel Aviv only, refer also to foreign workers with working visa, and foreign workers whose visa expired.

to the professionals lead to safety risks which can even amount to a real life danger. As described in the following.

- a. In the area surrounding the Central Bus Station in Tel Aviv and the neighborhoods of south Tel Aviv, illegal supply of propane gas and the use of gas tanks inside residential units are common. This situation poses a threat to the safety and welfare of the entire population of these areas. The Ministry of Energy has information regarding the dangerous use of propane gas in these neighborhoods, and received warnings time and again. Despite that, the Ministry of Energy has been resigned to routine checkups only from time to time, attributing this to a shortage in manpower, and did not perform any definitive action to amend the situation as needed from the faulty and dangerous use of cooking gas. The matter of illegal gas supply in south Tel Aviv was never discussed by the ministry's management.
  - b. TLV Municipality had partial information regarding safety issues of electricity connections in the neighborhoods of south Tel Aviv, some of which of severe in nature, and representatives of IEC participated in some of the inspections initiated by TLV Municipality. However, the information gathered by the authorities on the ground was not used by the Ministry of Energy and IEC to perform any wide-ranging evaluations in the area. As a result, the authorities in charge of the safety of the electricity grid did not ensure that the residents of the aforementioned neighborhoods were not exposed to dangers as a consequence of these serious safety deficiencies.
2. The Israel Fire and Rescue Services Authority in MPS is in charge of prevention and response to fires. The Authority's data shows that about 75% of the fires in Tel Aviv-Yafo occur in the area under the jurisdiction of two fire houses in the south of the city, in charge of a third of the overall area of Tel Aviv. In the area under their jurisdiction are the five neighborhoods of south Tel Aviv.

### **Police Preparedness in South Tel Aviv**

1. According to a poll conducted by TLV Municipality in the years 2011 and 2012, the city's residents reported a decrease in their perceived level of safety, especially in the neighborhoods of south TLV. More than half of the residents of these neighborhoods reported they feel unsafe to walk alone during the dark in the surroundings of their homes. This is compared to 20% of the entire city population reporting the same feeling.

2. Due to the limitations of the data - both from the police and from the Population Authority - one cannot determine clearly whether the number of criminal files against foreigners is high compared to their percentage in the population. The characteristics of crime among foreigners demonstrate the complexity of the current situation. An examination of the reasons leading to crime of which the police informed the Minister of Public Security; lead to the conclusion that only a cross-governmental effort which will include all the relevant ministries and will address the reasons for crime, could help alleviate this situation.
3. As mentioned, a large number of foreigners reside in the neighborhoods of south TLV which are mostly under the jurisdiction of the Yiftah district of the police, where the SRT<sup>9</sup> police station operates, in charge of Shapira and Neve Sha'anana neighborhoods. As of July 2013 only 70% of the positions accorded to the station, as recommended following a reevaluation decided on by the prime minister, were manned. A two-phase plan to reinforce the station was only partially carried out. Phase one of the plan, approved by the police commissioner in July 2012, was only partially implemented and phase two had not been started.

Considering understaffing in SRT station, it is doubtful that the police have the required tools to implement the operational principles as defined by Tel Aviv district of the police. Those delineate that an operational force should operate on a 24/7 basis, including interrogation and intelligence and perform foot patrols in areas of increased activity by foreigners to prevent and deter crime.

## **Employment and Livelihood**

1. On November 2010 the government decided on a plan to erect and operate a detention center for infiltrators from Egypt and to enforce the law against those who employ infiltrators. According to the plan, the basic needs of foreigners, including housing, food, water and health needs will be provided in the center. It was decided that the Population Authority will start enforcing the law against those who employ infiltrators only after the center will open.

There are, as mentioned, about 50,000 foreigners who cannot be deported. The sustenance of these tens of thousands of people depends on their ability to earn a living or on the state to actively provide their basic needs. The 2010 plan for erecting and operating the detention centers was only partially implemented. Furthermore, even if the three centers delineated in the plan

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<sup>9</sup> SRT= Shapira, Rakevet (train) and the central bus station.

would have been founded and populated, still most of the foreigners that cannot be deported would have remained outside them, without a legal option to work and earn a living; already by the end of 2010, when the government's decision and the HCJ debates took place, the number of foreigners in Israel was double the number of placements in the planned detention centers. Even after the implementation of a new integrated plan from November 2013, the number of foreigners is more than five times the number of placements in the detention center. As detailed below, the detention center and the Saharonim prison together can hold about 9,000 people, less than 20% of the number of foreigners residing in Israel according to the estimation of the Population Authority (more than 50,000 people); the center is designated in the first stage for foreign men alone, and not for the thousands of foreign women and children who are in Israel currently.

2. The state presented to the HCJ a temporary arrangement regarding foreigners who are ineligible for deportation until the detention center will open, according to which they will not get work permits but no action will be taken against employers at this stage. This arrangement was supposed to last for six months until the detention center opened. The HCJ considered this arrangement to be of appropriate balance, considering the situation presented to the court at the time. In actuality, this interim arrangement became a permanent settlement. At the end of the audit (about two and half years after the end of the aforesaid six months) foreigners can subsist themselves and earn a living only by getting a paid job. This arrangement is under the temporary settlement according to which the state will not persecute the employers. Moreover, the continuation of this status forms a violation of fundamental principles of the rule of law, since it creates a situation where the law is vague and unclear, and the authorities make non-enforcement and disregard of the law routine.
3. The current situation forces us to address the question how can a dignified minimum existence be ensured to foreigners outside the detention center who are not able to work and do not have their basic needs provided to them by the state, like those who suffer from illness or disabilities. This matter was never discussed and clearly no solution was suggested to ensure the right for a minimum dignified existence for foreigners.
4. The manner in which the non-enforcement settlement towards employers is implemented for several years now presents further difficulties: the Population Authority has refrained from

clarifying and publishing the settlement to the public; and official documents issued to foreigners have been phrased in a confusing and misleading manner.

It is feared that by carrying out this settlement, with its limitations, over years damages the ability of some of the foreigners to retain an adequate level of social security and living standards, including satisfactory food, clothing and housing as required by the International Covenant on Economic, Social and Cultural Rights from 1966 ratified by Israel in 1991 (hereinafter – the Social Rights Covenant). In the current situation, in some cases, the ability of foreigners to be protected from hunger and have a dignified minimum existence is faulty.

In light of the findings of this chapter, the Attorney General should consider the current and developing state so as to ensure that the provisions of Basic Law: Human Dignity and Liberty and the international law are maintained.

## **Health Services**

1. From the end of 2008 to the end of 2013 major changes took place in the scope of the foreign population not subject to deportation in Israel. During these years the Ministry of Health appointed several committees and teams to outline a policy regarding health services to foreigners and also actively operated to provide some of these services. However, the policy-making process was never completed and the ministry did not even have the necessary data in order to formulate such policy.

In general, health institutions are required by the Patient's Rights Law to give medical aid to foreigners only in emergencies, but foreigners turn to hospitals for treatments that are usually given in the community. The medical treatment of foreigners in the community is partial, deficient and limited mostly to the Tel Aviv area.

2. As detailed below, the policy formulated by the government regarding foreigners that cannot be deported is missing a crucial aspect: the treatment of foreigners who are not in the detention center. Against this background, and in the absence of a plan on the part of the Ministry of Health, the health system has to deal with the needs of foreigners without an appropriate budget backup. The lack of funds can also affect the financial stability of the hospitals.

3. In the absence of sufficient medical care in the community, the medical needs of some of the foreigners that cannot be deported are neglected until their condition deteriorates to become an emergency.

4. There is a real concern that providing limited access to health care to foreigners not subject to deportation who suffer from mental illnesses or certain chronic conditions and sometimes even to foreigners who need rehabilitation and nursing, as detailed in the findings of audition, does not meet the provisions of Basic Law: Human Dignity and Liberty as interpreted by the rulings of the HCJ and the conditions of the Social Rights Covenant. It is therefore necessary that actions be taken to make sure that the medical care required by the law to be given to these groups is provided. It is suggested that the Attorney General will examine, in light of the findings of this chapter if the limited access to health services meet the requirements of these statutes both for these groups and for other foreigners who need non-emergency medical care and are not in the detention center. The Attorney General should instruct the government ministries accordingly.

## **Social Services**

1. The policy of the Ministry of Social Services regarding foreigners not subject to deportation holds that in the absence of an inclusive government policy, social services will not be provided to foreigners, except in immediate life-threatening situations. It is doubtful that social services are able to identify foreigners who are in a life-threatening situation, as foreigners have very limited access to these services. Thus, abused women who are not in a shelter, foreigners who fell victim to torture on their way to Israel and never had their physical and mental condition evaluated, and foreigners acknowledged as trafficking victims who had no place in shelters, remain outside the scope of social services.<sup>10</sup>

There is real reason for concern that the treatment offered to these weak and vulnerable groups as a result of the aforementioned policy does not meet the provisions of Basic Law: Human Dignity and Liberty, does not guarantee protection from harm to the body or dignity of individuals belonging to these groups and does not maintain their right for basic social security. It is also feared that the treatment of these groups does not meet the provisions of the Social Rights Covenant designed to ensure everyone's right for social security, adequate standard of living and the best possible physical and mental ability as much as the state can offer. It is therefore suggested that the Attorney General will examine this matter in light of the findings of this chapter and instruct the Ministry of Social Service accordingly.

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<sup>10</sup> As for the lacking solutions by social services to minors, see ft.6 and the findings of the follow up report, p.215.



2. The Ministry of Social Services decided that the treatment of domestic violence will take place in “the Center for Prevention and Treatment of Domestic Violence” which will operate as part of the department for social services in the local municipality. Israeli women are entitled to a package of services and a range of solutions and in the most extreme cases they are referred to a shelter. The only solution foreign women are entitled to is the one for the severest cases – the shelter. Moreover, the usual process of treatment in the shelter which includes support, therapy and guidance towards independent living after leaving the shelter, while examining the options available for the woman in the future, is impossible for the foreign woman. Unlike an Israeli woman, a foreign woman is not entitled for rental assistance upon leaving the shelter so as to make an independent living away from the circle of violence. She is also not eligible to participate in long-term group therapy and she is not provided with the package of services which the Israeli women receive, including mental health services, rehabilitation and family therapy. Also, she is usually not eligible for medical care, since she does not have medical insurance. In the absence of all these aspects, the normal rehabilitation process, including the period of staying in a shelter, cannot take place in the case of a foreign woman.
3. Victims of human trafficking are the weakest and most vulnerable group among the foreigners not subject to deportation. They arrived in Israel through the border with Egypt after being tortured. These people were under real life danger, and some of them were kidnapped and arrived in Israel against their will. These people are entitled to the most supportive and caring treatment Israel can provide, and at the least, to the treatment given to any human trafficking victim in a shelter, according to a government resolution. Indeed, for about six months, dozens of foreigners who arrived over a short period of time who were acknowledged as trafficking victims but were unable to be placed in a shelter, were devotedly cared for by the Ministry of Justice and ASSAF organization (Aid Organization for Refugees and Asylum Seekers in Israel).<sup>11</sup> However, Israel’s social services are the ones who have the necessary training and authority to deal with these matters.

## **Government policy**

1. Since 2010 the government has passed several resolutions on the matter of “infiltrators into Israel through the Egyptian border” and “curbing illegal infiltration to Israel.” Through erecting a

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<sup>11</sup> ASSAF organization provides psycho-social services to persons without civil status in Israel.

barrier on the border between Israel and Egypt, the options of deportation from Israel, the aspects of building and operating a detention center and examining recommendations regarding enforcement against employers of infiltrators (not sure what this sentence means—it's grammar is a bit off). Furthermore, the government also had a stated policy of non-enforcement towards employers.

These government resolutions laid the foundation of the government policy aimed at curbing illegal infiltration into Israel, reducing the number of infiltrators residing in city centers and voluntary exit of infiltrators from Israel. This policy, however, lacks an important element of providing solutions in the field of care and providing the basic needs of foreigners residing in Israel, as the overwhelming majority of them are not held in the centers that were founded: the detention center and the prison can hold about 9,000 people, less than 20% of the number of foreigners who reside in Israel according to the estimation of the Population Authority (54,000 people). Furthermore, at the time of the audit's completion, the government's attempts which began back in 2008 to deport foreigners to a third country did not come to fruition.

2. For more than five years, different bodies, including ministers and MPs applied again and again to the Prime Minister, the PMO, the Ministry of Interior, the Attorney General and the budget department in the Ministry of Finance with requests to formulate a policy which will include aspects of treatment of foreigners who reside in Israel, outside the detention centers, and resources will be allocated to its implementation. Additionally, the appeal to appoint a coordinating body with authority to handle this matter and coordinate between the government ministries was brought up several times.

Replies to these appeals mostly dealt with the components of the government's policy, but they did not contain concrete answers to the demand to set a policy regarding the treatment of foreigners who reside in Israel and are not in detention centers or the "residing center". The solutions adopted by the government, including deportation to a third country, voluntary exit and building a "residing center", may reduce the number of foreigners in Israel, but even if realized, in the coming years there would surely still be tens of thousands of foreigners residing in the country, outside detention centers and the "residing center". Therefore, the government ministries, local authorities and the residents of south Tel Aviv face a difficult and complicated reality on their own.

## Summary and recommendations:

1. The matter of foreigners not subject to deportation from Israel is complicated and sensitive. There have been African immigrants in Israel for almost a decade; tens of thousands of them cannot be deported and are not in detention centers or “residing centers”. Over the years, the need for the government to take action in order to prevent a negative impact on Israeli citizens as result of the foreigners’ entry to Israel, alongside the duty to ensure the foreigners’ basic human rights, has increased greatly. Indeed, the two groups - foreigners and citizens - are intertwined with one another, especially in the areas where many of the foreigners reside. Neglect of one group by the state undermines and damages the living conditions of the other.  
In this situation and in view of severe social and humanitarian reality described in this report, the government is required to complete its policy immediately, based on plans that will be formulated by the relevant ministers, in a manner that will guarantee adequate treatment of foreigners and especially the needy and weakest among them. This action is also necessary considering the values of the State of Israel as a Jewish and democratic state, the Jewish heritage of treating the underprivileged including the foreigner (the *ger*) among us, and the international law of immigration, refugees and human rights.  
Simultaneously, the government is required to address the issues regarding local residents, particularly in Tel Aviv-Yafo. This report’s findings show that the absence of a comprehensive program to deal with the reality of life of tens of thousands of foreigners, in several cities and particularly in Tel Aviv-Yafo, carries obvious and direct implications on the plight of the residents of neighborhoods where foreigners concentrated over the years.  
The relevant ministers: the Minister of Interior, Mr. Gideon Sa’ar, the Minister of National Infrastructure, Energy and Water Resources, Mr. Silvan Shalom, and the Minister of Finance, Mr. Yair Lapid, should ensure, each in the area under his authority, that the government ministries and Tel Aviv Municipality will have the necessary means to address the abovementioned problems. This task is wide in scope and complex, but in light of the severe plight of the south Tel Aviv residents and the danger to their well-being and health, it must be carried out without delay. The minister of Public Security must guarantee that the police station in south Tel Aviv (Sharet station) has the manpower to address the specific needs of south Tel Aviv neighborhoods and to improve the sense of personal safety of their residents.

2. This report raises, in several cases, a concern regarding the government's actions to ensure minimum means which will enable the weakest and most needy of the foreigners to live in society. There is reason to doubt whether these actions meet the provisions of Basic Law: Human Dignity and Liberty, as interpreted in rulings by the HCJ and international law. This doubt is raised specifically in regard to several aspects: the limited access given to certain groups of patients to medical health services, the implications of implementing the Ministry of Social Service's policy regarding certain groups of foreigners in need; and the ability of the weak and needy among the foreigners to be protected from hunger and have a minimum dignified existence.

The Minister of Interior and the Minister of Justice should prepare a draft resolution which, if implemented, will ensure a minimum dignified existence for all foreigners that cannot be deported, and ensure that it meets the provisions of the law. In addition, they must put the draft forward for discussion in the government in order to formulate a resolution and take the necessary actions for its implementation. In light of this audit report, these actions should be completed as soon as possible.

The Minister of Health and the Director General of the ministry, the Ministry of Justice, and the Ministry of Finance if needed, should ensure that health policy for foreigners who cannot be deported is prepared and to verify that it meets the requirements of the law and if necessary to allocate the means to implement it. If any obstacles to the performing of these actions are encountered, the Minister of Health should present them to the government until a solution is found.

The Minister of Social Services and the Director General of the ministry, the Ministry of Justice and the Ministry of Finance if need be, must make the necessary changes to the welfare policy in order to ensure that it will meet the requirements of the law regarding certain groups of foreigners (abused women who are not in shelters, those who were tortured on their way to Israel whose mental and physical condition was not evaluated and foreigners acknowledged as victims of trafficking in persons for whom no room in shelters was found) and if necessary provide reasonable means to implement the policy. The Ministry of Social Services must also formulate a plan of action derived from the policy (regarding actions dependent on other ministries' action see below). If any obstacles are encountered in the performance of these actions, the Minister of

Social Services should present them to the government, and raise them again until a solution is found.