

# Mail-Order Brides and Human Trafficking in Israel: Forced Marriage as a Form of Exploitation

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## **I. Introduction**

Human trafficking is one of humanity’s oldest crimes. It was practiced in ancient Rome, medieval Europe, and, of course,

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through the trans-Atlantic slave trade.<sup>1</sup> Human trafficking continues in the modern day throughout the world<sup>2</sup> despite being illegal under international law as of 2000 and domestically in Israel, my focus in this Note, since 2006.<sup>3</sup> Domestic laws targeting human trafficking, however, do not always correspond with international law, even when the relevant countries are signatories to the treaties laying out the international law on the issue.

In this Note, I discuss the emerging presence of mail-order brides among Israel's Ethiopian-Israeli community. Increasingly, Ethiopian-Israeli men arrange with non-Jewish Ethiopian families to marry non-Jewish Ethiopian women in Ethiopia, bring the women to Israel on spousal visas,<sup>4</sup> and abuse them—resulting in their increasing presence in domestic violence shelters in Israel.<sup>5</sup> While similar phenomena may well exist within other ethnic and

<sup>1</sup> Melissa De Witte, *Stanford Senior Applies Lessons From Ancient Rome to Address Human Trafficking Today*, STAN. NEWS (JUNE 10, 2020), <https://news.stanford.edu/2020/06/10/applying-lessons-ancient-rome-address-human-trafficking-today/> [<https://perma.cc/2CCX-GPHN>]; CHRISTOPHER PAOLELLA, HUMAN TRAFFICKING IN MEDIEVAL EUROPE: SLAVERY, SEXUAL EXPLOITATION, AND PROSTITUTION 41 (Amsterdam Univ. Press 2020); Karen Bravo, *The Role of the Transatlantic Slave Trade in Contemporary Anti-Human Trafficking Discourse*, 9 SEATTLE J. FOR SOC. JUST. 555, 555 (2011).

<sup>2</sup> See generally Ivy C. Lee & Mie Lewis, *Human Trafficking from a Legal Advocate's Perspective: History, Legal Framework and Current Anti-Trafficking Efforts*, 10 U. C. DAVIS J. INT'L L. & POL'Y 170 (2003).

<sup>3</sup> See generally Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, G.A. Res. 55/25 (Nov. 15, 2000) (formalizing human trafficking's illegal status under international law) [hereinafter Palermo Protocol]; Penal Code, 5737-1977, 6 LSI 377a, (Amendment 91, 2006) (Isr.).

<sup>4</sup> Israel does not see itself as a migration destination, and based on the way Israeli law governs immigration to the country, a spousal visa is one of relatively few paths for a non-Jewish individual to stay in Israel long term. Irit Tau Webber, *You Shall not Mistreat Her – A Decade since the Promulgation of the Family Unification Procedure for Migrant Victims of Domestic Violence*, HOTLINE FOR REFUGEES AND MIGRANTS & ISRAEL RELIGIOUS ACTION CENTER, 3, August 2018.

<sup>5</sup> Of course, cisgender women are not the only victim-survivors of human trafficking or gender-based violence. In this Note I will use the term “women,” however, because of its narrow focus. For a variety of reasons including the relatively small number of people affected by this phenomenon and cultural-linguistic norms, to my knowledge, none of the individuals subject to this trafficking phenomenon identify as anything other than cisgender women. Even applying the label “cisgender” to these women is imposing a western idea upon them as people with different cultural vocabulary to discuss gender identity than what we utilize in the United States.

national groups in Israel, in this Note I focus on Ethiopians because this group has been identified by multiple leading human rights organizations as a group of concern in such trafficking. I argue that these women are, in fact, human trafficking survivors, and that not only is the State of Israel complicit in their trafficking, but it also willfully disregards its obligations under international law to provide them the assistance to which they are rightfully entitled as trafficking survivors.

Pursuant to its commitments under international law, Israel aids formally recognized survivors of human trafficking.<sup>6</sup> When recognized, survivors receive a one-year work permit, housing in a rehabilitative shelter, and access to free physical and psychological healthcare.<sup>7</sup> The Ethiopian mail-order brides, however, cannot access these benefits because the State refuses to formally recognize them. This refusal hinges on the definition of human trafficking. In simplified terms, human trafficking is the transfer of a person for purposes of exploitation.<sup>8</sup> Israel claims that domestic violence is not exploitation.<sup>9</sup>

In part II, I explore the phenomenon of Ethiopian mail-order brides in Israel, along with Israel's framework for recognizing human trafficking survivors. In Part III I examine international law addressing human trafficking and forced marriage. In Part IV I analyze the situation in the context of both international and domestic Israeli law. Finally, I conclude that Israel is disregarding its obligations under international law by failing to recognize Ethiopian mail-order brides as trafficking survivors, and that it may even be complicit in their trafficking.

## II. Ethiopian Mail-Order Brides in Israel

### A. Facts

#### 1. History of the Ethiopian-Israeli Community

Little is known about the origins of Ethiopian Jewry,<sup>10</sup> but this

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<sup>6</sup> See *infra*, III.A.

<sup>7</sup> *Id.*

<sup>8</sup> See *infra*, III.B.

<sup>9</sup> See *infra*, IV.A.

<sup>10</sup> ANU Museum of the Jewish People, *Far from the Eye, Close to the Heart: The Fascinating History of the Beta Israel Community in Ethiopia* (2019), [https://www.anumuseum.org.il/blog-items/far-eye-close-heart-fascinating-history-beta-](https://www.anumuseum.org.il/blog-items/far-eye-close-heart-fascinating-history-beta)

community is well-documented throughout centuries of Ethiopian history and refer to themselves as the Beta Israel.<sup>11</sup> The unsavory combination of the Italian occupation of Ethiopia and the Italian-German alliance in the days of the Nazi regime led to Ethiopia becoming dangerous for Ethiopian Jews throughout the 1900s.<sup>12</sup> As Ethiopia dealt with civil war, famine, and other struggles, significant advocacy work by Ethiopian Jewish leaders led the Israeli government to assist Ethiopian Jews.<sup>13</sup> The first wave of Ethiopian Jewish immigration to Israel, or *aliyah*, took place in November 1984 during Operation Moses.<sup>14</sup> The Israeli government brought 8,000 Beta Israel community members to Israel in Operation Moses, followed by tens of thousands more in similar operations throughout the 1990s.<sup>15</sup> Soon after, other groups of Ethiopian Jews, who no longer practiced Judaism because their ancestors were pressured to convert to Christianity, but who retained knowledge of their heritage, were also brought to Israel.<sup>16</sup>

Upon arrival in Israel, Ethiopian Jews faced challenges ranging from significant cultural differences—including language, literacy, technology, and social customs—to overt racism.<sup>17</sup> This resulted in significant difficulty assimilating to Israeli culture.<sup>18</sup> In 2015, only

israel-community-ethiopia/ [https://perma.cc/65PR-5VUH] [hereinafter *History of Beta Israel*]; Stewart Weiss, *The Beta Israel: The Return of a Lost Tribe*, JERUSALEM POST (Dec. 16, 2021), <https://www.jpost.com/diaspora/the-beta-israel-the-return-of-a-lost-tribe-688940#:~:text=The%20history%20of%20Ethiopian%20Jewry,Jewish%20world%3A%20Miracle%20and%20Mission> [https://perma.cc/MP4C-8EEJ].

11 See *History of Beta Israel*, *supra* note 10; Weiss, *supra* note 10.

12 See *History of Beta Israel*, *supra* note 10.

13 See Jeremy Sharon, *The Saga of Ethiopian Aliyah*, JERUSALEM POST (Dec. 16, 2021), <https://www.jpost.com/israel-news/the-saga-of-ethiopian-aliyah-688939> [https://perma.cc/FX6Y-YKFS].

14 JEWISH VIRTUAL LIBR., AM.-ISRAELI COOP. ENTER., *Aliyah* (1998-2022), <https://www.jewishvirtuallibrary.org/ethiopia-virtual-jewish-tour#operation1> [https://perma.cc/53WH-CP52] (defining *aliyah* as “the immigration of Jews from the diaspora to the Land of Israel”); see Sharon, *supra* note 9.

15 Sharon, *supra* note 13.

16 *Id.*

17 ETHIOPIAN NAT’L PROJECT, *Ethiopian-Israelis* (2022), [https://www.enp.org.il/en/pages/Ethiopian\_Israelis/] [https://perma.cc/X8UY-AQ9B]; MIDDLE E. POL’Y COUNCIL, *Ethiopian Jews Confront Racism in Israel* (2015), <https://mepc.org/commentary/ethiopian-jews-confront-racism-israel> [https://perma.cc/KF85-KX2J].

18 Fekade Abebe, *The Souls of Israel’s Black Folk*, HAARETZ (June 10, 2021), <https://www.haaretz.com/opinion/2021-06-10/ty-article-opinion/.premium/the-souls-of->

13% of Ethiopian-Israeli teenagers said they felt solely Israeli—much lower than the 68% of Russian-Israeli teenagers, whose community made *aliyah* to Israel in large numbers around the same period.<sup>19</sup> Ethiopians are the Jewish population in Israel most likely to live below the poverty line, the least likely to graduate high school, and suffer the most over-policing.<sup>20</sup> As of 2009, 93% of men and 85% of women of Ethiopian-Israeli origin married fellow Ethiopian-Israelis.<sup>21</sup> By late 2020, there were approximately 159,500 Ethiopians living in Israel—88,500 born in Ethiopia and 71,000 born in Israel.<sup>22</sup>

## 2. *Mail-Order Brides*

Little has been published on Ethiopian mail-order brides in Israel up to this point. Therefore, in this Note, I incorporate information from the Hotline for Refugees and Migrants, an Israeli non-governmental organization (“NGO”) that works with asylum seekers and trafficking survivors, in addition to anecdotal evidence from the sole newspaper article written about the phenomenon.<sup>23</sup> Each year, some number of men in Israel’s Ethiopian-Israeli community fly to Ethiopia to marry non-Jewish women there.<sup>24</sup>

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israels-black-folk/0000017f-f028-df98-a5ff-f3ad0f080000 [https://perma.cc/7QTW-QPT5] (arguing that Israeli society cruelly forced Ethiopian-Israelis to assimilate but never truly accepted them).

19 Revital Blumenfeld, *Study: Children of Soviet Immigrants Fully Assimilated Into Israeli Society*, HAARETZ (Dec. 26, 2011), <https://www.haaretz.com/2011-12-26/ty-article/study-children-of-soviet-immigrants-fully-assimilated-into-israeli-society/0000017f-f0dd-dc28-a17f-fcff28990000> [https://perma.cc/YRP2-V5BS].

20 Jeremy Sharon, *The Concerns of the Ethiopian-Israeli Community - Has Progress Been Made?*, JERUSALEM POST (July 5, 2019), <https://www.jpost.com/opinion/social-affairs-an-uphill-battle-for-equality-594670> [https://perma.cc/AR8C-MCAU].

21 Ofri Ilany, *Survey: 90% of Ethiopian Israelis Resist Interracial Marriage*, HAARETZ (Nov. 16, 2009), <https://www.haaretz.com/2009-11-16/ty-article/survey-90-of-ethiopian-israelis-resist-interracial-marriage/0000017f-dc22-d3a5-af7f-feae5bac0000> [https://perma.cc/LDR8-6787].

22 CENT. BUREAU STATISTICS, *The Population of Ethiopian Origin in Israel: Selected Data Published on the Occasion of the Sigd Festival 2021* (2021), <https://www.cbs.gov.il/en/mediarelease/pages/2021/the-population-of-ethiopian-origin-in-israel-selected-data-on-the-occasion-of-the-sigd-festival-2021.aspx> [https://perma.cc/7GEG-286F] (Isr.).

23 I worked at the Hotline for Refugees and Migrants from 2018-2021, and knowledgeable former colleagues provided much of the factual information in these pages.

24 Interviews with Maysoon Kheir, Crisis Intervention Coordinator; Sigal Rozen, Public Policy Dir., and Alexandra Roth, Crisis Intervention Dir., Hotline for Refugees and

Typically, these women are not willing participants in the marriage, but young women under the full control of their parents who were bought and sold from their parents' home to the Israeli husband's home for an agreed-upon amount of money.<sup>25</sup> By all accounts, the women have no say in the matter of their marriage.<sup>26</sup> While Ethiopia's gender politics are outside the scope of this Note, two Ethiopian women activists wrote as recently as August 2022 that "Ethiopia is a highly patriarchal society," which may explain a key element of how these forced marriages come to pass.<sup>27</sup> After the marriage is complete, the men return to Israel and apply at the Population and Immigration Authority to bring their new spouses to the country.<sup>28</sup> This is usually a lengthy process, but at its conclusion, the women are invited to the Israeli embassy in Addis Ababa to receive their visas and meet their spouses in Israel.<sup>29</sup>

The Israeli Ministry of Interior did not respond to a freedom of information request about the number of Ethiopian women who arrive to Israel this way, so the full scope of the phenomenon and frequency of the mistreatment cannot be estimated. The Hotline for Refugees and Migrants, however, has identified and assisted at least six Ethiopian mail-order brides in the past five years.<sup>30</sup> The mistreatment these women face ranges from financial exploitation, to physical abuse, to sexual assault.<sup>31</sup> In every case, the husbands

Migrants, in Tel Aviv, Isr. (2020-2022); Bar Peleg, *'He Controlled Everything': Her Family Sold Her to a Life of Abuse in Israel. She's Not the Only One*, HAARETZ, Sept. 13, 2021, <https://www.haaretz.com/israel-news/2021-11-30/ty-article-magazine/.highlight/her-family-sold-her-to-a-life-of-abuse-in-israel-shes-not-the-only-one/0000017f-e3ae-d75c-a7ff-ffa5c70000> [<https://perma.cc/2S5E-CK8V>].

<sup>25</sup> Interviews with Mayssoon Kheir, Sigal Rozen, Public, and Alexandra Roth, in Tel Aviv, Isr. (2020-2022), *supra* note 24; Peleg, *supra* note 24.

<sup>26</sup> *Id.*

<sup>27</sup> Hilina Berhanu Degefa and Emebet Getachew, *Why Ethiopia Must Close Its Political Gender Gap*, THE WORLD TODAY (Aug. 3, 2022) <https://www.chathamhouse.org/publications/the-world-today/2022-08/why-ethiopia-must-close-its-political-gender-gap> [<https://perma.cc/2A53-C5CX>].

<sup>28</sup> Interviews with Mayssoon Kheir, Sigal Rozen, and Alexandra Roth, *supra* note 24.

<sup>29</sup> On September 7, 2022, I sent a Freedom of Information request to the Israeli Ministry of the Interior requesting information on how many Ethiopian women request spousal visas and enter Israel on those visas. On November 28, 2022, a representative responded requesting an extension. There has been no response since that time.

<sup>30</sup> Interviews with Mayssoon Kheir, Sigal Rozen, and Alexandra Roth, *supra* note 24; Peleg, *supra* note 24.

<sup>31</sup> *Id.*

have massive power over the wives due to their different legal statuses: the husbands are Israeli citizens, while the wives' continued status in the country is dependent on their husbands.<sup>32</sup> Officially, it takes at least four and a half years for a non-Jewish spouse to gain Israeli citizenship, but the procedure is rarely completed in less than a decade.<sup>33</sup> In the interim, spouses are required to renew their visas every year, which requires the Israeli spouse's participation.<sup>34</sup> This requirement allows husbands to condition their cooperation with the visa renewal procedure on exploitative demands of their wives. The women who flee their abusive husbands often end up in domestic violence shelters, which welcome any individual in the country, but can provide only temporary housing.<sup>35</sup> At shelters, women unable to safely return to their Israeli husbands are also in perilous legal status for having fled their abusers.<sup>36</sup> They may be candidates for immigration relief under the Domestic Violence Procedure for Migrant Victims of Domestic Violence, but this procedure is far more effective in theory than in practice.<sup>37</sup>

### 3. *Basics of Human Trafficking in Israel*

Under Israel's framework, individuals may receive formal recognition as trafficking survivors from the Israeli Police Anti-Trafficking Unit or the National Anti-Trafficking Unit.<sup>38</sup> Those formally recognized are entitled to a legal aid attorney, housing in a rehabilitative shelter, a one-year work permit, and access to physical and psychological healthcare.<sup>39</sup> These benefits last only one year,

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<sup>32</sup> Peleg, *supra* note 24.

<sup>33</sup> Webber, *supra* note 4; Interview with Sigal Rozen, in Tel Aviv, Isr. (Dec. 2022), *supra* note 24.

<sup>34</sup> Webber, *supra* note 29, at 3; Peleg, *supra* note 24.

<sup>35</sup> Interview with Sigal Rozen, in Tel Aviv, Isr. (Dec. 2022), *supra* note 24.

<sup>36</sup> Interviews with Maysoun Kheir, Sigal Rozen, and Alexandra Roth, *supra* note 21 (I asked a domestic violence shelter about the situation but received no response); Peleg, *supra* note 24.

<sup>37</sup> The Domestic Violence Procedure is notoriously lacking in transparency and predictability. Even where the procedure has resulted in positive outcomes for applicants, these outcomes require legal representation and years of appeals, and tend to be "permanent temporary" status that require judicial intervention. Webber, *supra* note 29 at 15-20.

<sup>38</sup> I expound the legal framework for trafficking recognition in the Background Law section below.

<sup>39</sup> Anat Guthmann, *Deserted: Sudanese Survivors of Torture in Sinai* 7-8, HOTLINE

after which the survivors no longer retain legal status and are arrested and deported if they do not leave voluntarily, so the “cost” to Israel of recognition is low.<sup>40</sup> Due to the manner in which Israel has drafted and interpreted its penal code, however, the domestic definition of human trafficking is narrow and much easier to apply to sex or labor trafficking situations than any other.<sup>41</sup> The closest accepted form of human trafficking that applies to these Ethiopian women would be sexual slavery, which requires detailed accounts of repeated rapes for formal acknowledgment.<sup>42</sup> Historically, Israel has been reticent to improve its anti-trafficking laws and procedures without significant incentives.<sup>43</sup>

### *B. Israel’s Response*

To date, five Ethiopian women who were brought to Israel as mail-order brides have received formal recognition as survivors of human trafficking.<sup>44</sup> All five were required to provide sexual and labor services to their husbands, who controlled every aspect of their lives and did not allow them to leave their homes.<sup>45</sup> A sixth woman requested immediate shelter from her husband and expressed willingness to participate in his prosecution once she felt

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FOR REFUGEES AND MIGRANTS (June 2019).

<sup>40</sup> Guthmann, *supra* note 39, at 7-8; Interview with Sigal Rozen, in Tel Aviv, Isr. (Dec. 2022), *supra* note 24.

<sup>41</sup> Israeli law defines human trafficking as “buying, selling, or engaging in a paid or unpaid transaction involving a person for the purpose of: organ harvesting, birth or adoption of a child, slavery, forced labor, prostitution, subjection to abomination, or sexual offenses.” See Penal Code, 5737-1977, 6 LSI 377a, (Amendment 91, 2006) (Isr.); Guthmann, *supra* note 39, at 7.

<sup>42</sup> Guthmann, *supra* note 39, at 8.

<sup>43</sup> It was not until 2001, when the United States’ annual TIP report ranked Israel among countries that do not make any effort to eradicate human trafficking, and were eligible to lose U.S. foreign aid, that Israel began to act seriously to prevent human trafficking and assist survivors. Sigal Rozen, *2000-2020: Two Decades of Fighting Human Trafficking of Migrants in Israel*, HOTLINE FOR REFUGEES AND MIGRANTS, 4 (November 2021).

<sup>44</sup> See *supra*, note 26.

<sup>45</sup> As previously noted, an Israeli FOIA request that would have shed light on the number of women in this situation received no substantive response. See *supra*, note 29. Application for Recognition as a Victim of Human Trafficking, Sarit Peretz, Superintendent, Anti-Trafficking Unit, Israel Police (Dec. 30, 2020); Interview with Sigal Rozen, Public Policy Dir., Hotline for Refugees and Migrants, in Tel Aviv, Isr. (Dec. 2022).



safe.<sup>46</sup> The police agreed and immediately dispatched a car without notifying her.<sup>47</sup> The unannounced arrival of the police vehicle without warning put the woman at risk of further violence if her husband understood that she had called law enforcement.<sup>48</sup> Not only was the police car dangerous, it did not transport the woman to a safe environment, but rather to a police station where she was questioned by a male officer and a male interpreter.<sup>49</sup> Finally, the officer in charge of trafficking status determinations at that time told the woman that while her husband was abusive, hers was a case of mere domestic violence and did not rise to the level of human trafficking.<sup>50</sup> This experience caused the woman to cut off communication with the NGO that had initially assisted her; unfortunately, her whereabouts and safety are not known at this time.<sup>51</sup>

In the case of a young Bedouin<sup>52</sup> woman sold into marriage by her father—twice—to much older men, Israel’s High Court of Justice found that depending on circumstances, it is possible that forced marriage could be a part of human trafficking.<sup>53</sup> The Court emphasized that the *purpose* of the marriage was key—if the marriage was truly intended to be a marriage, even if it turned abusive, that could not fit the framework for human trafficking.<sup>54</sup> If the marriage was intended to facilitate some form of abuse or slavery, it could be human trafficking.<sup>55</sup>

NGOs assisting Ethiopian women brought to Israel as mail-order brides do not submit the vast majority of the women they encounter for formal recognition as trafficking victims. The

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46 HOTLINE FOR REFUGEES AND MIGRANTS, TEL AVIV UNIV. REFUGEE RTS. CLINIC, ASS’N OF RAPE CRISIS CTRS. IN ISR., SERIOUS FAILURES IN THE MANAGEMENT OF INVESTIGATIONS OF VICTIMS OF HUMAN TRAFFICKING ¶ 32 (2020).

47 *Id.* ¶ 35.

48 *See id.*

49 *Id.* ¶ 36.

50 *Id.* ¶ 37.

51 *Id.* ¶ 38.

52 The Bedouin are an Arab minority group indigenous to Israel and much of the Middle East. Miriam Zucker, *The Role of the State in the Intra-Group Vulnerability of Women: Revisiting Debates About Multiculturalism Through the Case of Polygamy Among the Bedouins in Israel*, 40 COLUM. J. GENDER & L. 313, 323 (2020).

53 A. v. Minister of Justice, HCJ 1591/18 1, 16-17 (2020) (Isr.).

54 *Id.*

55 *Id.*

organizations know that unless the women were forced to work in the most dire of conditions or subjected to repeated rapes, they will not receive recognition as human trafficking survivors.<sup>56</sup> In these cases, they choose not to get the women's hopes up with fruitless applications that are doomed to fail.

### III. Israeli and International Law on Human Trafficking and Forced Marriage

#### A. *Israeli Law on Human Trafficking*

Human trafficking for prostitution was criminalized in Israel in 2000 and for various other purposes in 2006,<sup>57</sup> following advocacy by human rights organizations on the matter.<sup>58</sup> Israeli law defines human trafficking as buying, selling, or engaging in a paid or unpaid transaction involving a person for the purpose of: organ harvesting, birth or adoption of a child, slavery, forced labor, prostitution, subjection to abomination, or sexual offenses.<sup>59</sup> Of these, the relevant purposes for this Note are slavery and forced labor. Israeli law defines slavery as “holding a person in a situation in which the person is treated as a commodity and includes real control over his life or deprivation of his liberty to compel him to provide services or work, including sex.”<sup>60</sup> The bar for sexual slavery is high, however—individuals must have been raped repeatedly to meet it.<sup>61</sup> A small number of rapes, such as only two to three, does not suffice,

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<sup>56</sup> This sentence only refers to women who NGOs identify as potential trafficking survivors. In fact, the vast majority of trafficking survivors are never recognized at all because the majority of NGOs and government offices do not know the how to identify trafficking victims. The National Anti-Trafficking Unit conducts trainings for official bodies that may encounter trafficking survivors, including the Population and Immigration Authority, Adjudicators of the Detention Review Tribunal, and government social workers. Despite these trainings, however, each of the survivors identified by the Hotline for Refugees and Migrants had interacted with each of these bodies, and each in turn failed to identify them as potential trafficking survivors. Interviews with Maysoon Kheir, Crisis Intervention Coordinator; Sigal Rozen, Public Policy Dir., and Alexandra Roth, Crisis Intervention Dir., Hotline for Refugees and Migrants, in Tel Aviv, Isr. (2020-2022).

<sup>57</sup> § 377(a), Penal Law, 5737-1977, 2006 (Isr.).

<sup>58</sup> See Rozen, *supra* note 43, at 4.

<sup>59</sup> § 377(a), Penal Law, 5737-1977, 2006 (Isr.).

<sup>60</sup> Guthmann, *supra* note 39, at 7 (citing § 375(a), Penal Law, 5737-1977, 2006 (Isr.)); see generally § 375(a), Penal Law, 5737-1977, 2006 (Isr.) (the entire statute, as Guthmann only includes part of it).

<sup>61</sup> Guthmann, *supra* note 39, at 8.

and while there is no official rule, this has often been construed to mean repeated rapes in a short period, often by more than one perpetrator.<sup>62</sup> Israeli law defines forced labor as unlawfully forcing a person to work using force or other pressure, or the threat thereof.<sup>63</sup>

Individuals who have been human trafficked to Israel can be formally recognized as trafficking survivors if their cases are presented to the Israel Police Anti-Trafficking Unit or, as of 2022, the National Anti-Trafficking Unit within the Ministry of Justice.<sup>64</sup> Formally recognized individuals receive rehabilitative benefits including: access to a legal aid attorney, housing in a rehabilitative shelter, a one-year work permit, and access to physical and psychological healthcare.<sup>65</sup> However, the National Anti-Trafficking Unit does not easily grant recognition, leaving some trafficking survivors without access to rehabilitative resources.<sup>66</sup>

### B. International Law on Human Trafficking

Human trafficking is prohibited under international law at the level of *jus cogens*.<sup>67</sup> The prohibition is also enshrined in numerous international agreements.<sup>68</sup> The Protocol to Prevent, Suppress and

<sup>62</sup> Sigal Rozen, “I Never Told What Happened to Me in the Sinai”: Identifying Survivors of Torture, in *MOBILE AFRICA: HUMAN TRAFFICKING AND THE DIGITAL DIVIDE* 353, 357 (Mirjam Van Reisen et al. eds., 2019); Guthmann, *supra* note 39, at 8.

<sup>63</sup> Guthmann, *supra* note 39, at 7 (citing § 376, Penal Law, 5737-1977, 2006 (Isr.)); see generally § 376, Penal Law, 5737-1977, 2006 (Isr.) (the entire statute, as Guthmann only includes part of it).

<sup>64</sup> SIGAL ROZEN & SAM KUTTNER, HOTLINE FOR REFUGEES AND MIGRANTS, TRAFFICKING IN PERSONS IN ISRAEL: YEARLY MONITORING 2015 5 (April 2016); COORDINATION OF THE FIGHT AGAINST THE TRAFFICKING OF HUMAN, <https://www.gov.il/en/departments/general/fight-against-trafficking> [<https://perma.cc/N8AS-FF7J>] (last visited Sept. 11, 2023).

<sup>65</sup> Guthmann, *supra* note 39, at 7-8.

<sup>66</sup> In fact, the Anti-Trafficking Unit has a history of mistreating trafficking survivors, including in such a way as to adversely affect their own investigations into alleged traffickers. See HOTLINE FOR REFUGEES AND MIGRANTS *supra* note 45.

<sup>67</sup> See generally CORNELL L. SCH., LEGAL INFO. INST., [https://www.law.cornell.edu/wex/jus\\_cogens](https://www.law.cornell.edu/wex/jus_cogens) [<https://perma.cc/Z3QZ-R6YH>]; Stefan Kirchner & Vanessa Frese, *Slavery Under the European Convention on Human Rights and the Jus Cogens Prohibition of Human Trafficking*, 27 DENNING L.J. 130, 130 (2015); INT’L COMM. RED CROSS, INT’L HUMANITARIAN L. DATABASES, [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule94](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule94) [<https://perma.cc/WH57-TGST>].

<sup>68</sup> See, e.g., G.A. Res. 55/25, art. 3(a), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United

Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) is the major treaty governing human trafficking within international law.<sup>69</sup> Israel signed the Palermo Protocol in 2001 and ratified it in 2008.<sup>70</sup> The Palermo Protocol defines trafficking in persons as:

“[T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs[.]”<sup>71</sup>

Human trafficking encompasses three parts: “the act, the means, [and] the purpose.”<sup>72</sup> The Palermo Protocol’s purposes, and the obligations of all states which ratify the Protocol, are to prevent human trafficking, particularly of women and children, and to protect and assist the victims of human trafficking.<sup>73</sup>

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Nations Convention Against Transnational Organized Crime (Nov. 15, 2000) [hereinafter Palermo Protocol]; Council of Europe Convention on Action against Trafficking in Human Beings, 05/16/2005, CETS No. 197.

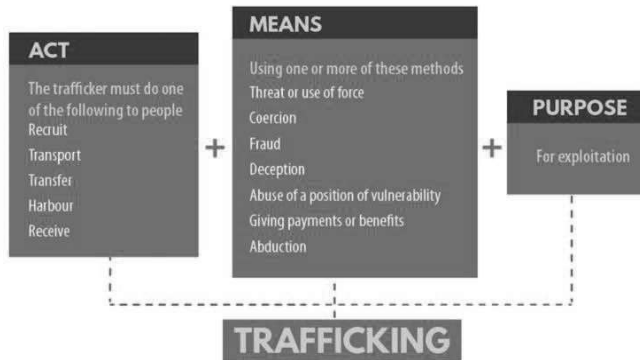
<sup>69</sup> See Palermo Protocol, *supra* note 68.

<sup>70</sup> UNITED NATIONS TREATY COLLECTION, Chapter XVIII Penal Matters 12.a Matters, [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-12-a&chapter=18](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18) [<https://perma.cc/7E7S-LAD9>].

<sup>71</sup> Palermo Protocol, *supra* note 68.

<sup>72</sup> UNITED NATIONS OFFICE ON DRUGS AND CRIME, The Crime, <https://www.unodc.org/unodc/en/human-trafficking/crime.html> [<https://perma.cc/W4LG-5NNC>] (last visited Sept. 11, 2023).

<sup>73</sup> Palermo Protocol, *supra* note 63, at art. 2(a)-(b).



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The prohibition on human trafficking continues in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Israel signed in 1980 and ratified in 1991.<sup>75</sup> Article 6 of the CEDAW commands that state parties “take all appropriate measures . . . to suppress all forms of traffic in women and exploitation . . . of women.”<sup>76</sup> The Office of the High Commissioner for Human Rights (OHCHR) refers to trafficked persons as victims of human rights violations and states that they are entitled to remedies.<sup>77</sup> The OHCHR also notes that trafficking is associated with practices including, but not limited to: “slavery, sexual exploitation, child labour, forced labour, debt bondage and forced marriage[.]”<sup>78</sup> These practices are further examples of the exploitation that constitutes the ‘purpose’ element of human trafficking. The Brussels Declaration on Preventing and Combating Trafficking in Human Beings gave more examples of conditions that constitute exploitation: “coercive sexual

74 UNITED NATIONS OFFICE ON DRUGS AND CRIME, *supra* note 72.

75 UN TREATY BODY DATABASE, Ratification Status for CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?Treaty=CEDAW&Lang=en) [<https://perma.cc/5ANQ-8Y8J>] (last visited Sept. 11, 2023).

76 G.A. Res. 34/180, Convention on the Elimination of All Forms of Discrimination Against Women art. 6, (Dec. 18, 1979) [hereinafter CEDAW].

77 OFF. OF THE HIGH COMM’R FOR HUMAN RTS., RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING 11-12 (2002).

78 OFF. OF THE HIGH COMM’R FOR HUMAN RTS., RECOMMENDED PRINCIPLES AND GUIDELINES ON HUMAN RIGHTS AND HUMAN TRAFFICKING COMMENTARY 3 (2010) [hereinafter Commentary on Recommended Principles].

exploitation, labour exploitation in conditions akin to slavery, exploitation in begging and juvenile delinquency as well as domestic servitude.<sup>79</sup>

The OCHCR continued its discussion of servitude that constitutes exploitation, stating that servitude is “generally seen to be broader than slavery, referring to ‘all conceivable forms of domination and degradation of human beings by human beings.’”<sup>80</sup>

There is also international case law on the issue. For example, *Rantsev v. Cyprus and Russia*, from the European Court of Human Rights, discussed trafficking in regard to a Russian woman, an alleged trafficking victim, who entered Cyprus on an “artiste” visa and ended up dead.<sup>81</sup> In this case, the chamber noted:

[T]rafficking in human beings, by its very nature and aim of exploitation, is based on the exercise of powers attaching to the right of ownership. It treats human beings as commodities to be bought and sold and put to forced labour, often for little or no payment, usually in the sex industry but also elsewhere . . . [T]rafficking threatens the human dignity and fundamental freedoms of its victims and cannot be considered compatible with a democratic society and the values expounded in the Convention.<sup>82</sup>

### C. *International Law on Violence Against Women and Forced Marriage*

Numerous international agreements and bodies prohibit forced marriage.<sup>83</sup> The OHCHR notes that certain forms may be servile.<sup>84</sup> It cites specific circumstances in which a woman is given in marriage for payment without the right to refuse, a woman’s husband or his family have the right to transfer her for payment, or a woman may be inherited to another person upon her husband’s

<sup>79</sup> European Conference on Preventing and Combating Trafficking in Human Beings, *Brussels Declaration on Preventing and Combating Trafficking in Human Beings* 3, 14981/02 (Nov. 29, 2002).

<sup>80</sup> Commentary on Recommended Principles, *supra* note 78, at 35.

<sup>81</sup> *Rantsev v. Cyprus and Russia*, no. 25965/04, ¶¶ 12-27, 82, Eur. Ct. H.R. (2010).

<sup>82</sup> *Id.* ¶¶ 280-81.

<sup>83</sup> *See infra*, III.C.

<sup>84</sup> Commentary on Recommended Principles, *supra* note 70, at 36 (citing Economic and Social Council Res. 608(XXI) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Apr. 30, 1956)).

death.<sup>85</sup> Similarly, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (Supplementary Convention on Slavery), which Israel ratified in October 1957, includes in its list of “Institutions and Practices Similar to Slavery” any practice in which a woman, without consent, is given in marriage based on payment to a family member, a woman’s husband has the right to transfer her to another person for money or other value, or a woman may be inherited by another upon her husband’s death.<sup>86</sup> The CEDAW dictates that state parties must act to eliminate marriage and family discrimination against women, including “[t]he same right freely to choose a spouse and to enter into marriage only with their free and full consent[.]”<sup>87</sup> The Universal Declaration of Human Rights states that “[m]arriage shall be entered into only with the free and full consent of the intending spouses[.]”<sup>88</sup>

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) aims to protect women against all forms of violence.<sup>89</sup> Israel was close to joining the Istanbul Convention, but ultimately did not do so largely because some Ministers feared that the Convention’s broad definition of violence against women would make Israel a migration destination for numerous women from countries where domestic violence is rampant.<sup>90</sup> The Convention defines violence against women and domestic violence:

“[V]iolence against women” is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic

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<sup>85</sup> *Id.*

<sup>86</sup> Economic and Social Council Res. 608(XXI) Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, section I, art. 1(c)(i)-(iii) (Apr. 30, 1956).

<sup>87</sup> CEDAW, *supra* note 76, at art. 16(b).

<sup>88</sup> G.A. Res 217A, Universal Declaration of Human Rights art. 16 (Dec. 10, 1948).

<sup>89</sup> Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence art. 1.1a, November 2014 (CETS No. 210) [hereinafter Istanbul Convention].

<sup>90</sup> Bar Peleg and Noa Shpigel, *Minister Stonewalls Israel Joining International Gender Treaty*, HAARETZ (May 18, 2022) <https://www.haaretz.com/israel-news/2022-05-18/ty-article/.premium/minister-stonewalls-israel-joining-international-gender-violence-treaty/00000180-e9ef-d189-af82-f9ffe680000> [https://perma.cc/TCB4-PJ5K].

harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;

“[D]omestic violence” shall mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim<sup>91</sup>

State parties to the Istanbul Convention are obligated to ensure that marriages undertaken by force may be dissolved without difficulties for the victim,<sup>92</sup> that forcing individuals into such a marriage is criminalized,<sup>93</sup> and that luring an individual to the territory of a state other than the one where she resides for the purpose of forcing her into marriage is criminalized.<sup>94</sup>

*Prosecutor v. Brima*, from the Special Court of Sierra Leone, adjudicated indictments of crimes against humanity and other serious violations of international humanitarian law including “other inhumane acts” for acts of forced marriage.<sup>95</sup> In a partly dissenting opinion, one Justice noted that in forced marriage, one party to the marriage is unable to consent, and therefore is forced into a conjugal relationship that undermines her right to self-determination.<sup>96</sup> The Justice also noted that forced marriage does not necessarily involve physical violence, but rather is “concerned primarily with the mental and moral suffering of the victim[s.]”<sup>97</sup> These considerations were the reason for that Justice’s holding that forced marriage constitutes a crime against humanity.<sup>98</sup>

Even if the prohibition on forced marriage itself does not rise to the level of customary international law, there has been significant movement toward the possibility of categorizing forced marriage

<sup>91</sup> Istanbul Convention, *supra* note 89, at art. 3.

<sup>92</sup> *Id.* at art. 32.

<sup>93</sup> *Id.* at art. 37(1).

<sup>94</sup> *Id.* at art. 37(2).

<sup>95</sup> *Prosecutor v. Brima*, SCSL-04-16-T, I. B. ¶¶ 4-6, Judgment, Special Court for Sierra Leone (June 20, 2007), <http://www.rscsl.org/Documents/Decisions/AFRC/613/SCSL-04-16-T-613s.pdf> [<https://perma.cc/VVT6-WETP>].

<sup>96</sup> *Id.* at Partly Dissenting Opinion of Justice Doherty on Count 7 (Sexual Slavery) and Count 8 (‘Forced Marriages’), ¶ 69.

<sup>97</sup> *Id.* ¶ 70.

<sup>98</sup> *Id.* ¶ 71.



within other categories of prohibited acts under international law, particularly as “other inhumane acts.”<sup>99</sup> Forced marriage has been found to be an “other inhumane act” by the Special Court for Sierra Leone, the Extraordinary Chambers of the Courts of Cambodia, and the International Criminal Court.<sup>100</sup> Other inhumane acts is a sub-category of crimes against humanity under the Rome Statute.<sup>101</sup> In a partially dissenting opinion, Justice Doherty of the Special Court for Sierra Leone even found that forced marriage constituted a crime against humanity.<sup>102</sup> By bypassing “other inhumane acts” and classifying forced marriage directly as a crime against humanity, Justice Doherty emphasized the severity of the crime of forced marriage and seemed to indicate that it could be a direct, enumerable crime against humanity as international law evolves on this topic.<sup>103</sup>

#### IV. Israel’s Failure to Meet International Standards on Human Trafficking

##### A. *Human Trafficking Under Israeli and International Law*

Israeli law defines human trafficking more narrowly than accepted international law. Both Israeli and international iterations contain relatively interchangeable “act” sections—“selling or buying a person or performing some other transaction with a person, whether or not for consideration”<sup>104</sup> in Israeli law and “the recruitment, transportation, transfer, harbouring or receipt of persons”<sup>105</sup> in international law. Israeli law does not contain a “means” section on trafficking in persons, but that is not at issue in the present inquiry. The discord arises in the “purpose” section.

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<sup>99</sup> Victoria May Kerr, *Should Forced Marriages be Categorised as ‘Sexual Slavery’ or ‘Other Inhumane Acts’ in International Criminal Law?*, 35(1) *Utrecht J. Int’l and European L.*, IV. 4.1.2. (Sept. 23, 2020) <https://utrechtjournal.org/articles/10.5334/ujiel.473/> [<https://perma.cc/M9MH-C453>]; *Prosecutor v. Ongwen*, No. ICC-02/04-01/15 A A2, International Criminal Court, II. 2. (2021).

<sup>100</sup> *Ongwen*, *supra* note 99, at II. 2.

<sup>101</sup> Rome Statute of the International Criminal Court, 2187 U.N.T.S. 90 (2002) art. 7(1)(k) [hereinafter Rome Statute].

<sup>102</sup> *Brima*, *supra* note 95, at Partly Dissenting Opinion of Justice Doherty on Count 7 (Sexual Slavery) and Count 8 (‘Forced Marriages’) ¶ 71.

<sup>103</sup> *Id.*

<sup>104</sup> Penal Code, 5737-1977, 6 LSI 377a, (Amendment 91, 2006) (Isr.).

<sup>105</sup> Palermo Protocol, Nov. 15, 2000, G.A. Res. 55/25, art. 3(a).

Israel's human trafficking law enumerates seven crimes which are the only potential purposes of human trafficking: (1) organ harvesting, (2) birth or adoption of a child, (3) slavery, (4) forced labor, (5) prostitution, (6) subjection to abomination, or (7) sexual offenses.<sup>106</sup> On the other hand, international law states that "exploitation" is the purpose of human trafficking.<sup>107</sup> The Palermo Protocol, which is the major international authority on human trafficking with 117 state signatories and 181 state parties<sup>108</sup> including Israel, lists five examples of actions that may constitute exploitation, but explicitly notes that those examples are the minimum of what exploitation includes.<sup>109</sup>

By limiting the purpose of human trafficking to seven crimes, Israel has created a domestic definition of an international crime that is far narrower than the broadly accepted definition under international law. Israel has signed and ratified the Palermo Protocol,<sup>110</sup> meaning that it has no standing upon which to limit its definition of human trafficking.<sup>111</sup> Even if Israel had not ratified the convention, the prohibition on human trafficking rises to the level of *jus cogens* under international law—meaning that no country may break the norm for any reason.<sup>112</sup> Israel's overly narrow definition of human trafficking violates international law. It is not enough for a country to have domestic laws criminalizing an act that is prohibited under international law; those laws must meet their international legal obligations. Anything less is a failure and abdication of duty.

In the context of Ethiopian mail-order brides, Israel avoids recognizing these women as survivors of human trafficking because, unless they are forced to labor or endure sexual slavery, the types of abuse they endure from their husbands rarely fall within Israel's seven enumerated purposes of human trafficking. This

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<sup>106</sup> Penal Code, 5737-1977, 6 LSI 377a, (Amendment 91, 2006) (Isr.).

<sup>107</sup> Palermo Protocol, *supra* note 105, at art. 3(a).

<sup>108</sup> United Nations Treaty Collection  
[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-12-a&chapter=18](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-a&chapter=18) [<https://perma.cc/3EKG-QGWA>] (last visited Sept. 8, 2023).

<sup>109</sup> Palermo Protocol, *supra* note 105, at art. 3(a).

<sup>110</sup> United Nations Treaty Collection, *supra* note 108.

<sup>111</sup> Vienna Convention on the Law of Treaties, art. 2(1)(b), art. 14(1), art. 16, May 23, 1969, 1155 U.N.T.S. 331.

<sup>112</sup> See CORNELL L. SCH., LEGAL INFO. INST., *supra* note 67.

constraint allows Israel to claim that these situations are regrettable instances of mere domestic violence, rather than international trafficking in persons.<sup>113</sup> This limited view of the crime, however, is a distortion of the international prohibition on human trafficking: act, means, and purpose. In determining that these women have not been trafficked, Israel ignores the act and limits the purpose.<sup>114</sup> Israel's decisions in these cases disregard the fact that the women are sold by their families to their Israeli husbands for marriage without their consent. Then, by limiting the purpose to seven enumerated crimes, Israel removes the possibility that women who are financially, physically, verbally, emotionally, and sexually abused could fall under the trafficking definition—all because they did not face the 'correct' form of abuse.

By failing to even consider the act portion of the trafficking crime, which is undeniably met in these women's cases, Israel rationalizes maintaining its illegal, restricted purpose definition. Starting the trafficking inquiry with a narrow purpose facilitates the state's goal of rejecting deserving applicants. Conversely, beginning the trafficking inquiry by acknowledging the act of buying or selling these applicants would leave Israel little room to reject the applications under a limited definition of purpose that violates international norms.

### *B. Forced Marriage as a Purpose of Human Trafficking*

Although forced marriage is not currently enumerated as a form of exploitation for the purpose of human trafficking, it fits within the category of exploitation under international law. Forced marriage is prohibited by, among other international treaties, the CEDAW, with its 99 state signatories and 189 state parties, and the Supplementary Convention on Slavery, with its 35 state signatories and 124 state parties. The widespread acceptance of these treaties, which specifically prohibit forced marriage, may indicate that the prohibition rises to the level of customary international law.<sup>115</sup>

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<sup>113</sup> See *Serious Failures in the Management of Investigations of Victims of Human Trafficking*, HOTLINE FOR REFUGEES AND MIGRANTS, TEL AVIV UNIVERSITY REFUGEE RIGHTS CLINIC, ASSOCIATION OF RAPE CRISIS CENTERS IN ISRAEL, June 2020.

<sup>114</sup> As noted previously, Israeli law does not consider means whatsoever, which is an oversight outside the scope of this Note.

<sup>115</sup> See Frances Nguyen, *Untangling Sex, Marriage, and Other Criminalities in Forced Marriage*, 6 GOETTINGEN J. INT'L L. 13, 39-40 (2014).

As noted above, forced marriage is not among the specifically enumerated examples of exploitation provided in the Palermo Protocol.<sup>116</sup> The examples, however, are just that: examples. The authors of the Palermo Protocol explicitly noted that other acts *could* constitute exploitation to the same extent as those listed in the Protocol.<sup>117</sup> Forced marriage is a crime which deprives the victim of consent and personhood. It reduces a living, breathing, thinking person to a good that may be exchanged for money based on the whims of its owner. Allowing a human being to be purchased by another is typically defined as slavery; calling the sale a “marriage” should not change that. These consequences all result from the act of the forced marriage itself, and do not begin to touch upon the fate of the victim once the forced marriage is completed. In the marriage, victims may be subject to financial, physical, emotional, verbal, psychological and sexual abuse. These horrific outcomes are enough to place forced marriage within the umbrella of exploitation required for human trafficking. In Israel, the High Court of Justice ruled that forced marriages which take place with the intention of somehow hurting or abusing the non-consenting spouse can fall within the purpose of human trafficking.<sup>118</sup> These marriages, which are initiated by the purchase of a human being and often immediately turn violent or abusive upon the Ethiopian wife’s arrival in Israel, meet the criteria set out by the High Court. This should be enough for Israel to meet its international obligations based solely on its own domestic law.<sup>119</sup>

Even if forced marriage did not constitute exploitation for the purpose of human trafficking, its categorization as a crime against humanity is certainly enough to place it within exploitation. Numerous international human rights tribunals have ruled that forced marriage constitutes other inhumane acts, a subset of crimes against humanity.<sup>120</sup> At least one judge in an international tribunal explicitly called forced marriage a crime against humanity.<sup>121</sup>

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116 Palermo Protocol, *supra* note 105, at art. 3(a).

117 *See id.* (“Exploitation shall include, at a minimum . . . .”)

118 *A. v. Minister of Justice*, HCJ 1591/18, 16-17 (2020) (Isr.).

119 *See supra*, IV.A.

120 *See infra*, IV.B.

121 Victoria May Kerr, *Should Forced Marriages be Categorised as ‘Sexual Slavery’ or ‘Other Inhumane Acts’ in International Criminal Law?*, 35(1) *Utrecht J. Int’l and European L.*, IV. 4.1.2. (Sept. 23, 2020) <https://utrechtjournal.org/articles/10.5334/ujiel.473/> [<https://perma.cc/M9MH-C453>];

Crimes against humanity are among the worst international crimes, akin to genocide and war crimes under the Rome Statute.<sup>122</sup> A crime which falls among the most horrific acts known to humankind must fall within what the drafters of and signatories to the Palermo Protocol consider exploitation for the purpose of human trafficking.

## V. Risks and Concluding Recommendations

Israel is obligated by the *jus cogens* prohibition on human trafficking, as well as its own voluntary signing and ratification of relevant international treaties, to prevent human trafficking and protect survivors within its borders. By creating a narrower domestic definition of exploitation than that accepted in international law, Israel shirks its duties and circumvents its legal and moral obligations. Allowing Israel to continue down this path sets a dangerous precedent for other Palermo Protocol member states to ignore human trafficking by creating their own definitions that are not in line with international norms. As forced marriage approaches recognition as a crime against humanity, and with an estimated 22 million people worldwide living in forced marriages in 2021,<sup>123</sup> the danger will not cease under the current enforcement of human trafficking laws. Further, if countries are allowed to shirk their international obligations by legislating narrower crimes than those defined internationally, this trend will certainly not stop at human trafficking. Israel's actions undermine respect for all international treaties.

The U.S. Department of State's annual Trafficking in Persons (TIP) report provides one avenue to incentivize Israel to step up its human trafficking enforcement. A Tier 3 designation in the TIP report puts countries at risk of losing American foreign aid,<sup>124</sup> which is a major impetus to reform. Israel maintained a Tier 1 designation for most of the past two decades but was recently downgraded to Tier 2 for 2021 and 2022, primarily due to the government's failure

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*Ongwen*, *supra* note 90, at II. 2; *Brima*, *supra* note 89, at Partly Dissenting Opinion of Justice Doherty on Count 7 (Sexual Slavery) and Count 8 ('Forced Marriages') ¶ 71.

<sup>122</sup> Rome Statute, *supra* note 101, at art. 6-8.

<sup>123</sup> *Global Estimates of Modern Slavery Forced Labour and Forced Marriage*, INT'L LAB. ORG., WALK FREE, and INT'L ORG. FOR MIGRATION 59 (Sept. 2022).

<sup>124</sup> U.S. DEPARTMENT OF STATE, 2023 TRAFFICKING IN PERSONS REPORT (2023), 72 [https://www.state.gov/wp-content/uploads/2023/09/Trafficking-in-Persons-Report-2023\\_Introduction-V3e.pdf](https://www.state.gov/wp-content/uploads/2023/09/Trafficking-in-Persons-Report-2023_Introduction-V3e.pdf) [<https://perma.cc/HCC2-7LA2>].

to humanely investigate instances of human trafficking and effectively identify survivors.<sup>125</sup> Placing Israel in Tier 3, however, would create a financial incentive that the country could not ignore. Israel continuing to offer minimal aid and protection to women who clearly fall under the international definition of trafficking without facing true consequences could prompt other countries to do the same. Specifically, Brazil, Denmark, Egypt, India, Italy, Mexico, New Zealand, Portugal, Thailand, and other countries given a Tier 2 designation in the 2022 TIP report, could be at risk of following Israel's lead.<sup>126</sup>

Beyond weakening the rule of international law, Israel's actions threaten marginalized populations. Respect for legal obligations is vital, but the reason laws such as the prohibition on human trafficking and crimes against humanity exist is to help real people. Israel's failures will do the most harm to vulnerable women who are sold by their families to strange men living in a foreign country where the women will be abused. These women need and deserve the rehabilitative benefits that come with formal recognition as trafficking survivors. They have been purchased and brought to Israel by citizens with the intention of inflicting violence and abuse on them, and it is Israel's moral and legal obligation to right that wrong.

While the Israeli citizen men who bring women to Israel as mail-order brides to abuse and control them are certainly committing trafficking, it may be the case that the Israeli government is also guilty of engaging in trafficking. Most domestic violence shelters in Israel are run by the state, or at minimum receive governmental grants that require activity reports.<sup>127</sup> The state has the means to know, better even than the NGOs that assist them, that Ethiopian

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<sup>125</sup> U.S. DEPARTMENT OF STATE, 2021 TRAFFICKING IN PERSONS REPORT: ISRAEL (2021) <https://www.state.gov/reports/2021-trafficking-in-persons-report/israel/> [<https://perma.cc/B9W2-CR9P>]; U.S. DEPARTMENT OF STATE, 2022 TRAFFICKING IN PERSONS REPORT: ISRAEL (2022) <https://www.state.gov/reports/2022-trafficking-in-persons-report/israel/> [<https://perma.cc/KD48-Y4HS>].

<sup>126</sup> U.S. DEPARTMENT OF STATE, 2022 TRAFFICKING IN PERSONS REPORT <https://www.state.gov/reports/2022-trafficking-in-persons-report/> [<https://perma.cc/S9KD-W2NG>].

<sup>127</sup> See Ariella Marsden, *Welfare Ministry Data Shows Increase in Reports of Domestic Violence*, JERUSALEM POST, Nov. 17, 2021 <https://www.jpost.com/israel-news/welfare-ministry-data-shows-increase-in-reports-of-domestic-violence-685159> [<https://perma.cc/4SPW-JW5H>]; Woman to Woman Jerusalem Shelter for Battered Women <https://en.jerusalemshelter.org.il/> [<https://perma.cc/QT5Q-ZTZK>].

women who enter the country on spousal visas frequently wind up in domestic violence shelters, and the circumstances that bring them there. Nevertheless, Israel continues to dole out spousal visas to non-Jewish women marrying Israeli citizens without any screening method to check for potential trafficking victims.<sup>128</sup> Actively assisting its citizens as they continue to participate in actions that constitute human trafficking under international law makes Israel at best complicit in, and at worst guilty of, human trafficking. A screening method to evaluate potential human trafficking victims among foreigners joining Israeli citizen spouses could result in fewer individuals being trafficked to and abused within Israel. Certainly, some of the beneficiaries will be Ethiopian, but there may also be beneficiaries from other countries where patterns of trafficking to Israel have not yet begun or been detected.

Israel's failure to join the Istanbul Convention is another alarming development, indicative of the tension between Israel's view of itself as a non-destination for migration and the state's international obligations. Former Interior Minister Ayelet Shaked stopped Israel from joining the Istanbul Convention specifically to prevent the country from expanding its obligations under the Refugee Convention and to foreign survivors of gender-based violence.<sup>129</sup> Her open letter on the matter cited an "unprecedented population in scope that could lay claim to refugee status or at least to protection from deportation."<sup>130</sup> This letter stands in stark contrast to the High Court of Justice's ruling, in a case regarding a Bedouin minor, that forced marriage could be a purpose of human trafficking.<sup>131</sup> The difference? The young Bedouin girl in *A. v. Minister of Justice* already resided in Israel, while the hordes of foreigners Minister Shaked fears do not. Israel's concerns with granting assistance to survivors of gender-based violence, including Ethiopian mail-order brides, stem from the country's fear of an influx of non-Jewish migration. The country's demographic concerns, however, cannot eclipse its moral and legal obligations.

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<sup>128</sup> An Israeli FOIA request regarding the numbers of these visas and entries received no substantive reply.

<sup>129</sup> Bar Peleg and Noa Shpigel, *Minister Stonewalls Israel Joining International Gender Treaty*, HAARETZ (May 18, 2022) <https://www.haaretz.com/israel-news/2022-05-18/ty-article/.premium/minister-stonewalls-israel-joining-international-gender-violence-treaty/00000180-e9ef-d189-af82-f9fffe680000> [<https://perma.cc/TCB4-PJ5K>].

<sup>130</sup> *Id.*

<sup>131</sup> See *A. v. Minister of Justice*, HCJ 1591/18, 16-17 (2020) (Isr.).

Israel must act now to recognize the Ethiopian bride-trafficking survivors already within its borders, expand its definition of human trafficking to be in line with both its international obligations and its own High Court ruling, and join the Istanbul Convention.