

# The Role of Non-Governmental Organizations in the Repatriation of Refugees

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Beginning in 2005, hundreds of Africans, mostly from Sudan and Eritrea, entered Israel across the Egyptian border. They typically paid smugglers in Egypt to take them to the border, where they were able to climb over the border fence. By 2009 about 22,000 non-Jewish individuals without authorization had crossed over into Israel, where the government labeled them "infiltrators" and "illegal work migrants." Of these, 1,250 were from South Sudan.<sup>1</sup> Most of these migrants had left Sudan during or before the Second Sudanese Civil War, fought between the Sudanese government and the South Sudanese People's Liberation Army (SPLA) from 1983 to 2005. By 2012 the number stood at between 700 and 1000. Private organizations provided services to facilitate what they called "voluntary repatriation" back to South Sudan. I evaluate here the moral obligations of these organizations. I will ask whether they were exploitative, negligent, or perhaps complicit in broader Israeli government policies that may have been unjust.

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## Introduction

In 2008 I founded a student group, Advocates for Asylum, and a website, [www.asylumseekers.org](http://www.asylumseekers.org), which sought to secure rights for refugees in Israel. In this capacity, I interviewed and engaged in informal conversations with South Sudanese refugees who resided in Tel Aviv, Jerusalem, Eilat, and Arad.

I learned from several of them that non-governmental organizations (NGOs) offered them assistance to return to South Sudan. It occurred to me that NGOs that helped South Sudanese to go back to a war-torn area did not necessarily serve the interest of these migrants, or, if they did, it was only to offer them a less horrible alternative to forced deportation from or imprisonment in Israel. I wondered whether a more humanitarian course might have included an attempt to legalize the presence of these refugees in Israel.

The Israeli government began a Refugee Status Determination (RSD) procedure for some asylum seekers in 2010, but not for the South Sudanese. According to the 1951 Convention for the Protection of Refugees, all signatory states, including Israel, must interview individuals and provide refugee status to those who can demonstrate that they have been persecuted because of their race, ethnicity, religion, or membership in a social group. South Sudanese, Sudanese, and Eritreans, however, were not allowed to access this procedure; they were given informal "group protection," which essentially consisted of a government decision prior to 2011 not to arrest or deport them but also not to give them legal status as

refugees or residents. Special visas were issued, to be renewed every three months.<sup>2</sup>

Under such "group protection," South Sudanese had few rights. They could not work legally in Israel, although the relevant ruling, Government Decision 2104,<sup>3</sup> was not enforced before 2012. In the southern town of Eilat, the municipal public schools refused admission to non-Jewish African asylum seekers, including all South Sudanese children, a policy that was reversed after the Sudanese left.<sup>4</sup> In addition, all South Sudanese residents throughout Israel were denied medical insurance,<sup>5</sup> and employers often paid them less than minimum wage.<sup>6</sup>

In 2005 the Sudanese government in the north and SPLA in southern Sudan signed a comprehensive peace agreement. In July 2011 South Sudan officially became an independent country, with Juba its provisional capital. In January 2012, half a year after independence, Israel's Population and Immigration Authority (PIBA) sent an open letter to South Sudanese in Israel telling them "Now that South Sudan has become an independent state, it is time for you to return to your homeland."<sup>7</sup>

The government had persuaded some members of the South Sudanese community to gather the names and addresses of the South Sudanese in Israel. Officials then came to their houses with "voluntary repatriation" forms to sign. All had either to repatriate "voluntarily" by April 1, 2013, with a 1,000 Euro stipend, or to face detention and deportation in April without any stipend.<sup>8</sup> South Sudanese were told they had three options:

1. They could be detained and possibly deported by force or
2. They could repatriate voluntarily with the assistance of an NGO called Operation Blessing International (OBI) if they had earlier expressed interest in repatriation or
3. They could repatriate voluntarily via a government-run project dubbed Operation Returning Home,<sup>9</sup> organized by civil servants who eventually headed a permanent Assisted Voluntary Return (AVR) unit.

A court rejected a petition to reverse this policy,<sup>10</sup> and nearly all South Sudanese, except for roughly fifty,<sup>11</sup> repatriated. Citizens of Cote d'Ivoire were also told they must repatriate in the summer of 2012 or face detention and forced deportation.<sup>12</sup>

In this article I will first describe some of the research I undertook in Israel, South Sudan, and Uganda over seven years, including what I learned about the repatriation. I shall then consider the possibility that by facilitating repatriation, OBI and a similar NGO exploited South Sudanese refugees in Israel or, alternatively, were negligent in failing to disclose accurate information about South Sudan to those considering repatriation. This will require some philosophical analysis of the concept of exploitation. I will then try to understand when and whether NGOs that facilitate repatriation are complicit in policies that may be unjust. In this way, I hope to contribute to the discussion of the moral obligations of NGOs in facilitating the repatriation of refugees.

### The Role of NGOs in Repatriation

In 2009 the International Christian Embassy (ICE) and OBI established a repatriation service for South Sudanese. This began three years before the government initiated its AVR program. South Sudan was and remains a territory of extreme poverty. Civil war erupted there late in 2013.

In 2010 while I was in Israel, NGO managers told me, in interviews I conducted with them, that repatriation had been a relative success. Returnees, I was told, were opening businesses, attending school, and rebuilding their country after return. In March and April 2012, while I was a graduate student at Oxford University's African Studies Centre, I went to South Sudan to conduct interviews with those who had repatriated. In Juba I interviewed ten returnees from Israel between the ages of thirty and forty-five. I then took a bus to Aweil in Northern Bahr Ghazal State, where I interviewed sixteen returnees between the ages of fifteen and fifty. I also spoke with a mother and her three children who had returned from Israel to the secondary town of Wau in South Sudan's Western Bahr Ghazal state.

Shortly after I left South Sudan in April 2012, almost all of the remaining 700 to 1,000 South Sudanese in Israel had repatriated to avoid the 2012 detention threat from PIBA. Many who returned in 2012 moved to nearby countries shortly after repatriation. Therefore, in April to May 2013 I travelled to Uganda, where I interviewed 31 returnee parents and children. On December 12th 2013 I travelled to South Sudan again, to interview those who repatriated in the summer of 2012 to avoid

government deportation, but who had stayed in South Sudan, rather than move to Uganda.

I arrived in Juba on December 13th, 2013, with a list of ten cell phone numbers of returnees. I checked into a modest hotel and managed to conduct two interviews on December 14th. The next day, on December 15th, fighting broke out in Juba among members of the presidential guard, whose base was close to my hotel. I called the cell phones of some of the returnees whom I planned to interview, and two told me they were not safe in their homes in Juba, because they were members of the Nuer tribe. They had fled to the Internally Displaced Persons (IDP) camp of the United Nations Mission in South Sudan. I stayed to bring food and medicine to these two returnees in IDP camps, and there I soon met dozens of other returnees from Israel. I decided to stay in South Sudan to help those who were in the camps and to pursue research on the moral ambiguities of NGO-assisted repatriation, which for me was no less urgent.

Because I was there independently, rather than funded by an external body, I could use my own discretion in deciding where to travel within South Sudan and when to leave. I learned two weeks into the war, through extensive interviews inside and outside the two IDP camps, that five returnees from Israel had been killed in the fighting. I told this to reporters I knew in Israel and in the U.S., who reported it, although they could not enter South Sudan because incoming flights has ceased.<sup>13</sup> On January 17th 2014 I returned to the UK, as I had teaching responsibilities during that semester. I hope to go back to South Sudan again within a year.

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I undertook the research I conducted to better understand the ethics of repatriation. While empirical studies address the role of NGOs in facilitating repatriation,<sup>14</sup> philosophical analysis tends to focus on state obligations,<sup>15</sup> rather than on the obligations of NGOs in dealing with often ghastly situations. Medical

ethicists, however, have discussed cases in which hospitals in the United States (arguably NGOs) have facilitated medical repatriations from the US, when migrants do not have medical insurance.<sup>16</sup> It has been argued that hospitals should not facilitate repatriation if those repatriating are leaving only because they fear deportation by US immigration authorities, as this would not be a voluntary repatriation.<sup>17</sup> This conclusion is problematic, as it is precisely the prospect of deportation that provides a possible justification for facilitating repatriation: asylum seekers and migrants may be likely to be deported regardless, and they may want to have a helping hand to leave beforehand. This was certainly the feeling of many returnees to South Sudan.

### **The Repatriation of South Sudanese in Israel Between 2009-2012**

South Sudan is the world's newest country. In addition to suffering from the civil war which continues as of this writing, it is one of the poorest countries in the world, with one of the worst public health records.<sup>18</sup> Both Juba and secondary towns, such as Aweil and Wau, face severe food insecurity.<sup>19</sup>

South Sudanese with whom I spoke in Israel in 2010 were understandably concerned about returning too soon to South Sudan, due the widespread poverty, crime, internal violence, and the risk of war with Sudan.<sup>20</sup> Nonetheless, some South Sudanese in Israel wanted to return even before independence. Eager to help, the ICE began a pilot program of Assisted Voluntary Return to South Sudan, including to Juba, Aweil, Wau, and other villages and secondary towns. OBI took over in 2010, providing a flight, a 1,000 Euro stipend, and training courses to those who wished to repatriate.<sup>21</sup> The Hebrew Immigrant Aid Society (HIAS) was hired by ICE and OBI to conduct interviews with those who were considering repatriation, to ensure they were well-informed and were not coerced by the Israeli government into leaving. The NGOs helped 900 South Sudanese and Sudanese repatriate between 2009 and 2012. Most South Sudanese had stayed in Israel up until 2012, when the government threatened to detain and deport them.

When I went to South Sudan in 2012 to speak to those whom the NGOs had helped to repatriate, I learned that many faced very different conditions than they had been led to expect. On the one hand, eight

out of the ten I interviewed in Juba in 2012 had employment or had started a business. On the other hand, only two returnees I interviewed in Aweil had a business<sup>22</sup>—the remainder were unemployed, and suffered from fear of hunger and lack of shelter. Nearly all lived in houses that would collapse in the rain, as they were made out of woven straw mats.<sup>23</sup>

The majority of returnees I met who had resettled in rural areas had no memory of rural South Sudan life. For example, a woman named Catherine left Abyei for Khartoum at age seven and then Khartoum for Cairo several years later. While in Israel, she learned about South Sudan through television programs on South Sudanese Television, produced by the Government of South Sudan. A member of OBI had told her that her children could learn English in South Sudan.<sup>24</sup> An OBI worker in Israel told me that all who returned would have access to schooling.<sup>25</sup> Another woman, Tareza, was born in 1990 in Mariel Bai near Aweil, but had lived in the capital of Sudan, Khartoum, since infancy until age fourteen, and then in Egypt for two years before crossing over into Israel. She assumed, before returning to South Sudan in April 2011, that it would be "fine because it's my country."<sup>26</sup> A meeting had been organized by OBI in Israel before repatriation. Tareza told me that at the meeting, an Israeli who had visited Juba promised that there was infrastructure, employment, healthcare, and schools in South Sudan. None of these were actually provided after repatriation.<sup>27</sup>

Some returnees recalled how, before they returned to South Sudan, they had been in contact with family and friends in their home villages who had promised to help. However, friends and family did not always provide returnees basic necessities or livelihoods as promised. Catherine, who returned to Wau, could not rely on her father-in-law's family network: "They only say hello on the road, and then move on."<sup>28</sup> Nor could returnees outside of Juba afford to travel to Juba to seek employment, with an overland round trip costing approximately \$260. Eliza, a mother of four in Aweil, could not afford to pay the school fees of 600 SSP (\$133) per year.<sup>29</sup> Furthermore, by the time they saw they could not find employment, deadlines for World Food Program assistance had passed.<sup>30</sup>

In April and May 2013 and in December 2013 to January 2014, I went to Uganda and South Sudan to speak with those who repatriated to avoid the 2012 deportation threat from PIBA. They told me they had received a lot of misinformation about what they

would find on their return. As far as I could judge, however, they were not misinformed to the same extent as those I spoke with who returned before the 2012 PIBA deportation threat. Those who returned in 2012, either via OBI or the government AVR unit, felt they had been physically forced to repatriate because of the threat of deportation. They did not feel that misinformation was what led them to choose to repatriate, because they did not think they had a choice.

In December 2012 and in June 2013 I also interviewed two families who have stayed in Israel, in hiding. They were not deported, although they remain without legal status. They have decided that life in Israel without legal status is unquestionably better than repatriation to South Sudan.<sup>31</sup> Indeed, the majority whom I interviewed in South Sudan agreed that they might have been better off if they had refused to repatriate.

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### Exploitation

A moral concern arises because it is hardly clear that the NGOs facilitated repatriation as a purely humanitarian intervention. ICE, which facilitated the first repatriation flight, defines itself as a "worldwide, non-profit ministry of Christian supporters of Israel... whose purpose is to remind her of God's promises to re-gather His scattered Jewish people to the Land."<sup>32</sup> Pat Robertson, vocally supportive of Israeli policy goals, founded OBI and now in his 80s remains on its board.<sup>33</sup>

Mikhail Valdman has argued that "one wrongly exploits another when and only when...one extracts excessive benefits from someone who cannot, or cannot reasonably, refuse one's offer."<sup>34</sup> Valdman provides the following example: Person A agrees to provide an antidote to B, a lone hiker, who has been bitten by a poisonous snake, in return for \$20,000, though it retails for \$10. In this example, Person A extracts an excessive benefit from B when viewed against the baseline of an ordinary market exchange, i.e., in view of what it costs A to give B the medicine. Note, as well, that both parties in an exploitative

exchange may view the exchange as beneficial compared to not entering the exchange at all, even if the exchange is worse for B compared to the type of exchange that would occur were B not in distress.

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I want to ask whether OBI exploited South Sudanese in facilitating their repatriation. Economists use the term "rent" to describe the amount of a person pays to acquire a good beyond its competitive market price or opportunity cost. If OBI had used the plight of the South Sudanese to extract "rent" or a high price from them, it could have exploited these refugees, in the way Person A exploited the hiker.

I agree with the literature that defines "excessive benefit" as any benefit that is above what the exploiter ought to have benefited, were she to fulfil her basic moral obligations or duties.<sup>35</sup> These moral obligations or duties are relevant baselines, and a benefit extracted because one has failed to fulfil these duties is exploitative. Some scholars, such as Hillel Steiner,<sup>36</sup> view exploitation as involving a benefit above what the exploiter would obtain, had the exploited not faced some rights violation, including a violation by some third party unrelated to the exploiter. In this case, there is also an implied moral baseline of what the exploiter ought to give the exploited. The baseline is the price the exploited ought to be charged or ought to accept, were the exploited not to have suffered a rights violation. South Sudanese suffered a rights violation when they were denied the right to apply for refugee status in Israel. Perhaps OBI exploited them, if OBI benefited from South Sudanese repatriating under such circumstances.

The "rent" – if I may use that economic term – OBI extracted in this situation did not involve any monetary payment from the refugees. One could argue, however, that the price OBI extracted from the refugees included the sacrifice of whatever legal rights they might have obtained had they remained in Israel. We can call this a price, and not merely an unrelated unfortunate consequence for South Sudanese, insofar as this sacrifice was essential for ICE and OBI to

promote their own (and Israel's) ideological and political goals. It is difficult or impossible, however, to quantify the sacrifice the South Sudanese made in leaving Israel because one can only speculate about how well they would have fared if (possibly with the help of NGOs) they had contested or resisted the deportation order.

The extraction is indirect, but it may be exploitation nonetheless. OBI gained donations in return for repatriating South Sudanese. OBI was not paid by the South Sudanese, but by external donors, whose support included funding for salaries and the travel of personnel. This funding may have been available only for a repatriation program and not for humanitarian purposes in general.

One may argue that OBI had a duty to provide humanitarian assistance to the South Sudanese migrants, perhaps because OBI implicitly promised to do so or because they had that role to fulfill. If so, OBI had a moral duty to treat South Sudanese as ends-in-themselves. Their welfare, however, may not have been the primary purpose of the repatriation. Rather the effort may have been motivated by the attempt to "re-gather His scattered Jewish people to the Land." The South Sudanese were not considered to be "His people." What is morally problematic is that OBI in response to its donor base may have focused more on repatriating as many South Sudanese as possible than on their serving their best interest.

On the other hand, perhaps the only way OBI could acquire any funds was by promising repatriation; if so the OBI director possibly could either offer repatriation or nothing at all. If repatriation is better than no charity at all, and if there was nothing else OBI could offer, perhaps OBI was not exploitative but simply did what it could in a dire situation.

I believe there is something else OBI could have offered. OBI could have appealed to donors to provide more funds for a safer return, even if donors wanted to earmark their donations for repatriation. How much more in security and assistance should OBI have offered to South Sudanese when facilitating their repatriation, to avoid charges of exploitation? One could opine that the NGOs, to avoid the charge of exploitation, ought to have given South Sudanese at a minimum the kind of assistance they would have accepted to repatriate, were they not facing forcible deportation or detention without an RSD process. Yet, how does one really know what South Sudanese would

have accepted, had the Israeli government set up a working RSD procedure?

One may be tempted to argue, for example, that OBI's offer of 1,000 Euro in "reintegration assistance" and some job training was not enough because, if South Sudanese were able to access residency and refugee status in Israel, they would have agreed to repatriate only with far more assistance. Yet, even if Israel had a working RSD process, perhaps South Sudanese would have been unable to prove they were refugees, and so would have accepted whatever OBI had to offer in excess of the government-sponsored program. The question whether the South Sudanese in Israel had a legal claim to refugee status under international law becomes a factor in determining the moral baseline of efforts to repatriate them.

Some rights should have been granted to them regardless of whether they gained refugee status, such as access to education for children and basic healthcare; other rights, however, are contingent on the consequences of having access to the right to an RSD process. To determine fully what OBI owed the South Sudanese to avoid being exploitative, one depends on a counterfactual chain of events that are impossible to calculate. Since the baseline legal right of the South Sudanese to refugee status in Israel is so uncertain, it may not be possible—it is certainly not easy—to determine the extent that OBI was exploitative in repatriating South Sudanese from Israel.

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### Misleading Information

There is another way South Sudanese may have been exploited. According to a number of philosophical arguments, exploitation can involve taking advantage of someone who is ignorant of key relevant facts.<sup>37</sup> One party may be vulnerable because they lack information, or their rights could be violated by the exploiter, if the exploiter has a duty to disclose certain information. One might ask, then, if OBI knew how

tough things were in South Sudan and thus misled the South Sudanese migrants. If OBI did not know, which is possible given the volatility there, was this intentional, or just negligent? How much diligence was due on the part of OBI given the limited choice available to the South Sudanese?

HIAS knew relatively little about South Sudan, even though it was hired by OBI to determine if those returning were fully informed about the conditions there. The little information on Sudan that was available in the HIAS training manual for employees was not particularly accurate or well-cited. For example, the manual states: "...although Sudan might not have the same services as we have in Israel, their family is a significant factor for positive mental health - indeed a strong pull factor for their return." The manual also states: "Many applicants might not be aware of the entire situation in Sudan. Instead, they might only know about the circumstances in their village. This is OK."<sup>38</sup>

OBI employees with whom I spoke stated that they called returnees on a monthly basis, but none of the returnees whom I interviewed in Aweil and Wau had been contacted. Rachel, the OBI employee I interviewed, explained to me that they had fallen behind in contacting returnees as promised.<sup>39</sup> She said that one challenge was that returnees often did not speak English or Hebrew, but only Arabic and one or two additional tribal languages. There was no native Arabic speaker on the OBI staff until 2012, making communication difficult.

In 2012, when migration authorities in Israel told South Sudanese that they would be imprisoned if they did not repatriate, OBI stopped accepting new applicants. However, those who had expressed any interest in repatriation before the prison and deportation threat could repatriate via OBI.<sup>40</sup> During the deportation, OBI also organized meetings within the South Sudanese community in Israel. At these meetings, the OBI director, the Israeli Ambassador to South Sudan, and a South Sudanese government employee claimed that it was safe to repatriate.<sup>41</sup>

In this context, one may ask whether the problems of misinformation, the lack of follow-up, and so forth, which I have described, represented 1) an intentional failure to disclose information, to encourage South Sudanese to repatriate or 2) an instance of negligence. It seems that intent is important for exploitation, but not for negligence.<sup>42</sup> It is not that negligence is any less serious. Negligence, like exploitation, can also benefit

a stronger party. Furthermore, the recipients of a negligent offer, just like the recipients of an exploitative offer, may face a demeaning choice.<sup>43</sup> Yet negligence does not involve intent, and so it is a distinct wrong, with a distinct policy solution. If OBI did not know what information on South Sudan it lacked, that is different than if it did.

It seems clear to me after talking with affected individuals that OBI, if it had hired a native Arab speaker to conduct phone calls to returnees, could have learned more about the conditions they found when they returned. About 20% of Israel's population are native Arabic speaking Palestinians with Israeli citizenship. Furthermore, OBI could have easily contacted those living in Aweil and Wau, were they to have contacted other NGOs in Israel, as I did, such as the Hotline for Migrant Workers and the Aid Organization for Refugees and Asylum Seekers. Rachel, the OBI employee I interviewed, expressed regret at OBI's failure to build a relationship with these organizations. When the OBI director told me "there is health insurance and free education in South Sudan,"<sup>44</sup> OBI may have genuinely thought it to be true. However, OBI could have obtained more accurate information if it had tried to do so.

Because it would have been relatively costless to provide more information, it may be that OBI did, in fact, foresee the consequences of its actions. Furthermore, OBI's failure to adequately inform the refugees of their prospects looks like exploitation rather than negligence insofar as it served an ulterior interest which was to repatriate the South Sudanese.

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### Complicity and the Policy Effect of the Repatriation Option

According to Chiara Lepora and Robert Goodin, for an NGO to be complicit in a wrong, such as an unjust government policy, its actions must be necessary and sufficient for that wrong to have occurred in the circumstances or even if the world were somewhat different. In other words, "the agent's actions *could have been* necessary and sufficient for the injustice if the world was *slightly* different."<sup>45</sup> In this case, one can argue that there was a significant injustice when Israel refused to initiate an RSD process for the South Sudanese. The claim that this was an injustice would be consistent with a range of views on immigration.<sup>46</sup> Regardless of whether South Sudanese were actually refugees, it seems that they had a right to have their claims heard.

To what extent were the NGOs complicit in the refusal of the government to hear the status claims of the South Sudanese? One may argue that the NGOs would have been complicit in this policy if 1) the policy would not have been implemented or would have been softened *but for* the work of the NGOs; and 2) the policy was *influenced* by the work of the NGOs.<sup>47</sup>

Neither of these conditions seems to hold. As I noted earlier, it was not only through OBI that individuals repatriated. The government had its own repatriation program, set up in 2012, the AVR Unit. Perhaps the government's AVR unit, which was less generous, played the bad cop to the OBI good cop. On one hand, one could argue that OBI humanely preempted the government repatriation, which would have occurred regardless of how OBI acted. On the other hand, pre-emption is hardly grounds for avoiding complicity, because if the world were slightly different — if the government did not have its own repatriation program — then OBI would have had a bigger impact. However, one may argue that the world would have to be *very* different indeed for the Israeli government to have had no AVR unit; it was and is an integral part of their immigration policy. If the success of voluntary repatriation did encourage the government not to initiate an RSD procedure, but if repatriation was possible without OBI, then OBI's actions were not necessary or sufficient for the decisions of the Israeli government, nor would they have been necessary or sufficient if the world were only *slightly* different.



This photograph, taken in an IDP camp in Juba by a photographer who wishes to be anonymous, shows two parents who lost a child to malaria shortly after their family returned to South Sudan from Israel. They fled to the IDP camp after armed men had entered their neighborhood and began to execute civilians who were members of the Nuer tribe. Faces are smudged to protect the identity and safety of the refugees. The photograph is used with permission.

Yet, perhaps the world without the government repatriation *would* only be slightly different. Indeed, the government runs its repatriation program with only two staff members, from a small office. As such, we can consider whether OBI was complicit by determining what would have happened without OBI, in a world slightly different from our own, where the government had no repatriation program. Furthermore, OBI really was the only NGO to provide repatriation up until 2012. It is possible to speculate that if a sizeable number of South Sudanese chose to stay and go to prison in Israel, or if they had to be physically deported, as it were, in chains, Israel might have initiated an RSD process or done something else to limit the damage to its image at home and abroad. The availability of repatriation—facilitated by NGOs—might have lessened pressure on Israel to initiate an RSD process for the South Sudanese. Israel avoided embarrassment because the South Sudanese repatriated voluntarily. Did this make it easier for Israel to threaten them with physical deportation or life imprisonment without an RSD process—threats it might have found difficult to carry out?

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Unfortunately, I am not able travel to a counterfactual world and conduct empirical research there. This may be a problem for all philosophers. I am unable to compare the real world, where both OBI and the AVR unit existed, to hypothetical worlds without the AVR unit and/or without OBI. Would the South Sudanese have been treated differently by the Israeli government if NGOs did not assist in repatriation? It is nearly impossible to get a purchase on this question. To try to do so, one can compare the experience of the South Sudanese refugees to the experience of other groups of refugees in Israel who did not have access to a repatriation process. In other words, one can look to see if there is a correlation between 1) the work of NGOs to facilitate repatriation and 2) the willingness of Israel to threaten to force repatriation and to refuse to initiate an RSD process. Plainly correlation is not

causation, but one can try to tease out the counterfactual and hypothetical this way.

Congolese asylum seekers in Israel, for example, were not threatened with imprisonment to anything like the same extent as the South Sudanese. No NGO-assisted repatriation process was offered to them. This example may be considered evidence in support of the claim that OBI's repatriation scheme causally contributed to the Israeli government's policy of detention and forced deportation without access to an RSD procedure. There is counter-evidence. Ivoirians *were* threatened with imprisonment in 2012 alongside South Sudanese and never had access to a repatriation scheme by a private charity, OBI or otherwise. More empirical research is needed, and it would help to make comparisons across countries and times.

Yet again, by acting as an independent NGO with humanitarian credentials, OBI might have abetted Israeli policy by providing a moral cover as well as an easier path for repatriation. Furthermore, the Israeli government was perhaps emboldened to administer its own repatriation, the AVR unit, precisely because it saw that many were repatriating through OBI; it saw that, since so many refugees did repatriate via OBI, it could get the others to leave. As such, perhaps OBI causally contributed because, in the absence of OBI repatriation, the government would have to take the moral onus of repatriation on itself. It was not just that OBI pre-empted the AVR unit, it is that OBI causally contributed to the government's overall policy. Therefore, it is possible that OBI did not merely pre-empt the AVR unit. OBI possibly caused the AVR unit to exist to begin with.

We are left with a unique chicken and egg dilemma, which Lepora and Goodin's definition of complicity cannot quite resolve. To wit: 1) The threat by the government to repatriate by force encouraged OBI to create its own more humane repatriation scheme, and 2) that more humane repatriation scheme encouraged the government to threaten to repatriate the South Sudanese by force.

### "We Had No Choice"

None of the South Sudanese I interviewed were actually deported. "Why did you go back to South Sudan?" I asked. "Because we needed to. The government told us to go back." I persisted, "So they forced you, physically, to go back?" In an IDP camp, one returnee answered "No," as he crouched under

bed sheets draped over twigs, his shelter since the war began. "If we hadn't gone back, the Israeli immigration would have detained us. So we signed a form, and agreed to go back."<sup>48</sup>

Why did nearly every South Sudanese national in Israel agree to repatriate by 2012 rather than face the threatened consequences? The co-operation of the South Sudanese in their repatriation is puzzling in part because many of them were not naive about what they would find when they returned. "Did you know or suspect what would happen to you when you decided to go back?" I asked those I met in South Sudan, both times I went, and I put this question to those living inside and outside the IDP camps after the civil war began. Many replied that they did, indeed, suspect what would happen to them.

What did happen to those who went back? By far the most widespread risk was malaria, and I heard rumours that over thirty individuals died from the disease among those who returned. This, based on the newest data on malaria in South Sudan,<sup>49</sup> seems likely. A lack of resources for housing and food was also widespread. When the civil war began, those who repatriated also faced ethnically-targeted killings, by Dinka militias against Nuer citizens, and Nuer militias against Dinka citizens, depending on the region.

One South Sudanese returnee I met, Gatluak, had been an active member of the Nuer community in Israel. Before return, a friend already in South Sudan warned him that, if he repatriated to South Sudan, his life might be at risk. While still in Israel, he hired a lawyer and applied for refugee status, and his application was rejected. He returned and, when the war started, Dinka militias came to his home in Juba, beat him up, and tried to arrest him, but he managed to flee to the IDP camp. "Why did you decide to go back, rather than go to detention in Israel?" I asked him. He was not the victim of misinformation. He responded that he was told by immigration authorities that he would be forcibly deported from detention if he did not consent to repatriation.<sup>50</sup> Others I spoke with simply feared imprisonment for life. I was always told, "We had no choice."



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*If better services to the refugees under the circumstances could not have been provided by NGOs, and if there was nothing they could do to change government policy, then perhaps they were not complicit, exploitative, or negligent.*

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## Conclusion

Why did Israel fail to initiate an RSD process for the South Sudanese? It seemed obligated under international law to do so, but that may not be the whole story. Given that things are very bad in South Sudan, could any South Sudanese claim refugee status if he or she managed to cross into Israel from Egypt? One may speculate that if the number of asylum seekers in Israel were few and not apt to increase, there may have been an RSD process to weigh the circumstances of each individual. My experience suggests that the growing number of asylum seekers who might be eligible for an RSD process was a concern for the Israeli government.

In 2007, before OBI set up its program, the majority of members of Israel's parliament signed a petition to end to the detention of Sudanese asylum seekers, to cease deportations at the border, and to support the implementation of an RSD procedure.<sup>51</sup> Another student and I spent a month in 2007 trying to reach and to persuade Benjamin Netanyahu, who was head of the opposition at the time, to sign the petition. In the final week of July, we found Mr. Netanyahu outside of the plenum in Israel's parliament, where he had just left for his lunch break. In lieu of a formal meeting, we walked with him to the cafeteria. After we spoke with him, he eventually agreed to sign the petition, but only after telling us that he did not support a single additional Sudanese entering the country.

Netanyahu later (as Prime Minister) supported detention, but this may have been because there were so many more asylum seekers in the country, and this was not related to OBI's repatriation program. It is conceivable that Israel took a tough position because it wanted to discourage more asylum seekers from crossing the border from Egypt. If the South Sudanese had been able to access an RSD process, more and more South Sudanese may have found their way into Israel and claimed refugee status there. I believe many

in Israel including Netanyahu were worried about this prospect. Even if Netanyahu's policy as Prime Minister was not just, it suggests that OBI's offer of repatriation was not the only contributing factor to the government policy of refusing to implement an RSD process and threatening South Sudanese with deportation and detention.

I cannot compare the real world in which Israel emptied itself of the South Sudanese nationals through various incentives to a hypothetical world in which these same South Sudanese refused those incentives or in which Israel initiated an RSD process. I know that the few South Sudanese who remained were not forcibly deported, but they may be left in peace because there are so few of them.

If better services to the refugees under the circumstances could not have been provided by NGOs, and if there was nothing they could do to change government policy, then perhaps they were not complicit, exploitative, or negligent. There is a great deal to be discussed and to know about the appropriate roles of NGOs in assisting voluntary repatriation as an alternative to forced repatriation or worse. One ought to try to understand what role they play, in terms of causality and responsibility. At the same time, one cannot mount a moral high horse in the matter; indeed, the moral high ground is often difficult to find except in a counterfactual world.

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## Notes:

<sup>1</sup>Nathan (2012), p. 13.

<sup>2</sup>Yaron et al. (2013).

<sup>3</sup>Nathan, op. Cit.

<sup>4</sup>Beer Sheva Administrative Court petition no. 29883-07-11 (Hebrew), HCJ 6312/10 (Hebrew).

<sup>5</sup>Protocol No. 64: "Special Committee for the Evaluation for the Problem of Foreign Workers" (Hebrew).

<sup>6</sup>Furst-Nichols and Jacobson (2011).

<sup>7</sup>For the text of the letter sent to South Sudanese, see PIBA "A Call for the people of South Sudan" (31/01/11) <http://www.piba.gov.il/SpokesmanshipMessages/Documents/2012-2192.pdf>.

<sup>8</sup>Ibid.

<sup>9</sup>Lijnders (2013).

<sup>10</sup>Administrative Petition (Jerusalem) 53765-03-12: ASSAF

vs. Ministry of Interior (7.6.12).

- <sup>11</sup>Interview with Rami Gudovitch, Tel Aviv 19 March 2013.
- <sup>12</sup>Administrative Petition (Jerusalem) 58161-01-12 Abu Bakuyoko vs. Ministry of Interior (24-6-12).
- <sup>13</sup>Frankel (2014).
- <sup>14</sup>Blitz et al. (2005); Webber (2011).
- <sup>15</sup>Long (2013); Bradley (2013).
- <sup>16</sup>Kuczewski (2012); Oakley and Sorell (2012). See also Wak and Schonfeld (2012); and (2012).
- <sup>17</sup>Cantwell (2012).
- <sup>18</sup>Rai (2012).
- <sup>19</sup>Tappis et al. (2013).
- <sup>20</sup>Interview with Gatwech, 20 July 2010, Jerusalem; Interview with George, 24 March 2009, Jerusalem; Interview with Yasmin 10 January 2008; interview with Gabriel, 10 October 2008.
- <sup>21</sup>Interview with OBI Director and AVR Project Manager, Jerusalem, 6 October 2010.
- <sup>22</sup>Interview with Nyabang, Aweil, 30 March 2012.
- <sup>23</sup>Personal observations, March-April 2012.
- <sup>24</sup>Interview with Catherine, Wau, 4 April 2012.
- <sup>25</sup>Interview with OBI Director and AVR Project Manager, 6 October 2010.
- <sup>26</sup>Interview with Tareza, Aweil, 26 March 2012.
- <sup>27</sup>Interview with Nyanath, Aweil, 25 March 2012.
- <sup>28</sup>Catherine op cit.
- <sup>29</sup>Interview with Eliza, Aweil, 25 March 2012.
- <sup>30</sup>Interview with Ajuk, Aweil, 31 March 2012.
- <sup>31</sup>Interview with Florence, Tel Aviv, 18 December 2012 and Interview with Gloria, Tel Aviv, 14 August 2013.
- <sup>32</sup><http://int.icej.org/>
- <sup>33</sup>OBI Annual Report, 2011. [http://www.ob.org/press\\_room/annual\\_report/OBI\\_FY11\\_AnnualReport.pdf](http://www.ob.org/press_room/annual_report/OBI_FY11_AnnualReport.pdf). See also McDonnell (2013).
- <sup>34</sup>Valdman (2009).
- <sup>35</sup>See Lifshitz (2008); Joseph Millum (2014); and Miller and Wertheimer (2009).
- <sup>36</sup>Steiner (2013).
- <sup>37</sup>See for the relation between "misrepresentation" and "exploitation" see, for example, McClurg (2014).
- <sup>38</sup>The director of HIAS - Israel provided me with their training manual, which is not available for public view.
- <sup>39</sup>Interview with Rachel, Tel Aviv, 3 January 2013.
- <sup>40</sup>Interview with Director of HIAS-Israel, Jerusalem, 11 December 2012.
- <sup>41</sup>Interview with David, Juba, January 10th 2014; Interview with Peter in UN IDP camp, Juba, 1 January 2014; Interview with Samuel, Juba, December 22 2013; Interview with Phillip, 26 December 2013, Juba; Interview with Tahani, Juba, 25 December 2013. Tahani described a meeting that took place with the OBI Director and the Israeli Ambassador to South Sudan at the time, Dan Shaham.
- <sup>42</sup>Ferguson (2013).
- <sup>43</sup>Jeremy Snyder (2013) "Exploitation and Demeaning Choices" *Politics, Philosophy, Economics* 12(4): pp. 345-360.
- <sup>44</sup>Interview with OBI Director, ibid.
- <sup>45</sup>Lepora and Goodin (2003).
- <sup>46</sup>For a range of views that are consistent with my argument on complicity, see Gibney (2004); Betts (2013) Lister (2013); Carens (2013); Sandelind (2014); and Kukathas (2012).
- <sup>47</sup>For discussion see Lewis (2000). But see Bigaj (2012).
- <sup>48</sup>Interview with Dan, Juba, 9 January 2014.
- <sup>49</sup>Margaret B Eyobo et al. (2014).
- <sup>50</sup>Interview with Gatluak, Juba, 21 December, 2013.
- <sup>51</sup>Willen (2010).

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