

“FOR YOU WERE STRANGERS”

MODERN SLAVERY AND TRAFFICKING IN HUMAN BEINGS IN ISRAEL

HOTLINE FOR MIGRANT WORKERS

FEBRUARY 2003

“You shall not wrong a stranger or oppress him, for you were strangers in the land of Egypt” – *Exodus 22:20*

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ABOUT THE HOTLINE FOR MIGRANT WORKERS

The Hotline for Migrant Workers is a non-partisan, non-profit organization striving to protect the rights of migrant workers and victims of trafficking in Israel. The Hotline works on several levels: direct intervention, advocacy, and humanitarian aid; legal action; and raising public awareness. The greater part of the Hotline's work is carried out by volunteers.

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INTRODUCTION

In September 2002 a new “Deportation Police” was set up to implement Prime Minister Sharon’s decision to expel 50,000 migrant workers from Israel by the end of 2003.¹ Unlimited amounts of money and manpower were allocated for what the government described as a “national mission”. The government’s argument for this policy was that deportation was necessary in order to make jobs available to unemployed Israelis. While this decision to carry out mass expulsions is unprecedented in scope, it reflects accurately what has long been Israel’s official policy towards migrant labor.

In this report, we aim to examine the authorities’ policies towards migrant workers, how they implement them, their effects on the rule of law, and their human toll. The report documents many violations of the rights of migrants as workers and as human beings, and exposes the methods by which they are committed and by whom. These violations are in no way exceptional instances. The report shows that migrant workers in Israel are the victims of a government policy which allows for – and indeed in some cases encourages – the trampling of the rights of migrant workers to such an extent as to result in modern slavery and trafficking in human beings.

Ever since the migration of workers became a widespread phenomenon about ten years ago, the subject has been widely discussed. Migrant workers are a focal point of concern – a focus of encounter and conflict between powerful economic and political interests. The media avidly follow the public debate on the issue, and the academic world tries to analyze its significance and implications. From the Israeli point of view, the migrant workers themselves are almost irrelevant to the issue, even though they are its subject. Silent and transparent, they are at the center of the debate but it is conducted over their heads. This report is an attempt, as far as possible, to include their viewpoint in the debate as well as to tell their story.

METHODOLOGY

This report is the first of its kind, in that it is based on first-hand information gathered at Ma’asiyahu Prison where migrant workers are detained until their deportation. It includes data collected from the records of the Administrative Tribunal before which the detained migrant workers appear, decisions of representatives of the Ministries of Labor and of the Interior, and personal interviews conducted by volunteers of the Hotline for Migrant Workers who visit the prison twice a week. Statistics given in this report relate to 1,085 migrant workers, who comprise one-third of the 3,250 migrants incarcerated at Ma’asiyahu Prison between November 8, 2001 (one day after Amendment No. 9 to the Law of Entry to Israel came into force) and August 30, 2002.² The report also refers to relevant laws, correspondence between the Hotline for Migrant Workers and the authorities, government reports and publications, and articles that have appeared in the Israeli press.

¹ The Deportation Police has been officially named “The Immigration Administration”. This was the first step towards establishment of an “Immigration Authority” which was recommended in the report of the Inter-Ministerial Committee on Foreign Workers headed by Yuval Rachlevski, published in July 2002 .

² The no. of prisoners is based on the detainee numbers given to migrant workers when they are arrested and imprisoned.

FROM WAGE LABOR TO UNFREE LABOR: MODERN SLAVERY AND TRAFFICKING IN HUMAN BEINGS IN ISRAEL

Ever since the Israeli government introduced non-Palestinian migrant workers to the local labor market more than a decade ago, there has been a continuous deterioration in their wages and working conditions. In recent years, there has been a sharp increase in instances of enslavement and trafficking in human beings. Its primary manifestations include debt bondage, restrictions and violations of basic human freedoms, and renting and selling of workers. The accomplices and beneficiaries of the trade in human beings include employers, employment agencies and smugglers. The vocabulary which has evolved in Hebrew, such as quotas, importing and supplying workers, disposal of workers, “portable” workers, and runaway workers truly reflects how human beings have been reduced to mere chattels.

Although the authorities are aware of this deterioration, they have failed to take adequate measures to prevent it. Furthermore, the continuous erosion of migrant workers’ rights is a direct consequence of the government’s own policies, in particular binding workers to their employers, failing to enforce laws applicable to employers which could have protected workers’ basic rights, and deporting “illegal” migrant workers. Each of these policies, and especially the combination of the three, has created fertile ground for the development of conditions of slavery and trafficking in human beings in Israel. The different facets and mechanisms of this heinous phenomenon are discussed in detail in the following chapter.

The Fraud: The promises made in countries of origin and the reality in Israel

Recruitment of workers abroad

Formally, an Israeli employer seeking migrant workers (known as “foreign workers”), is supposed to apply to the Employment Service of the Ministry of Labor for permits. Having been given a quota, he then contacts one of the many local employment agencies specializing in recruiting workers abroad. These agencies employ middlemen and employment agencies in the countries of origin. Before coming to Israel, most workers sign contracts guaranteeing them a monthly salary equivalent to at least the minimum wage defined by the law in Israel, approximately \$650 (it should be noted that the law applies to all workers and does not distinguish between citizens and non-citizens). Most contracts promise one or two years’ employment with a possibility of extension, and an opportunity for working overtime for extra pay.

Payment of fees by workers

Given the wages and working conditions promised in the contracts, workers are tempted to agree to demands made by their recruiters to pay for working in Israel. The fees range from \$2,000 to \$15,000, depending on the country of origin.³ Another practice, common especially among Romanian workers, is to require the worker to mortgage his house as a guarantee, used as a kind of “insurance” to prevent him from leaving his Israeli employer. These handsome fees are shared between recruiters abroad and Israeli employers and employment agencies, thus making profits from just recruiting the workers. It is important to

³ Chinese migrant workers pay the highest fees, workers from Thailand and the Philippines the lowest. Source: interviews with thousands of migrant workers in Ma’asiyahu Prison, conducted by Hotline for Migrant Workers volunteers. See also, “Workers or slaves? On the trafficking in foreign workers in Israel”, Kav La’Oved, August 2002.

note that Israeli employers and employment agencies are violating Israeli legislation, which specifically forbids collecting payment from workers in return for giving them work.⁴ In a discussion in the Knesset Committee for Foreign Workers, a representative of the Chinese Embassy in Israel, Wang Qiuniu, admitted that a Chinese worker who wants to work in Israel must pay a fee to government employment agencies in China: "... This can be 25% of their expected salary... According to the term of employment, paid in advance."⁵ Since these fees are enormous compared to the wages in the countries of origin, the workers are forced to take loans and mortgage their property in order to raise the money. The commitment to repay the loans is a heavy burden on the worker's back, and creates debt bondage. The hefty profits that employers and employment agencies make from the fees paid by workers create "an awkward situation where instead of having the farmer pay the employment agency (as is customary when recruiting services in other fields), the agencies not only collect fees from the workers, but even offer the farmer a per capita sum for the workers he imports through them. Agencies which did not initially follow this practice and failed to reward employers were forced to do so, and it pays off: the farmer gives them a power of attorney which enables them to bring in the number of workers allotted to him by the government's Employment Service, and they make profits from the money paid by the Thai worker in Bangkok."⁶

Importation of workers for the sole purpose of collecting fees paid by them for working in Israel

Due to the hefty fees migrant workers are required to pay for the work in Israel, many employers and middlemen have discovered that the business of recruiting the workers is highly profitable irrespective of the additional profits made from their labor. The culmination of this phenomenon is evident in the recruitment of workers for whom there is no need, in other words: importing the unemployed. On December 2001 the daily *Yediot Aharonot* published a shocking series of articles which found that "employment agencies have realized that it is far more profitable to recruit a Chinese worker and collect the fees he pays for the work than to actually employ him. Thus, despite the major depression in construction, these traders in human beings invest great efforts in convincing contractors to fraudulently apply for increased quotas of workers. They are promised thousands of dollars for each worker brought to Israel, even if he doesn't work for them a single day. Under these circumstances, is it surprising that contractors are constantly demanding more and more workers?"⁷

Ha'aretz newspaper also reported that "In recent months, many workers, mainly from China, who were legally brought to Israel, supposedly to work in construction, discovered after their arrival that they had been deceived and there was no work for them. As a result some of them are unemployed while others work illegally in order to repay the loans they took. The police are investigating how these contractors, who make more money from trading in workers than in construction, received permits from the Employment Service of the Ministry of Labor to bring in additional workers."⁸

⁴ Section 12 (i) and (ii), Law of Employment of Workers by Manpower Contractors, 1996.

⁵ Minutes #88 of the Knesset Committee for Foreign Workers, January 1, 2002.

⁶ Ruth Sinai, "Suppliers of Thai workers make a profit off the workers", *Ha'aretz*, May 22, 2002.

⁷ Oron Meiri et al, "You've got your own unemployed. What do you need us for?", "Seven Days" Weekend Supplement of *Yediot Aharonot*, December 7, 2001.

⁸ Ruth Sinai, "Middlemen will not be permitted to import foreign workers for agriculture and construction", *Ha'aretz*, January 15, 2002.

The following statements indicate that this phenomenon is well known to the Israeli authorities:

Ministry of the Interior: Batya Carmon, Head of the Visas and Foreign Workers Section at the Ministry of the Interior, was quoted in the above mentioned series of the daily *Yediot Aharonot* as having said “Chinese are the most lucrative business... It is a prosperous industry worth billions. It pays to bring them in with no intention of finding them employment. Unskilled workers are brought in. They’re not needed at all. [Employment agencies] call on contractors or farmers just so they’ll sign the forms for the application to the Employment Service, and happily pay them for it.”⁹

Ministry of Internal Security: Appearing before the Knesset Committee for Foreign Workers, Mr. Hagai Herzl, the Minister’s adviser on migrant workers, said: “We regard foreign workers in general, and especially the Chinese, as victims. We have testimonies of Chinese workers who paid as much as \$10,000 for working in Israel... Once here, it becomes our own problem, that is the “money industry” of importing workers but failing to employ them... I can tell you that a number of investigations are currently being conducted regarding connections between Israel and various bodies in China involved in trafficking in human beings and making money off the backs of workers who want to come to Israel.”¹⁰

Ministry of Labor: In another session of the Knesset Committee for Foreign Workers held on January 15, 2002, the Minister of Labor himself, Mr. Shlomo Benizri said: “It smells bad that someone abroad collects money...A terrible phenomenon has been revealed to me. These Chinese are forced to pay money in their country, ranging between \$2,000 and \$10,000. They arrive here after being promised work, and suddenly they are abandoned and find themselves unemployed. They are charged enormous interest rates in their countries of origin, sometimes as high as 10%. [The worker] has to work to repay the interest, otherwise he and his family will be in great danger.”¹¹

While charging workers fees is in breach of the law, and the authorities are clearly aware of its dimensions and severity, this phenomenon continues unchecked.

Working conditions

“It had become a problem for an Israeli citizen to get a job these days, for the simple reason that he has a competitor for \$500 and even less, who is able to work longer, [because] he has commitments. He took out loans in his country and has to repay them. **He has no choice. He is a kind of a slave for these employers.** That is why, and I’m sorry to say it, he can be exploited.” Minister of Labor, Mr. Shlomo Benizri.¹²

Confronted with the harsh realities in Israel, migrant workers realize that they have been deceived. Most workers’ wages remain well below the legal minimum, and they can only dream of the salaries promised to them in the contracts they signed in their countries of origin. The annual report published by the State Comptroller in 1999 provides official proof. It indicated that 68.5% of the foreign workers during the period between 1997 and mid 1998 earned less than the minimum wage, and added that “foreign workers constitute the most

⁹ Oron Meiri, Meron Rappaport, and Ofer Petersburg, “You’ve got your own unemployed. What do you need us for?”, “Seven Days” weekend supplement of *Yediot Aharonot*, December 7, 2001.

¹⁰ Minutes #88 of the Knesset Committee for Foreign Workers, January 1, 2002.

¹¹ Minutes of the Knesset Committee for Foreign Workers, January 15, 2002.

¹² *Ibid.* (Emphasis added.)

vulnerable sector in terms of violation of minimum wage laws.” It adds: “The exploitation of workers by employers is supported by the findings of another survey among migrant workers, conducted by the Workforce Planning Authority of the Ministry of Labor, which found that 70% of the interviewees earned less than the hourly minimum wage, 40% did not receive their salary on time, while others did not receive all of their wages.”¹³

These findings match statistics documented and analyzed by the Hotline for Migrant Workers from information provided by workers awaiting deportation in Ma’asiyahu Prison. 43% complained that their employers owed them money, and most of those who were paid on time received a salary substantially lower than the minimum wage.¹⁴ Many migrant workers do not receive pay slips from their employers, and those who do are often shocked to discover numerous deductions from their paltry salaries. For example, they are overcharged for the food expenses and poor living conditions provided for them. Some employers deduct sums for “insurance against running away”, in order to deter workers from leaving them and compensate themselves for possible damages.

Living conditions

“Someone collected us from the airport and took us to several employers, but no one wanted us. Finally, we were put in a container, previously used for chickens. Smears of blood and feathers were all around. This is where we lived... We worked for two weeks, but the employer did not register our working hours. He did not give us money for food.”¹⁵

Yu Xi Gui, a Chinese migrant worker, in a letter to the Hotline for Migrant Workers

In 2000, the Ministry of Labor issued a set of regulations, defining the minimal living conditions an employer must provide for workers. These regulations include housing with reasonable access, separate from the place of work, properly ventilated and heated sleeping quarters and bathroom facilities, a maximum of six persons per room, etc.¹⁶ These regulations are rarely respected, especially with regard to construction workers, who are commonly housed in the construction sites they are building.

For example, in May 2002, following an appeal filed by the Hotline for Migrant Workers, a court canceled the deportation order of 66 Chinese migrant workers who had lost their legal status through no fault of their own. The court ordered their return to work, for another contractor.¹⁷ 30 of these workers were sent by the authorities to work for the Peretz Boneh Ha’Negev company, in Ma’aleh Adumim near Jerusalem. The director of the Hotline for Migrant Workers visited them at the construction site, and found that the workers were being kept in sub-human conditions, with not even one of the above regulations being met.

The workers were housed in the basement of the building they were constructing, which could be entered only via a dangerously steep ramp. The 30 workers were crammed into three rooms without a single window or any other source of ventilation. The other rooms in the basement were occupied by migrant workers from Bulgaria, and were in a similar condition. The workers’ “dining room” was also in the basement. Wooden boards on bricks constituted

¹³ State Comptroller’s Report No. 49, 1998, p. 279.

¹⁴ The survey was conducted between November 2001 and August 2002, and is based on 1,085 interviews of migrant workers out of 3,250 deportees in that period.

¹⁵ The letter was handed to a Hotline volunteer on a visit in Ma’asiyahu Prison on March 6, 2002.

¹⁶ Section 7 (iv), Foreign Workers (Prohibition of Unlawful Employment and Assurance of Fair Conditions) Law (Suitable Residential Accommodation), 2000.

¹⁷ Administrative Appeal 500/02, He Zhan Tian and others v. the Minister of the Interior.

their dining table. Between them, the 30 Chinese workers and an unknown number of Bulgarian workers estimated at a few dozen had only three toilets, three sinks, and three showers at their disposal. The sole regulation with which this company did comply was the requirement concerning the ventilation of bathrooms, as none of the toilets had a door.¹⁸

Restrictions on workers' freedom

The employer's control over his migrant workers extends far beyond the sphere of work, and includes intrusion into and complete control over their personal lives. The employer determines where they will live, under what conditions, what to eat, whether or not they can have a mobile phone, etc. Additional restrictions limit workers' access to legal advice and medical care. In August 2002, three Chinese workers employed by the Malibu construction company through the Gal Meshi employment agency gave a volunteer of the Hotline for Migrant Workers a detailed description of their conditions. All the workers were living at an isolated caravan site in Rishon LeZion that was run like a prison. They were forbidden to leave the site during the week, even after the end of the workday. Inspections and "roll calls" (just like in prisons) were conducted three times a day in order to make sure no one escaped. Mobile phones were forbidden. Anyone caught with a mobile phone in his possession was immediately deported to China. Workers' passports were taken away and held by the company.

As mentioned above, most contracts signed in countries of origin promise the workers far better working and living conditions than actually turns out to be the case. But in some cases the contracts include harsh restrictions that deprive workers of their human rights and bind them absolutely to their employers. These contracts, which are especially common with regard to Chinese workers, constitute a violation of Israeli law. A contract obtained by the Hotline for Migrant Workers between a Chinese worker and a Chinese-Israeli employment agency reveals the following violations:

- The worker's pay is \$2.75 per hour – the minimum wage in Israel at the time was \$4/hour.
- The monthly salary will be paid between the 20th and the 25th of each month – two weeks later than permitted by Israeli law.
- The Israeli company will be permitted to deduct money as a guarantee to prevent the worker from leaving his job. This deduction, known as "insurance against running away", is illegal.
- The Israeli company retains its right to deport any worker whose conduct is found to be idle, immoral, or who decides to go on strike – a violation of the principle of freedom of association.
- The worker is forbidden to contact, have sexual relations with, or marry any local resident – a violation of the right to personal liberty.
- No religious practice is allowed, nor any involvement in a local political or cultural activity – a violation of freedom of religion, freedom of association, and the right to personal liberty.
- For the duration of the worker's employment, his passport will be held by the Israeli company – in violation of section 376 (i) of the Penal Law.

¹⁸ Section 7 (iv) , Foreign Workers (Prohibition of Unlawful Employment and Assurance of Fair Conditions) Law (Suitable Residential Accommodation), 2000.

- In the case of failure to comply with any of these restrictions, the worker will immediately be deported at his own expense and will not receive his salary.¹⁹

It is important to note that the Ministry of the Interior is also a party in dominating the private lives of migrant workers, by issuing orders forbidding them to have a family in Israel. A letter sent by Batya Carmon, Head of the Visas and Foreign Workers Section at the Ministry of the Interior, to all employment agencies of caregivers, specifically forbade them “to apply for the issuing of a new work permit or to extend the permit of a worker whose spouse or partner (even if unmarried) is in Israel”.²⁰

Confiscation of passports

On arrival in Israel, many migrant workers immediately have their passports taken from them and held by their employers or employment agencies, a practice commonly known as confiscation of passports. Between November 2001 and August 2002, the Hotline for Migrant Workers documented 225 cases of migrant workers whose passports were confiscated among deportees in Ma’asiyahu Prison. Confiscation of passports constitutes a serious violation of human rights and is specifically forbidden in Israeli law.²¹ It is tantamount to denying workers their identity and deprives them of many freedoms.

- Without a passport, a worker cannot leave the country when he wishes or when he has to due to illness or death of a relative. Many workers have contacted the Hotline and complained that their employers had extorted hundreds of dollars from them in return for their passports.
- Without passports, workers cannot prove to police officers that their visas are valid, and therefore face arrest. According to figures provided by the Israel Prisons Service itself, 15% of the workers who end up in jail are in fact legal, and were arrested by mistake.²²
- Without a passport, workers remain in detention until they are provided with new passports or travel documents issued by the consulates of their countries. This process extends their incarceration by weeks and sometimes even months.
- Without a passport, workers cannot open bank accounts: this forces many of them to hold large sums of money on their person, making them an easy prey for thieves.
- Without a passport, workers cannot sue for unpaid wages nor appeal to the National Insurance Institute (the equivalent of Social Security in the U.S.) if they are involved in a work-related accident.
- The absence of a passport creates difficulties in identifying victims of terror attacks. It also hampers freedom of movement, passage and entry into public places for which identifying documents are required.
- Confiscation of passports facilitates trafficking in workers since without a passport the worker has no way of knowing who his legal employer is and protesting his transfer to another employer in violation of the law.

¹⁹ A contract made between a Chinese worker, the Chinese Xia Men company, and the Israeli Linoi Trade and Employment Services, Inc. employment agency on August 26, 2001.

²⁰ The letter was sent on June 4, 2000.

²¹ Section 376 (i), Penal Law, 1977, amended in 1995.

²² A letter from the spokesperson of the Israel Prisons Service sent on August 8, 2002 in response to a request for information under the Freedom of Information Law states: “About 15% of the illegal aliens arriving in Ma’asiyahu Prison are released due to false arrests: that is to say, there was no reason for their arrest.”

Movement of workers onto the free market

Faced with this reality of sub-human living and working conditions, most legal migrant workers soon reach the conclusion that they are being exploited, and will never be able to save money, nor even repay the debts incurred in order to work in Israel. Many therefore choose to leave their legal employer and seek better paid work on the free market, thereby losing their legal status. An absurd situation exists in Israel whereby undocumented workers (commonly referred to as “illegal workers”) earn much more than legally employed workers. Even the authorities are aware of this anomaly. A Report of the Inter-Ministerial Committee on Foreign Workers acknowledges that “the working conditions of illegal workers are generally better than those of legal workers because they are not ‘bound’ to a particular employer”.²³ This absurdity is the result of the unique method of employment also known as the “binding policy” which is the topic of the next section.

By leaving the legal employer to whom he is bound, the worker not only increases his chances of earning more, but also frees himself of the terms of enslavement forced upon him. True, as an undocumented worker he loses his work permit and becomes liable to arrest and deportation, but he regains curtailed freedoms such as freedom of movement, the freedom to choose a place of residence, to choose his employer, and the freedom to control his own private life.

Binding migrant workers to their employers: modern, State-endorsed slavery

The “binding policy”

In 1977, an agreement was established between the Ministry of the Interior and the Employment Service of the Ministry of Labor whereby a work permit for a migrant worker would be granted only to work for a specific employer, whose name would be specified on the migrant worker’s passport.²⁴ The employee is permitted to work only for a specific employer, and if he is fired, becomes ill, resigns, finds other work, or is transferred to another place of employment, he is immediately and automatically viewed as having violated his conditions of employment and residence. He thereby becomes an “illegal worker” liable to arrest, imprisonment, and deportation. Under these circumstances, the migrant worker’s subjugation to his employer is total since the worker’s legal status within Israel is completely dependent upon his employer’s will. At the basis of the “binding policy” is the perception of the migrant as a mere working tool. A migrant worker is not perceived as an independent entity possessing rights, needs and desires. He has no right to choose his workplace, and the authorities permit him to switch employers only if he has first received a “letter of release” from his former employer. From the moment an employer no longer requires his services for any reason whatsoever, all he must do is call the police and declare that he is no longer interested in employing the worker. The worker is then likely to be deported. The “binding policy” is the most extreme and flagrant use of the exercise of proprietary authority and complies with international definitions of slavery: “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”²⁵

²³ Report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority, July 2002, p. 11.

²⁴ State Comptroller’s Report No. 49, 1998, p. 275.

²⁵ Article I (i), Slavery Convention, Geneva, 1926, ratified by the State of Israel on January 6, 1955. The amending protocol of 1953 was ratified in September 12, 1955.

The implications of this system are far-reaching: combined with the workers' lack of knowledge of the local language and of the rights to which they are entitled by law, the "binding policy" enables the employer to unilaterally define their working conditions, wages, even their personal lives. The employer's control over migrant workers, compared with their Israeli counterparts, is virtually unlimited. The migrant worker belongs to his employer, and this total control enables the employer to treat him as his own personal property, since he has the power, on a whim, to transform the worker from a legal employee into an illegal alien. A migrant worker who leaves his employer, even if the employer has violated rights to which he was entitled by law, loses his legal status and can expect to be arrested and deported. This "binding policy" traps the worker: if he tries to demand his rights within the workplace, he risks being fired, which will lead to the loss of his legal status and to deportation; whereas if he leaves his employer, he loses his legal status and once again runs the risk of deportation. In other words, in order to protect his legal status, a migrant worker must submit to any conditions his employer sets, even if they are restrictive, dangerous, or illegal.²⁶

The State Comptroller warned about this as long ago as 1998: "The gap between the cost of employing a foreign worker and that of an Israeli is to a large extent determined by the stipulation in the foreign worker's permit limiting it to a certain employer. A foreign worker with a permit who leaves his employer and works for another thereby becomes an illegal worker liable to deportation, even if his permit has not expired. **This fact increases the foreign worker's dependency on his employer.**"²⁷ Three Chinese workers told a volunteer of the Hotline for Migrant Workers how they made a point of staying with their employer even when they found out that their salary would be only NIS 80 (around \$U.S. 16) for an 11 hour work day, because it was important to them to maintain their legal status.²⁸ Furthermore, workers who leave their legal employers are referred to as "runaways" or "fugitives" by the employers and even by the authorities themselves. This is another reflection of the view that migrant workers are the property of their employers. The authorities view with concern the phenomenon of workers "running away" from their employers and view this, rather than their exploitation and enslavement, as a grave problem that must be dealt with. On November 20, 2001, the Knesset Committee for Foreign Workers held a discussion entitled "How the handicapped and people aided by caregivers cope with the phenomenon of runaway foreign workers." A sign posted at the Ministry of the Interior office at Ben-Gurion Airport details the hours during which employers are invited to report "runaways".

S., a citizen of Sri Lanka, personally experienced the effects of this policy. She came to Israel via an employment agency in 1999 in order to work as a caregiver. She was not permitted to leave her employer's home, even when she asked permission to purchase food to her taste. After one and a half months, she learned that her salary had not been sent to her family in breach of promises made to her, and therefore decided to leave her employer's home. Soon after her departure, her employer arranged a meeting with her, and then took her to the Ministry of Labor, where she complained that S. was a "runaway." S. was arrested on the spot for the crime of being in the country unlawfully and incarcerated at Neve Tirza Prison. Only following the involvement of the Hotline for Migrant Workers and exceptionally was S. released.

²⁶ See also: "The binding of migrant workers to their employers: A policy and its consequences", information sheet, Kav La'Oved, July 2002.

²⁷ State Comptroller's Report No. 49, 1998, p. 279. Emphasis added.

²⁸ Testimony submitted to the Hotline for Migrant Workers on March 26, 2002 by Chu Chan Han, Hu Beijun, and Lin Han Lun.

The distortions caused by the “binding policy” have gone as far as extreme instances in which employers take advantage of wrongful arrests of their employees (working under permit) in order to dispose of them and bring in new ones, declaring upon their arrest that they are “runaways”. In this way they avoid paying the employees’ last paychecks and can now import a new employee who is likely to pay a hefty commission. The authorities are always more likely to believe the employer’s version of the story than the employee’s. This was the case, for example, in the November 2000 arrest of a construction worker of the Bassat company in Nazareth. The worker claimed he had not left his legal employer and that his arrest was wrongful. In the course of the proceedings, Advocate Bavly-Lary, who was serving as the Review Authority under the Ministry of the Interior, called the representative of the company, who confirmed that the worker had not, in fact, left his workplace. However, a moment later the representative declared that he no longer needed the worker and that he could be deported. A letter of complaint was sent by the Hotline for Migrant Workers to the Employment Service (of the Ministry of Labor) demanding that the company be denied any further permits to employ migrant workers following their declaration that they did not require the arrested worker. No answer was received to the letter.²⁹

To a certain extent the binding policy is two-way in the sense that employers, too, are entitled to employ only those workers brought to Israel through the permits issued to them by the Employment Service. In order to replace one authorized permitted worker with another, the employer must either “transfer” the worker to another employer who possesses an unfilled permit, or send the worker out of the country. The “binding policy” encourages employers to place harsh restrictions on workers’ freedom, to deport them by force, and in extreme cases even to employ man-hunters to hunt down “runaways.” An article published in the *Yediot Aharonot* daily newspaper on July 2, 1999 detailed these practices: “The methods of the man-hunters are as follows: abduction, incarceration, interrogation, beatings, humiliation, and starvation. In some cases the treatment ends in workers being taken, under threats, to the airport and in their deportation ... in full view of policemen and security men. Fear guarantees the success of this ‘black deportation’.”³⁰

Oferim Recompensa מוצע פרס
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לכל המוסר מידע מדוייק על מקום הימצאם של העובדים הללו אשר ברחו ממעסיקם החוקי. למסירת מידע בעברית : 052-625660 / 053-937997
Dorim informatii si indrumare sa gasim muncitori romani care au fugit de la patronii lor legali.
Pentru informatii in limba romana la telefon 052-625660

An ad published in a Romanian newspaper issued in Israel: “A reward as high as \$3,000 is offered to anyone who provides precise information regarding the whereabouts of these workers who have run away from their legal employer.”

In addition to man hunts, the “binding policy” encourages debt bondage. Workers from Romania, for example, are required to mortgage their homes as insurance that they will not “run away” from their legal employers in Israel. The story of M. illustrates the ramifications

²⁹ The letter was sent on November 11, 2000.

³⁰ Shlomo Abramovitch, “They can be kidnapped, imprisoned, robbed,” Weekend Supplement, *Yediot Aharonot*, July 2, 1999.

of the binding system for migrant workers: “In Romania, I paid \$2,000 and I arrived in Israel at the end of 2001. My employer took me to Moshav Zohar, where I worked for one and a half months. He took away my passport and gave me a photocopy of the first page and of the visa itself. The visa indicated it was valid for only one month. When I began to work, I received NIS 200 (around \$40) after which I was paid NIS 50 (around \$10) per week. After one and a half months I demanded that my salary be paid to me, and I was given \$100. The employer refused to pay any more. I realized that my visa was no longer valid, and decided to look for other work at a better salary, and for a while I worked in various jobs for reasonable wages. However, I was worried, since I had mortgaged my home in Romania to ensure I would not leave my legal employer in Israel. Thus, after some time I returned to my original employer and asked him to employ me again, only this time under legal conditions and for a reasonable salary. He was very angry, pulled out a gun, pointed it at my head, and threatening to shoot, forced me into a car and took me to people who beat me up. Then he forced me into a container and locked me in. Fortunately I still had my mobile phone with me and I called a friend of mine. The friend contacted the police and policemen released me. They put cuffs on my hands and feet and took me to prison. The employer came and made a statement to the police. I don’t understand why I’m in prison and he isn’t.”³¹

Trafficking in workers

“In the current situation, without an overall policy, there is trafficking in workers, and this is an understatement. Today, as a result of the market situation, workers are bought and sold. Employment agencies and others act as go-betweens, and I estimate, conservatively, and I’m sure the folks at the Ministry of Finance will corroborate this, that we are talking about more than three billion NIS a year...”

*Efraim Cohen, head of the Foreign Workers Administrative Body of the Ministry of Labor*³²

“The system of rationing permits for employing migrant workers .. combined with the economic interests of employment agencies in bringing in more migrant workers into the country ... has lead to corruption, bribery and even trafficking in workers.”

*Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority*³³

Most migrant workers do not know who their legal employer is. The employer’s name is generally clearly marked in their passports, but the passports are nearly always confiscated. The only person whom they know is the representative of the employment agency that brought them to Israel. The workers are transferred from one employer to another and from one place of work to another, according to the economic needs of the Israeli employers and the employment agency. The authorities have euphemistically called this phenomenon of "moving" "worker mobilization" (in the sense of "making workers mobile"), but specifically what is actually taking place is without doubt the buying and selling of workers. Although such “mobilization” is against the law, it is the workers themselves who pay the price.

How is the trade in workers conducted? Employers approach the Employment Service and try to acquire as many work permits as possible for importing migrant workers. The permits

³¹ Translation of an interview conducted in Ma’asiyahu Prison by a volunteer of the Hotline for Migrant Workers with M. on April 30, 2002.

³² Minutes #61 of the Knesset Committee for Foreign Workers, May 15, 2001.

³³ Report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority, July 2002, p. 16.

are then handed over to an employment agency that recruits the workers abroad and brings them into the country. The employer takes the necessary number of workers from the employment agency, and the remaining workers are “sold” by the employment agency to another company or “rented” on a daily basis until the legal employer requires their labor. As one of the major Israeli contractors explained to the *Ha'aretz* newspaper: “Employment agencies call us and say ‘you have been allotted 100 permits but if you don’t need all of them we will make use of them’. If I were to say ‘OK’, they would take the permits and sell them to another contractor.”³⁴ The trade in work permits and in workers takes place entirely in the open. In August 2002, for example, an employment agency sent notices to contracting companies asking them for excess permits so that they could sell them to another client of theirs. The request made no effort to disguise its purpose: “We require permits for one of our customers,” they wrote unambiguously.³⁵

This practice of placing workers according to the needs of the market theoretically complies with the rules of the free market and would have been justifiable, were it not indisputably illegal, and were it not such that those who end up paying the price are the workers themselves. For it is the workers, employed by someone other than the legal employer whose name is marked on their passports, who violate the law – often through no knowledge or fault of their own. They are then at risk of losing their legal status, of being arrested, and of being deported should the Ministry of Labor raid their workplace. Employers, on the other hand, have no reason to worry: if one of their workers is arrested, they will be free to bring in a new worker to replace him. Any fine imposed is offset by the unpaid last salary or salaries of the worker arrested and deported. The fact that workers violate their contractual agreements through no fault or knowledge of their own is of no consequence to the authorities, and they are deported nevertheless.

Precisely such a case came to court in a petition submitted by the Hotline for Migrant Workers in May 2002. The petition tells the story of D.O., a Romanian worker, who entered Israel legally to work in the construction industry. After several days working for his legal employer, he was “mobilized” to another company. This act of “mobilization” turned him – without his knowledge and against his wishes – into an illegal worker. Shortly afterwards, he was arrested and incarcerated in Ma’asiyahu Prison, where he was detained for six months. The two employers involved admitted to the authorities that they had “bought” and “sold” the worker without his knowledge, and requested his release, but the Ministry of the Interior refused to release him. D. was only released following the petition submitted on his behalf.³⁶

In the 1998 report, the State Comptroller wrote: “The ‘mobilization’ of foreign workers, solely according to employers’ needs and wishes, contributes to reducing foreign workers’ wages, makes their employment more lucrative, and reinforces their dependency on employers.”³⁷

Policymakers and decisionmakers alike are aware of the existence of trafficking in human beings and its consequences, but do nothing to stop it. The Minister of Labor, Shlomo Benizri, gave more than a hint why. In a TV interview broadcast in February 2002 he was

³⁴ Ruth Sinai, “Employment agencies and contractors bring in surplus workers and sell them”, *Ha'aretz*, July 22, 2001.

³⁵ A letter of inquiry signed by Mr. Yehuda Lev, chairman of S.I.R. Foreign Workers Services, was sent to contractors nationwide on August 27, 2002, with the subject of “Foreign Workers Permits”.

³⁶ Administrative Appeal 576/02, D.O. v. the Minister of the Interior.

³⁷ State Comptroller’s Report No. 49, 1998, pp. 279-280.

asked: “How has trafficking in workers developed in Israel?” and answered: “I am sorry to say that it starts at the top. There are interested parties in the highest places, in the Knesset, and outside, business people... big money is involved here. Importing foreign workers is the most profitable business around today...” Interviewer: “Including personal interests, Mr. Minister?” Minister: “Absolutely.” Interviewer: “Commissions, percentages?” Minister: “Absolutely.”³⁸

Deportation: a tool in the hands of employers

“I have been saying this for years, the policy of deporting foreign workers – and I think all the experts have heard this – does not solve the problem but rather perpetuates it. If we take steps against foreign workers, they will be hunted down and completely unable to demand more. That is to say, if pressure is brought to bear on a foreign worker, he will not come to his employer and say ‘Dear sir, I would now like to receive \$4 instead of \$3,’ because the employer will tell him, ‘You want to complain? Tomorrow you’ll find yourself in jail.’ And then employing them becomes more profitable because the lower the worker’s salary, the more lucrative his employment. Thus more pressure is exerted on the State to import more workers ... if we give foreign workers the opportunity to work on equal terms, then employing them will become unprofitable, and eventually the employers will say ‘Why do we need this headache? We’ll employ Israeli workers and that’s it.’”³⁹

Batya Carmon, Head of the Visas and Foreign Workers Section at the Ministry of the Interior

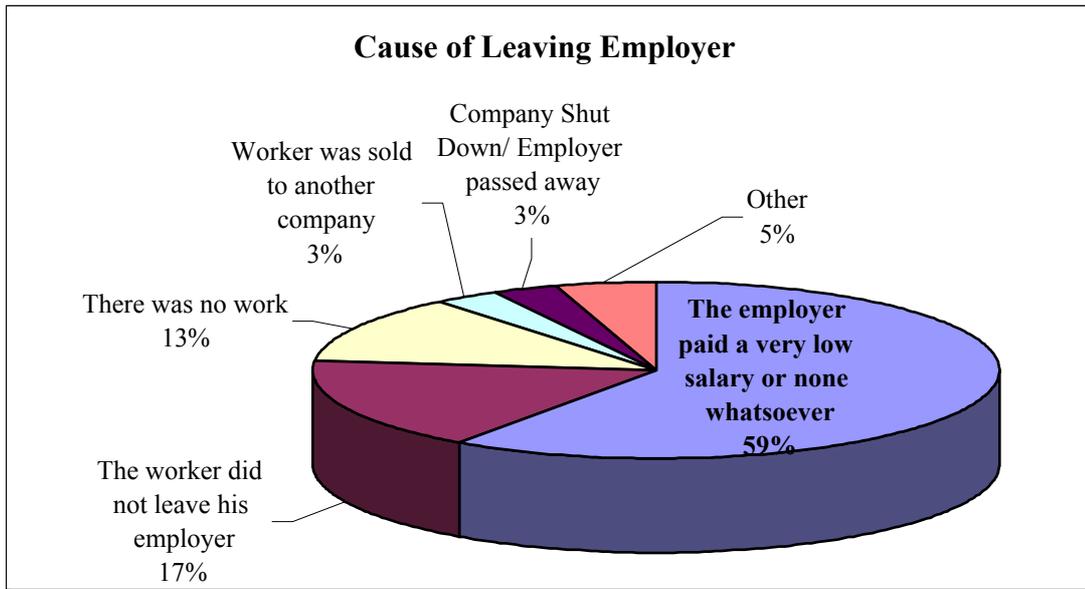
Instead of enforcing laws which are designed to protect the rights of employees, fining employers who pay less than the minimum wage, and fighting the confiscation of passports, the state authorities choose instead to concentrate on hunting down, arresting, and deporting migrant workers, most of them victims of the practices of exploitation which have become so common among employers of migrant workers in Israel. According to a survey conducted by the Ministry of Labor’s Workforce Planning Authority in 1998 among migrant workers present in Israel without permits, 53% had arrived in Israel with a legal working permit and lost their legal status. Indeed, when asked by the Tribunal in prison⁴⁰ why they had left their legal employers, more than 59% of those asked answered that their employers did not pay them or paid them an extremely low wage, 17% declared that they had not left their employer and were not aware that their visa had not been renewed, and 3% lost their legal status after they had been sold (“mobilized”) from one company to another. 13% were told there was no work available for them and were forced to seek work elsewhere.⁴¹

³⁸ Television program *Hasifa* (“Exposure”) broadcast on February 27, 2002.

³⁹ Joint Meeting of the Knesset Committee for Foreign Workers and the Committee for Immigration, Absorption, and the Diaspora, which took place on International Migrants’ Day, December 18, 2001.

⁴⁰ Amendment No. 9 to the Law of Entry to Israel, enacted on November 7, 2001, states that a Border Control Officer appointed by the Ministry of the Interior shall see any migrant worker arrested within 24 hours of his arrest, and that the detainee is to be brought before an administrative tribunal which operates in prison within 14 days of his arrest.

⁴¹ Roni Bar Tzuri, “Illegal migrant workers in Israel, 1999”, Workforce Planning Authority, March 2001, p. 5.



A petition filed by the Hotline for Migrant Workers to prevent the deportation of 66 Chinese workers demonstrates the harmful consequences of the government’s policy, comprising three main elements: binding the worker to the employer, lack of enforcement on employers, and mass deportation. The workers arrived in Israel at the request of Israeli employers who had received permits to hire them. Each of the workers paid a sum of between \$5,000 and \$15,000 in exchange for the opportunity to work in Israel. Most of them borrowed the money from people in their village or loan sharks, relying on the work agreements which they signed in China and which promised work in Israel for two years at a minimum salary of \$700 per month. Shortly after arriving in Israel, they lost their legal status under circumstances beyond their control: Some were told immediately upon arrival that there was no work available for them, others were “mobilized” without their knowledge, and some left their employers after their salaries had not been paid. In a compromise agreement with the State, it was decided that only those who could find a legal employer would be released from prison. However, finding employers for the workers turned out to be a very difficult task since most employers contacted by the Hotline for Migrant Workers stated that they were not interested in “veteran” workers who are aware of their rights and may turn out to be “troublemakers”. Instead, they preferred to import new workers from China or Thailand who would work for a lower wage. In the end 51 workers were released, two were forcibly deported in violation of the court’s ruling, and the remaining workers gave up waiting for an employer who would hire them and after many months in prison agreed to be deported.

Conclusion

The international conventions signed by Israel contain absolute prohibitions on trafficking in humans and slavery of all kinds. This prohibition can be found in Paragraph 4 of the U.N. Universal Declaration on Human Rights of 1948: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms,” and in Article I (i) of the Convention on Slavery of 1926, ratified by Israel in January 1955.

In 1992, Israel ratified the International Covenant on Civil and Political Rights,⁴² which obligates the signatory state to respect and safeguard the human rights of all individuals

⁴² International Covenant on Civil and Political Rights (ICCPR), 1966.

within its territory and subject to its jurisdiction and to take appropriate steps toward prevention, investigation, and punishment for violation of these rights. This covenant provides the foundation for the state's duty to protect the individual's right to liberty, the right not to be enslaved, and the prohibition of slavery of any form.⁴³

The protocol for prevention and elimination of trafficking in humans, which Israel signed in November 2001, defines trafficking in human beings as "recruitment, transportation, transfer, harboring 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."⁴⁴

As demonstrated above, many of the practices used by employers of migrant workers and by employment agencies create in effect a state of slavery and trafficking in human beings in Israel. In its continual failure to fight this phenomenon, the state of Israel enables employers and employment agencies to engage in illegal practices whose sole objective is to enlarge their profits as much as possible. By agreeing to sustain legal mechanisms and institutional arrangements which exempt criminals from punishment and deny protection to their victims, Israel contributes, directly and indirectly, to the unfettered development of this phenomenon, and in doing so it also systematically violates its international obligations.

Since its establishment, the Hotline for Migrant Workers has protested to the authorities about these serious problems stemming from the existing policies pertaining to the employment of migrant workers in Israel. The Hotline and other organizations such as Kav La'Oved, Physicians for Human Rights, and the Association for Civil Rights in Israel, have been joined in recent years by new voices calling for the termination of the "binding policy" and for work permits to be issued to workers rather than to their employers:⁴⁵ the Knesset Committee for Foreign Workers chaired by MK Yuri Stern,⁴⁶ the Bank of Israel,⁴⁷ and the Israeli Institute for Democracy.⁴⁸ Against these voices, others are heard: the voices of contractors, farmers, and owners of employment agencies, who operate a strong lobby against abolishing the "binding policy", for were workers to receive individual permits, these groups would no longer be able to hold workers in slavery-like conditions, to trade in workers, or to use the police to deport workers and receive new, submissive ones in their place.

Since 2001 the United States State Department has been publishing annual reports on the issue of trafficking in human beings throughout the world. States which do not work to eradicate the phenomenon in their area lose the right to U.S. foreign aid. The first report, which referred to Israel only in respect of the phenomenon of trafficking in women for purposes of prostitution and not trafficking in migrant workers, stated: "The Government of

⁴³ See Articles 2, 8, and 9 of the ICCPR.

⁴⁴ Article 3, Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, November 15, 2000.

⁴⁵ In July 2002 these organizations, assisted by lawyers from the Law and Social Welfare program of Tel Aviv University, filed an appeal against the "binding policy" (H.C. 4542/02, Kav La'Oved and others v. the Government of Israel and others).

⁴⁶ Minutes of the Knesset Committee for Foreign Workers, October 31, 2000.

⁴⁷ Report of the Bank of Israel "Foreign Workers in Israel," December 2000.

⁴⁸ Israel Democracy Institute, "Employment of Foreign Workers", June 1998.

Israel does not meet the minimum standards for combating trafficking in persons, and has not yet made significant efforts to combat the problem”⁴⁹ The Hotline for Migrant Workers, which is also active in combating trafficking in women, protested to the authorities long before the publication of this report, but only after the American publication was released did Israel’s authorities begin to act. The 2002 report noted some improvement in Israel with regard to this issue, and Israel was transferred from the third-worst group to the second-worst, consisting of countries who were taking some measures to prevent trafficking in human beings.⁵⁰ The Hotline confirms that there has been some improvement in the struggle against trafficking in women, but at the same time the enslavement and trafficking in migrant workers are not only continuing but even getting worse. If the “binding policy” is not terminated, and if the authorities do not take measures to enforce the law against employers who break the law, instead of continuing to deport the victims, trafficking in persons will continue to flourish unimpeded, and the State of Israel is likely to once again find itself the subject of international criticism for its failures.

⁴⁹ Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report, July 13, 2001, US State Department, p. 88.

⁵⁰ Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report, June 5, 2002, US State Department, p. 63.

ENFORCEMENT

Israel's statute books contain many laws which could protect the rights of migrants both as workers and as human beings, but the key to their realization lies in enforcement of the law. Without enforcement the law is of no real value.

As far as migrant workers are concerned, the authorities enforce the law selectively: their main efforts and resources focus on enforcing the law in respect of the workers themselves, mainly in the form of detention and deportation. On the other hand, law enforcement in respect of Israeli employers who have broken the law and violated the rights of the migrant workers is minimal. Given the large number of infringements against workers – violating the protective labor laws, withholding of passports, illegal employment of workers, sale of forged work permits and smuggling of workers – it is fair to say that practically no enforcement measures have been taken against perpetrators.

Non-enforcement of protective labor laws

The protective labor laws determine rights such as a minimum wage, a ban on delay in paying wages, guaranteed paid annual leave and many other rights. These laws apply to all the workers on Israel's territory, including migrant workers.⁵¹ The penal code also protects the rights of migrant workers, for example including a clause that prohibits the taking away or confiscation of a person's passport.⁵²

As long ago as 1998, the State Comptroller warned that migrant workers were the most vulnerable sector in terms of violation of the Minimum Wage Law, with 70 per cent of them receiving a wage lower than the minimum wage.⁵³ Payment of a low wage is the main incentive for the employment of migrant workers, for if the cost of employing a migrant worker were identical with the cost of employing an Israeli, it would not be worthwhile for employers to bring in workers from abroad. Official reports confirm this conclusion.

The 1998 State Comptroller's Report stated: "The principal economic incentive to the employment of foreign workers is that the cost to the employer is lower than the employment of Israeli workers, and that they are prepared to work without social benefits and under conditions not acceptable to the Israeli worker."⁵⁴ The 2002 report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority adds: "The disastrous situation at the lower end of the labor market with its rock-bottom wage levels, characterized by an exceptionally high percentage of foreign workers rather than Israeli labor, is the outcome of employers' and households' blatant interest in having access to a labor force that is "simple", efficient, available round the clock, and as cheap as possible."⁵⁵

The Ministry of Labor is responsible for enforcing the protective labor laws. Failure to pay the minimum wage and withholding of wages are felonies for which the offender can be

⁵¹ Minimum Wage Law 1987. Annual Leave Law 1951; Protection of Wages Law 1958.

⁵² Penal Law 1977, Section 376(i).

⁵³ State Comptroller's Report No. 49, 1998, p. 279.

⁵⁴ Ibid.

⁵⁵ Report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority, July 8, 2002, p. 6.

prosecuted and for which custodial penalties have been laid down.⁵⁶ The Ministry of Labor has the authority to enforce the law in various ways: imposing administrative fines on offending employers, preventing them from receiving permits to employ workers from abroad, and refusing to issue employment agencies permits to bring in workers.

Nevertheless, the state of enforcement gives cause for concern, to put it mildly. Despite the State Comptroller's findings on the broad spectrum of violations, from the beginning of 1999 to May 2002, only 287 fines were imposed for failure to pay the minimum wage.⁵⁷ Furthermore, even in the rare cases when fines were imposed, for the most part they were so low as not to counter the profitability of employing immigrant workers, or to act as a deterrent against continued infringement of the minimum wage law. To the best of our knowledge, to this day no company has had its license withdrawn or been refused a permit because of infringement of these laws, not even a company that has actually been convicted, as in the case of the Solel Boneh construction company.⁵⁸

Before 2001, the Ministry of Labor offered employers who paid their workers less than the minimum wage the option of paying the difference to the workers, in exchange for waiving the administrative fine. As of 2001 the Ministry changed its policy and decided to use its authority to collect the fines and not to demand the wage differentials. The result has been that while the Israeli public, through the Treasury, has benefited from the collection of the fines, the workers who were actually deprived received no compensation whatsoever.⁵⁹

In a survey conducted by the Hotline for Migrant Workers among workers detained prior to deportation at Ma'asiyahu Prison, more than 43% of those questioned said that they were owed wages by their employers.⁶⁰ For most of the foreign workers, their first encounter with the Labor Ministry inspectors takes place only once they are in prison, their last stop prior to deportation, and after their rights have been infringed and there is no longer the slightest chance of attaining them. These inspectors listen to the worker's complaint and then demand from the employer that he pay the outstanding wages and the workers' fare back home. They do not, however, demand other social benefits due to them, such as holiday and overtime pay.

This policy is based on the assumption that the worker can implement all his rights by applying to the Labor Court, but of course where migrant workers are concerned, particularly those detained prior to deportation, this is a pipe dream. A long series of obstacles stands in the way of a migrant worker attempting to obtain all his rights, first and foremost ignorance of the law. Many of them discover what their rights are only after they have been arrested and are about to be deported, and have little chance of contacting a lawyer from prison. In any case they would not be able to pay legal fees, and even those who do get legal representation

⁵⁶ For example, the Minimum Wage Law states that an employer who fails to pay the minimum wage is subject to one year's imprisonment or a fine.

⁵⁷ Report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority, of July 8, 2002, p. 21.

⁵⁸ Criminal Case 1081/00 State of Israel v. Solel Boneh Building and Infrastructure Ltd. The company was prosecuted for failing to pay Chinese building workers the minimum wage. The Hotline applied, under the Freedom of Information Law, to the Ministry of Labor for information on the number of licenses withdrawn and permits withheld from employers for infringement of protective labor laws. No reply has been received at the time of writing of this report, more than 8 months later.

⁵⁹ Report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority, July 8, 2002, p.21.

⁶⁰ The survey was conducted from November 7, 2001 to the end of August 2002 and covered 1,085 migrant workers out of 3,250 migrant workers awaiting deportation in Ma'asiyahu Prison in that period.

find they are forced to wait long weeks behind bars just to give preliminary testimony. We do not have any figures regarding the effectiveness of the Labor Ministry inspectors' attempts at getting the wages due to these workers. However, the impression of the Hotline volunteers visiting prison is that quite a few employers evade and even ignore them.⁶¹

The Report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority stresses that lack of funds is the main reason for the minimal enforcement of the law in respect of employers.⁶² And yet Prime Minister Ariel Sharon undertook to give the new Deportation Police, established in September 2002, "all necessary resources, without limitation" for the deportation of 50,000 migrant workers, and Treasury officials provided a blank check for implementation of the plan.⁶³ The Deportation Police, together with Labor Ministry inspectors, conducts raids to find illegal workers. Whenever a worker is found who does not have a valid visa or is being illegally employed, he is immediately arrested. A reporter for the *Globes* newspaper learned that "the Ministry of Labor has ordered its work inspectors, who are responsible for enforcing the payment of the minimum wage and for youth employment, to drop their regular work and concentrate solely on the expulsion of foreign workers."⁶⁴ This order of priorities – with deportation at the top of the list and protection of workers' rights at the bottom – is the main reason for the employment of migrant workers being so profitable, and for the ever growing size of this workforce.

Illegally employing workers

There are two ways in which workers are employed illegally: first, employing migrant workers who do not have a valid work permit, and second, transferring a worker with a valid work permit from the employer to whom he bound to another. Such a transfer, known as "mobilization", is illegal and causes the worker to lose his work permit.

The method of enforcement adopted by the Ministry of Labor against illegal employment is to impose fines. From the beginning of 1999 to May 2002, 4,177 such fines were imposed for illegal employment of workers, but of these only 743 (18 per cent) were actually paid. Rather, it was the worker who paid the price. Even if it was proved that a worker did not know that he was being employed illegally, he would be expelled from Israel. As for the employers, the deterrent effect of the fines on them was limited. The risk of being caught and fined, the amount of the fine and the difficulties in collecting it, and the absence of any sanctions over continued employment of migrant workers – none of these in any way offset the attractions of the tremendous profits to be made by employers from hiring migrant workers.

This phenomenon and its implications are described as follows in the Report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority: "Permitting the bringing in of foreign workers for the construction, agriculture and caregiving services on a temporary basis, by means of 'binding' the worker to a specific

⁶¹ A request for this data from the Ministry of Labor made by the Hotline for Migrant Workers under the Freedom of Information Law has not been answered yet at the date of writing.

⁶² Report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority, July 8, 2002, pp. 6 and 21.

⁶³ Ruth Sinai, "Sharon orders deportation of 50,000 foreign workers within one year", *Ha'aretz*, July 23, 2002, and Assaf Zohar, "They're working on it", *Globes*, August 26, 2002.

⁶⁴ Zahava Dovrat, "Zahava Dovrat, "All Labor Ministry Inspectors Expelling Foreign Workers", *Globes*, October 2, 2002.

employer, without application of the rules to offset the economic benefits of bringing in foreign workers and employing them in Israel, and without instituting effective supervision and enforcement of their legal employment in Israel have led to an increase in the number of illegal aliens, and the existence of an easily available and convenient alternative to hiring local workers in the above industries and other sectors of the economy.”⁶⁵

Nor does the Labor Ministry make any great effort to enforce the law governing employment agencies. In January 2001 and again in August 2002, volunteers of the Hotline for Migrant Workers conducted phone surveys among ten employment agencies who supply workers for care-giving jobs. Representatives of the company were asked what conditions should be given to a migrant worker employed in a care-giving job, and whether it was possible to obtain a care-giver for an elderly man who had not yet obtained the necessary permit from the authorities.

Since 2001 the minimum wage in Israel has been NIS 3,266 (around \$ 650). Nine of the ten companies surveyed said on both occasions that the monthly wage of a foreign worker averaged \$550 per month. Representatives of several companies suggested to callers interested in hiring a worker that it was best to bring over a worker from abroad rather than obtain a permit for a worker already in Israel because “those who are already in Israel know their rights and make demands.”

Furthermore, many of the companies explicitly encouraged illegal employment of migrant workers. Thus for example, in January 2001 five of the companies offered a worker who could start immediately until another worker with a permit could be brought in from abroad. In other words, they offered a worker already in Israel but without a permit, but did not point out that the employer would thereby be breaking the law. Only at one of the companies was the volunteer informed that the temporary employee was “legally in Israel but would be illegal with you”, even though in light of the “binding policy” no such situation is possible. In August 2002, the number of companies offering to employ a temporary worker, in violation of the law, rose to nine out of ten.

As shown by the survey, it is not difficult to discover employment agencies which encourage payment of a wage lower than the minimum wage and illegal hiring of workers. The State Comptroller commented on this as far back as 1999 when he wrote in his annual report: “Most of those seeking to employ a foreign worker approach the employment agencies which specialize in the importation of foreign workers (hereinafter: the placement companies). In some cases, the application is made only after the necessary permit for hiring workers has been obtained. The Employment Service considers that generally the application to the placement companies is made before the application to the Employment Service. In such cases, the placement companies, which are interested in having the foreign worker get his employment through them, help in filling in the necessary forms and sending them in. **Some of them will provide an elderly patient with a foreign worker who has no work permit, on the assumption that he will soon obtain the permit. This helps the individual who needs the help of the foreign worker but also extends the phenomenon of illegal foreign workers in Israel.**”⁶⁶

⁶⁵ Report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority, July 8, 2002, pp. 6 and 21.

⁶⁶ State Comptroller’s Report No. 50, 1999, p. 471.

The results of the first survey conducted by the Hotline for Migrant Workers were given early in 2001 to the Ministry of Labor and to the Knesset Committee for Foreign Workers in the course of a debate conducted there on the subject.⁶⁷ Nevertheless, not only was no harm done to the business of the companies surveyed but they were not in the least concerned about once more answering our questions in the survey conducted eighteen months later, in August 2002.

A similar survey was conducted with three employment agencies supplying workers for agriculture, and it was found that all these companies recommended a daily wage of NIS 91 (some \$19) for Thai workers, with the comment that “some farmers pay less”. The representative of one of the companies said that all the employment agencies in agriculture recommend a uniform wage for the Thai workers: the fact that the minimum daily wage in the Israeli economy today is NIS 110 (around \$22) appears to have totally escaped their notice.

Illegal hiring of migrant workers by the authorities

Because it is so profitable, the offense of illegally employing migrant workers is committed by wide sections of the Israeli public and consequently it has become very difficult to enforce the law, even if the authorities were keen to do so. Many people do not know that to employ a migrant worker in the home or in home repairs is illegal, as labor permits are issued for migrant workers only for the building trades, agriculture and care-giving positions.⁶⁸ However even the authorities themselves, which are supposed to be guardians of the law, employ migrant workers in violation of the law.

Several months before he was elected Prime Minister, Ariel Sharon was shown on Channel One TV News entertaining guests at his home: a Thai worker who had a permit to look after the lambs on his farm was serving the refreshments. Sharon indeed confirmed to a reporter for the *Yediot Aharonot* newspaper that he calls this worker to help whenever he entertains guests. The Prime Minister appeared to be totally unaware of the fact that this kind of “help” is illegal.⁶⁹

On June 3, 2002, *Yediot Aharonot* newspaper reported that Chinese workers had re-decorated the National Insurance Institute (NII) premises in Tiberias. A local resident protested against the employment of migrant workers on this project. He said “It’s a mockery. In a situation where there are hundreds of thousands of unemployed people, I would have expected the NII, which has to pay the people unemployment benefit, would make a point of employing Israeli workers.”⁷⁰ The NII spokesman is quoted in the report as saying, “There is no ban on hiring a contractor who hires migrant workers.” There is indeed no ban on hiring migrant workers, but no such permits are issued for renovations (as opposed to construction).

Twenty migrant workers were even employed on renovations at Israel’s parliament, the Knesset, in violation of the law, according to a Tel Aviv local weekly newspaper. The response of the Ministry of Labor to this report was as follows: “The Labor Ministry will immediately send a team of inspectors from the enforcement unit on foreign workers, and take

⁶⁷ Minutes of the Knesset Committee for Foreign Workers, discussion on caregivers, July 3, 2001.

⁶⁸ A small number of permits are issued to the restaurant trade, provided the origin and skills of the worker correspond to the character of the restaurant. A very small number of permits is also issued to experts from abroad.

⁶⁹ Nehama Duek and David Regev, “Sharon employs foreign worker who does not have appropriate permit”, *Yediot Aharonot*, February 4, 2001.

⁷⁰ Yisrael Moskovitz, “Foreign workers refurbished National Insurance Institute premises” *Yediot Aharonot*, June 3, 2002.

the necessary measures according to the evidence found on the site. If illegal foreign workers are found as alleged, particularly in the Knesset, which enacted the law on foreign workers, arrests could follow.”⁷¹ The workers’ employer admitted to the reporter that he had “mobilized” the workers from another site that he owned, and it may be assumed that the workers themselves had no idea that this caused them to lose their permits.

On July 22, 2002, a report in *Ma’ariv* newspaper stated that the Ministry of Defense was illegally employing migrant workers on gardening jobs through a sub-contractor. The Ministry’s reply: “We assume that the contractor got it wrong: he was given a huge project and apparently he thought it was okay to hire foreign workers”.⁷² At a conference organized by the Ministry of Internal Security on migrant workers, the Head of the Visa and Foreigners Section at the Ministry of the Interior, Batya Carmon, discovered that the kitchen staff who had prepared lunch for the conference delegates were illegal aliens.⁷³

However, perhaps the most astonishing story is that, of all the authorities, the Israel Police, at this time of mass expulsion of migrant workers, is employing Chinese workers to refurbish police stations. In the building in which the Hotline for Migrant Workers has its premises in Tel Aviv, the city police division has rented several offices and is having them refurbished. Volunteers from the Hotline were surprised to discover that the ceramic floor tiles at the new police premises were being laid by Chinese building workers. Since no permits are granted to migrant workers for refurbishment jobs, it follows that the Israel Police is employing migrant workers in violation of the law.

Corruption at government ministries

The tremendous profits to be made from bringing in and employing migrant workers, which has in itself in recent years become a prosperous industry, have led to many reports of corruption, most of them in the Labor Ministry’s Employment Service, whose job it is to allocate quotas of work permits for migrant workers.

On December 7, 2001, the *Yediot Aharonot* weekend supplement published the first of a series of reports on the importing of 13,000 Chinese building workers for whom no work was found, and exposed a major bribery case in the Employment Service.⁷⁴ Sam Ulpiner, president of the Contractors’ Association, said in an interview that 42,000 building workers had been allocated to the Association’s contractors, but according to the report, the Minister of Labor, Shlomo Benizri, said that 49,000 building workers had been brought into the country. Ulpiner said, “There are 7,000 workers who have been brought into the country without our knowledge and, without checking the files. I do not know how that figures and I wouldn’t like to go into this.”⁷⁵

A report by Ruth Sinai in *Ha’aretz* on December 2, 2001 is headlined: “Official suspected of illegal allocation of work permits for foreign workers cooperates with the police”. She reports that the Director General of the Employment Service accused the Minister of Labor of attempting to distort the outcome of a tender for bringing in migrant workers, and that these

⁷¹ Yehiel Dotan, “Foreign workers without permits at the Knesset”, *Yediot Tel-Aviv*, July 12, 2002.

⁷² Merav David, “Illegal foreign workers employed at military cemetery on Mt. Herzl”, *Ma’ariv*, July 22, 2002.

⁷³ Nurit Palter, “Illegal workers served refreshments at discussion on deportation of foreign workers” *Yediot Aharonot*, January 26, 2002.

⁷⁴ Oron Meiri, Meron Rappaport, and Ofer Petersburg, “You’ve got your own unemployed. What do you need us for?”, “Seven Days” weekend supplement of *Yediot Aharonot*, December 7, 2001.

⁷⁵ *ibid.*

accusations “injected new vigor into the investigation that has been underway for many months with no results.”⁷⁶

On December 25, 2001, David Regev reported in *Yediot Aharonot* that a senior official in the Employment Service had been detained on suspicion of being involved in trading in migrant workers.⁷⁷ Two months later, the following headline appeared in *Ha'aretz*: “Labor Minister Benizri suspected of accepting a bribe from a contractor: he is suspected of receiving benefits and payments from a friend, a contractor whom he gave inside information that enabled him to bring over to Israel foreign workers with a permit.”⁷⁸ A week later the same newspaper reported that the Director General of the Employment Service, who was being questioned about the suspicion that the Minister of Labor had accepted a bribe, told the reporter that he had been sacked from his job because he refused to distort the results of the tender for the import of foreign workers.⁷⁹ But at the time of writing, a year later, these investigations have not yet led to any charges being laid.

Irregularities also came to light in the permits allocated for agriculture: a report in *Ha'aretz* on January 15, 2002 states that while the government set a quota of 18,000 foreign workers for agriculture, the Employment Service actually issued 20,000 permits.⁸⁰ The grave consequences became apparent later on: on October 2, 2002, Ruth Sinai wrote in *Ha'aretz*: “150 Thai workers brought to Israel recently by Shalom Simhon, a colleague of the Minister of Agriculture, complained to the Thai Embassy that no work was found for them. The Knesset Labor, Welfare and Health Committee was about to discuss imposition of a NIS 3,300 tax on every foreign worker employed, but the Prime Minister’s adviser pressured the Committee to put off the debate. This of course has no connection whatsoever with the 16 foreign workers employed on Sharon’s farm. These are only two stories defining the unacceptable link between big money and petty politics, which is behind the absurd policy of simultaneously bringing in and expelling foreign workers, instead of legalizing the workers already in Israel.”⁸¹

Arrest and expulsion of migrant workers

Even though migrant workers are a very weak and vulnerable group, enforcement measures are directed mainly against them, thus increasing their vulnerability. Since 1995, more than 24,000 migrant workers have been deported from Israel. Expulsion is a harsh procedure whose implementation often involves violation of the worker’s rights, and it further undermines his status as a person and a worker. Fear of being deported, together with their feelings of being foreign and their problematic status, prevents migrant workers from filing complaints about infringements of their rights. The fear of deportation is so overwhelming

⁷⁶ Ruth Sinai, “Official suspected of illegally allocating labor permits to foreign workers cooperates with police”, *Ha'aretz*, December 2, 2001.

⁷⁷ Leshem, Regev, and Meiri, “Senior Official at Employment Service Arrested on Suspicion of Involvement in Trade in Foreign Workers”, *Yediot Aharonot*, December 25, 2001.

⁷⁸ Baruch Kra and Ruth Sinai, “Labor Minister Benizri suspected of accepting bribe from contractor” *Ha'aretz*, February 20, 2002.

⁷⁹ Baruch Kra and Ruth Sinai, “Buchris interrogated on the alleged bribing of Benizri”, *Ha'aretz*, February 26, 2002.

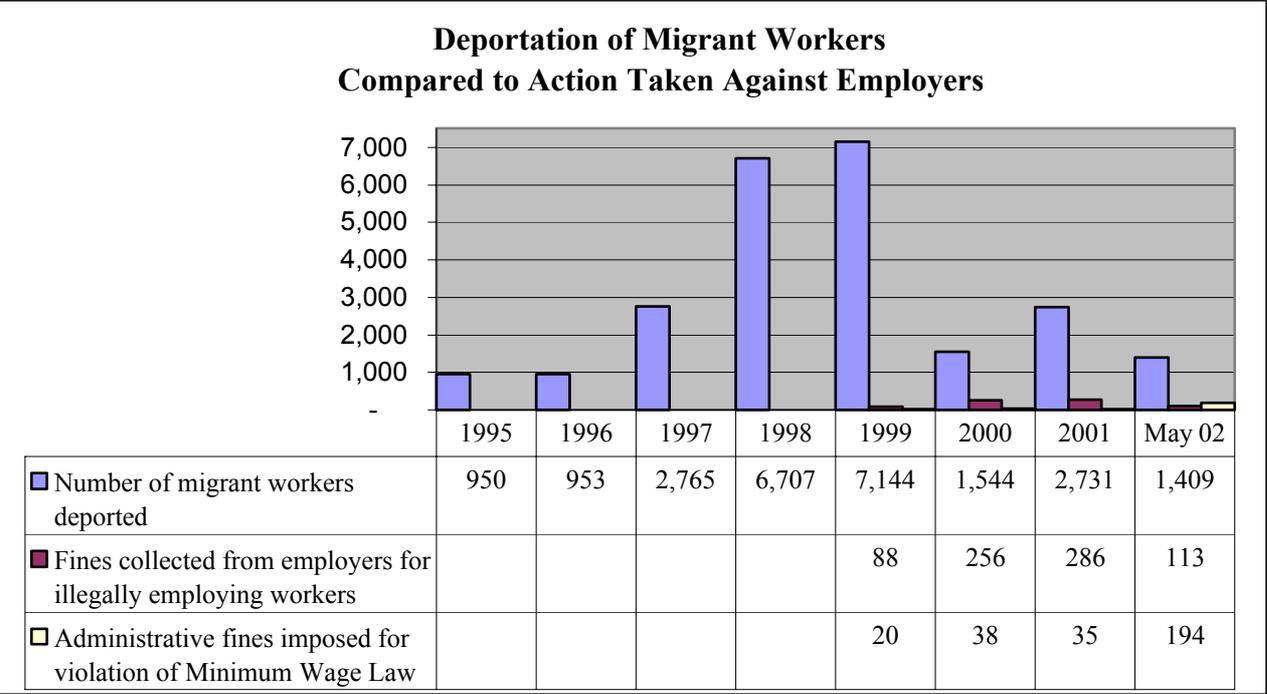
⁸⁰ Ruth Sinai, “The Employment Service suspected of exceeding quota on foreign workers for agriculture”, *Ha'aretz*, January 15, 2002.

⁸¹ Ruth Sinai, “Why does the state invest NIS 200 million in the deportation of foreign workers? In order to make room for 100,000 new workers who will bring the labor contractors earnings of one billion NIS”, *Ha'aretz*, October 2, 2002.

that foreign workers who have sustained injuries in terrorist attacks have even refused to go to hospital for treatment.⁸²

An operation combining raids and detentions was launched on September 1st, 2002, aimed at deportation of migrant workers who have no permits. Out of 800 workers held for questioning, 203 were found to be in Israel illegally, and deportation orders were issued against them. Only 17 employers were taken in for questioning.⁸³ This operation was the first public action by the new Deportation Police (officially known as the Immigration Administration), set up in accordance with a Cabinet decision taken on August 18, 2002 to deport 50,000 migrant workers annually.⁸⁴ This much publicized operation, which was chosen by the new division as the opener for its activities, reflects its policy of taking action against migrant workers while ignoring the employers' illegal activities.

The diagram below clearly reflects the tremendous disparity between the authorities' enforcement of the law against employers and against workers. Whereas migrant workers in Israel without a visa are deported, no one interferes with their employers who continue unperturbed to infringe the law.



Source: Report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority, p. 13.

Enforcement of the law against seizure of passports

In 1995, Section 376(i) was enacted under the Penal Law, to the effect that a person who illegally takes possession of another person's passport is liable to a one-year jail term. The explanation given for the bill tabled by MK Poraz stated: "An enlightened society should not allow unscrupulous exploitation of individuals, even if they are foreign. Foreign workers

⁸² Shira Immerglick et al, "Foreign workers refuse to be taken to hospital, because they fear deportation", *Ma'ariv*, July 18, 2002.

⁸³ Shira Immerglick et al, "One a.m. – A Knock on the Door", *Ma'ariv*, September 3, 2002.

⁸⁴ Government decision no. 2469 of August 18, 2002.

came to this country in order to seek a livelihood here, and they are making a genuine contribution to the Israeli economy. [...] Another widespread phenomenon is for an employer to ‘bind’ a worker by seizing his passport. Such an act violates Israel’s *Basic Law: Human Dignity and Liberty*, and it is therefore proposed that employers be explicitly prohibited from holding on to the passport, laissez-passer or identity card of a foreign worker. This law, if it is passed, will be another instrument in combating such ugly manifestations of exploitation of foreign workers.”⁸⁵

Even though the seriousness of this employers’ habit of seizing the passports of their foreign employees has officially been acknowledged and it has been forbidden in legislation, the Israel Police which is responsible for enforcement of that law intervenes on very rare occasions only, and then only considers such practice a secondary offense. Until 1997 the police refused to investigate complaints submitted in this regard by foreign workers, and only following a petition to the High Court of Justice submitted by the Association for Civil Rights in Israel was a practice established under which an employer suspected of withholding a worker’s passport would be summoned for questioning.⁸⁶ The police however closed the majority of these cases on the grounds of “lack of public interest” or insufficient evidence. A study of the minutes of hearings of the Administrative Tribunal for the Review of Detention of Illegal Aliens conducted in prison shows that this offense is very widespread and is committed openly with no attempt at concealment. In the period from November 2001 to August 2002, volunteers of the Hotline for Migrant Workers recorded 225 cases in which the worker stated before the Tribunal that his passport was being held by his employer. Yet not one of them was asked by the Israel Police to testify against the employer, and those workers who sought to testify encountered the greatest difficulties.

Thus for example, S.M., a Kenyan national, complained to the police in 1998 that his passport had been taken away by his employer, and for three years nothing was done to follow up that complaint. When the Hotline for Migrant Workers made inquiries at the police station, they were told that the case had been closed for lack of evidence. The Hotline petitioned the High Court of Justice, demanding enforcement of the law banning the confiscation of passports in general, and in the case of S.M. in particular.⁸⁷ Following submission of the petition, the employer was charged and the National Police Headquarters issued new instructions to local police stations to the effect that enforcement of this law must be stepped up, particularly where recidivist offenders are concerned.⁸⁸

Since these new guidelines were issued, 38 workers have, with the assistance of the Hotline for Migrant Workers, filed complaints against their employers for confiscating their passports. Following these complaints, some of the passports were returned to their owners, but the investigation files were closed. On 24 June 2002, the Hotline appealed against this decision to the Attorney General, demanding that charges be brought against the employers. As a result some of these cases were reopened while others still remain unanswered.

The Deportation Police has acknowledged that the confiscation of passports constitutes an obstacle to mass deportation as it prolongs the detention of the deportees. Lately, it has raided several employment agencies and companies and confiscated hundreds of passports that had

⁸⁵ Draft Bill on Prevention of Exploitation of and Discrimination Against Foreign Workers – 1994.

⁸⁶ H.C. 2117/97, Paltia v. Israel Police.

⁸⁷ H.C. 740/02, S.M. v. Israel Police.

⁸⁸ Directives issued by Superintendent Avi Davidovitz, head of the Investigations Section, National Police Headquarters, February 11, 2002.

been taken away from migrant workers. Several investigations have been opened , however, at the time of writing no indictments have as yet been brought against the offenders.

The market in forged visas

A lively trade in forged visas has been going on in Israel for the past few years. The document forgers publish advertisements in the foreign-language press, offering visas and work permits for hundreds, and sometimes thousands of dollars. Some of those who apply know very well that forged documents are involved; but the Hotline for Migrant Workers has collected testimony from workers about to be deported who, when they were arrested, did not know that the visas in their passports were forged. Some of them were arrested on the premises of the Ministry of the Interior, when they reported there for an extension of the work permits that they held, without having the slightest inkling that the visa had not been issued by the Ministry of the Interior in the first place.

In an article which appeared in *Ha'aretz* on August 27, 2001, Yuli Khromchenko wrote: "For two years a properly registered association operated in Israel and overseas which is suspected of committing fraud against hundreds of residents of foreign countries. The ministries of the Interior and Labor, and the Israel Police have received innumerable complaints by the victims of this scam: they came to Israel after being promised entry visas and work permits, but found themselves over here without visas and heavily indebted to the association."⁸⁹ The article was referring mainly to an organization called the "Union of Construction Workers" which openly misled thousands of migrant workers for years, selling them forged visas and promising them that everything was above board and cleared with the Ministry of the Interior. The Hotline for Migrant Workers has frequently approached the Israel Police demanding that an investigation be conducted against the forgers of these visas and permits. But here again this matter was handled in the same way: the worker was expelled and the forger of the visas went on with the fraud undisturbed.

Thus for example, on November 12, 2001, G.M., a citizen of Cameroon, was arrested for being in the country unlawfully. In the hearing of the Administrative Tribunal for the Review of Detention of Illegal Aliens, held at Ma'asiyahu Prison, he insisted that he had in his possession a legal work permit, and gave full details of the company from whom he had purchased the permit for NIS 5,000. When he realized that he was the victim of fraud, he asked to sue the company and testify against it. He also offered to provide the names of other workers who had been similarly swindled. The Hotline for Migrant Workers contacted the agent selling the visas and recorded him admitting that indeed he had sold G.M. a permit for NIS 5,000. This information was then passed on to a police officer from the Tel Aviv police Fraud Squad, noting the existence of the incriminating tape and demanding that an investigation be conducted. The police agreed to take evidence from G.M. but only on condition that he would be prepared to stay in jail until the preliminary testimony was taken. They refused to promise that the other workers who wished to complain would not be arrested as illegal aliens. G.M. was expelled, while the company which sold him the forged permit continues to operate undisturbed.

In September 2002 it was reported for the first time in the press that the police had made several arrests on suspicion of forging visas. The daily paper *Globes* reported that the police believes that "the Jerusalem office which issues false visas which was discovered early this

⁸⁹ Yuli Khromchenko, "We're sorry but the forgers generally operated within the framework of the law", *Ha'aretz*, August 27, 2001.

week is only the first revelation of what they call ‘the underworld of foreign workers in Israel’.”⁹⁰ The police, however, will find it difficult to expose other traders of forged documents if it maintains its policy of deporting victims of scams before their complaints are filed and checked.

Smuggling people into Israel across the Egyptian border

Over 70% of migrant workers in Israel entered the country with a legal working permit.⁹¹ Others arrived as tourists or were smuggled in, having paid large sums of money to smugglers. Smuggling workers has increased in recent years following the tightening of controls on entry through Ben-Gurion Airport and Haifa Port, and the steady increase in the numbers of people refused entry to Israel.⁹² In most cases smuggling follows a path used until recently only by traffickers in women, drugs, and arms. The workers land in Egypt, are transported to the Sinai Desert, where they meet Bedouin guides who lead them in an arduous journey, mostly on foot, through the desert and across the border into Israel. According to data gathered by volunteers of the Hotline for Migrant Workers in the prison, the fee charged for smuggling a worker across the border into Israel ranges from \$3,500 to \$4,000.

IDF troops patrol the Egyptian border in an attempt to catch the migrants, but with very little success due to the length of the border. In an article published in *Ha'aretz*, Uzi Havshush, a commander of an IDF reserve force assigned to patrol the border and prevent the entry of contraband, provided a list of products and people regularly smuggled across the border: “July 22: three bags of marijuana. July 24: six bags. July 24: 25 prostitutes. July 26: ten prostitutes. July 28: ten prostitutes. July 30: two jeeps heading to meet each other changed course after being identified. July 31: four Egyptians got into a vehicle awaiting them on the Israeli side. Not far from there the crossing of four foreign workers and one woman was recorded.”⁹³

Despite the security risks, from the Israeli point of view, the authorities are doing very little to prevent the smuggling from taking place, but instead prefer to concentrate on catching the people who have crossed the border.

A Ghanaian national who wished to give information on Israeli and foreign citizens who, he claimed, were involved in organizing illegal migration across the Egyptian border, was held in prison for over eight months after being arrested for being in Israel unlawfully. His lawyer informed the Attorney-General that his client was prepared to give evidence on this matter, and the Hotline for Migrant Workers approached the Commissioner for Foreign Nationals at the Ministry of Internal Security and the head of the Immigration Administration in this regard.⁹⁴ Police officers came to take the Ghanaian’s testimony several months ago, but nothing was then done about it, and he was eventually deported. This fact attests to the attitude of the authorities who prefer to ignore the organizers of the human contraband.

⁹⁰ Assaf Zohar, “The cost of looking the other way”, *Globes*, September 24, 2002.

⁹¹ According to data provided by the Central Bureau of Statistics 2000, and Roni Bar Tzuri (2001) “Illegal migrant workers in Israel, 1999”, Workforce Planning Authority, Ministry of Labor, Jerusalem.

⁹² In the first half of 2002, 1,581 people were refused entry according to the Report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority, July 2002

⁹³ Avihai Becker, *Ha'aretz Weekend Supplement*, “Chase”, August 9, 2002.

⁹⁴ The letter to the Commissioner for Foreign Nationals was sent on July 30, 2002 and the letter to the Immigration Authority on September 18, 2002.

Conclusion

If law enforcement as practiced reflects government policy, one cannot avoid the conclusion that the selective policy regarding law enforcement where foreign workers are concerned involves deporting workers while ignoring the crimes of their employers. In pursuing this policy, which focuses on punishing foreign workers while ignoring their rights, the authorities treat migrant workers as objects that can be brought in and sent back, imported and allocated as quotas, transferred from one employer to another, bought and sold, exploited and deported.

The government claims that its policy is an effective and humane solution that will reduce or totally eliminate the number of illegal aliens in Israel. However, if no action is taken against employers who infringe the protective laws, migrant workers' wages will continue to be so low that it will pay to employ them, and their numbers will continue to grow. Apart from its doubtful effectiveness, this policy does nothing to eradicate the inhuman conditions which facilitate the existence of modern slavery in Israel.

POLICE VIOLATIONS OF MIGRANT WORKERS' RIGHTS

By law, any policeman is entitled to arrest and detain a migrant worker for deportation, if he suspects that he is an illegal alien.⁹⁵ Although these arrests are ostensibly legal, they often entail numerous violations of human rights: the use of unreasonable force, breaking into homes without a court order, arresting workers who come to the police station to complain of an offense against them, trumped-up charges, the arrest of single parents of minors, violations of freedom of worship, association, and expression, denying detainees the right to collect their personal belongings or the opportunity of notifying others of their arrest, and unwarranted extension of remand.

Police brutality

According to Section 13 of the Law of Entry to Israel, if a policeman or police inspector has reasonable grounds for suspecting that a person is residing in Israel unlawfully, he may demand that the person accompany him to a place of detention, after first identifying himself to the person and explaining the reasons for the arrest. If the person refuses, the policeman may use reasonable force to bring him to detention. The Hotline for Migrant Workers has documented many complaints of police brutality during, and sometimes after, the arrest. Detainees have complained of physical force, intimidation and verbal abuse being used against them, and of damage to their possessions.

W.M., a Chinese national, who was arrested on January 14, 2002 on the grounds of being in the country unlawfully, described his arrest as follows: "Several plain-clothes men attacked us. I thought they were gangsters, and fled. They grabbed hold of me, threw me to the ground, and kicked me hard. They manacled my hands and feet, and took me to the police station. Due to the manacles, it was hard for me to get out of the car, and one of the policemen beat me in the stomach and testicles. It was so painful, I was bent double. They took me to the hospital and the X-ray showed that a rib was broken. The policemen put me back in jail. Next day, the terrible pains continued, and I was again taken to hospital, where I was operated on, without my consent. I was given no say in the matter. When I woke up, I saw that they had removed one of my testicles. No one bothered to inform me why this was done. I checked my whole body to see if they had removed any other organs."⁹⁶ The photograph on the back page of this report is, in itself, damning evidence of the police use of force during arrests, and is more eloquent than words.

In the past three years, with the help of the Hotline for Migrant Workers, 24 complaints were filed with the Police Investigations Division of the Ministry of Justice, against policemen responsible for causing bodily harm to, or harming the property of, migrant workers. Most were not investigated, either because by the time an investigator was appointed to question the detainee, the latter had already been deported, or because the investigator failed to find a competent interpreter. When an investigation was actually held, it tended to be protracted, while the complainants waited in jail, and no request was made by the Division to release them or to prevent their deportation.

⁹⁵ Note that according to Amendment 9 of the Law of Entry to Israel, which came into force on November 7, 2001, "The Minister of the Interior is entitled, for the purposes of this law, to appoint employees of his Ministry, or government employees, as inspectors" (Section 13 (iv) (a), Law of Entry to Israel).

⁹⁶ From the testimony of W.M., dated February 6, 2002, in Ma'asiyahu Prison.

The policy regarding detention of witnesses is different for victims of trafficking in women, following court rulings stating that a person whose evidence is required by the State must not be held in detention. Accordingly, victims of trafficking in women are housed in government-financed hostels.⁹⁷ This ruling is not, however, applied to migrant workers, making it virtually impossible to conduct proper investigations into police brutality. Moreover, migrant workers have no incentive to testify, since they know that if they do so, they can expect a long period of detention.

Entering houses without a court order

According to the provisions of the Law of Entry to Israel, a policeman may request a court order from a judge to enter a place of residence, in order to search for illegal aliens. Even if such an order is issued, a policeman is only entitled to enter a place of abode after identifying himself to the apparent owner, and informing him of the purpose of the search.⁹⁸ Volunteers from the Hotline for Migrant Workers have, over the years, interviewed thousands of detainees awaiting deportation. None of them saw or received a copy of the search warrant, as required by law.

On the night of May 23, 2001, volunteers from the Hotline arrived at two adjacent buildings in Shivat Zion Street, Tel Aviv, minutes after policemen from the Yiftah Tel Aviv Aliens Division had left the premises. They found broken doors and windows in the building. Testimony collected by the volunteers from women and children who lived in the building shows that the policemen never showed a warrant, but simply asked the residents if they had permits. They claimed that the arrests were carried out brutally, and the tenants of two apartments alleged that they had been severely beaten. The arrests took place in the small hours, and the tenants were dragged from their beds in the presence of their children.

This arrest procedure has already taken its toll on human life. In 1997, John Avuya, a Nigerian national, was killed when attempting to escape through the window of his apartment from policemen who had come to arrest him. In September 2000, Sandra Carolina Sanchez, a Colombian national, died when attempting to escape from policemen through a window of the fourth-floor apartment where she lived. Attempts by migrant workers to escape from policemen who came to arrest them have also resulted in serious physical injury. In early September 2002, two Chinese workers were injured when they jumped from the window of their second-floor apartment. In a church frequented by migrant workers, Hotline volunteers met a Ghanaian citizen who had jumped from the window of his second-floor apartment, and broken one of his legs, but had managed to escape from the police.

Arrest of workers filing complaints for offenses perpetrated against them

A survey conducted among migrant workers in 1999 by the Labor Ministry's Workforce Planning Authority found that 25% of migrant workers had been victims of crimes. The most common crimes were property offenses, such as theft. Other crimes committed against migrants were violence, extortion, and fraud. The survey indicated that 67% of the victims failed to report the crime to the authorities. The main reason for this, according to the report, was the fact that the workers felt that as "illegals," they had no rights.⁹⁹ Many were also anxious to avoid any contact with the authorities in general, and with the police in particular,

⁹⁷ Misc. App. 91548/00, State of Israel v. Veryubkin; Misc. App. 73/00, State of Israel v. Natalia Pinsko.

⁹⁸ Sections 13 (v) (c) and 13 (v) (d), Law of Entry to Israel, 1952.

⁹⁹ Roni Bar Tzuri, "Illegal migrant workers in Israel, 1999", Workforce Planning Authority, March 2001, pp. 63-65.

for fear of deportation. In accordance with the Police Inspector-General's directive of August 1998, migrant workers who go to the police station to report a crime committed against them are not to be arrested.¹⁰⁰ In most cases, the Israel Police are careful to obey this directive, but exceptions still occur. For example, a Chinese citizen was arrested at the Yiftah police station, when he came to report that he had not been paid his wages and that his employer had assaulted him. The police responded by arresting the complainant for being in the country unlawfully. Only after the Hotline for Migrant Workers petitioned the Administrative Tribunal for the Review of Detention of Illegal Aliens in Ma'asiyahu Prison was the worker released, 18 days after being arrested.¹⁰¹ Similarly, A.V., a migrant worker from Belarus, was arrested when he came to report that a victim of trafficking in women was being held, against her will, in a brothel. He too, was released by the Tribunal only after Hotline volunteers intervened.¹⁰²

Trumped-up charges against migrant workers, and refusal of bail

Occasionally, the Israel Police justify an arrest on the grounds that the migrant worker is suspected of involvement in criminal activities. Although these charges are usually found to be unsubstantiated, they serve as grounds for refusing release on bail. Thus, for instance, on November 22, 2001, the police broke into 11 apartments in a building at 92 Ha'shiryon Road in Tel Aviv, and arrested **all** residents on the pretext of having "intelligence information concerning involvement in drug dealing". Some of the people detained applied for release on bail, but because of the allegations that they were involved in drug dealing on their deportation order, they were refused bail.

In another case, F.R., a Filipino worker who was legally resident in Israel was arrested shortly before he was due to leave the country. He petitioned the Ministry of the Interior's Review Authority, asking to be released on bail until he left the country. The police, however, contested the release, arguing that they had incriminating information against him. It transpired that this "incriminating information" was the fact that a **Thai** migrant worker was involved in a number of thefts. Five days later, the Filipino worker was released, having incurred the legal fees of the lawyer he had hired to handle his case. In her summing up, Advocate Sharon Bavly-Lary, who served as the Review Authority, condemned "the unbearable ease with which people are wrongfully arrested in Israel of the third millennium."¹⁰³

The Hotline for Migrant Workers has roundly condemned the indiscriminate charges brought against migrant workers, and has warned of the danger of slandering all migrant workers as a group. In a meeting held on November 30, 2000 with Superintendent Ido Gutman, head of the Patrol Division, the latter agreed that charges against a legal worker would be investigated as if he were an Israeli citizen, but that charges against an illegal worker would depend on the seriousness of the offense: for more serious offenses, the suspect would stand trial, and for

¹⁰⁰ Paragraph 8 of Directive No. 03.300.251, August 1998, issued by the Police Inspector-General, states: "If the complainant is illegally present in Israel, he shall not be arrested on this count alone, but only if there is another reason for arresting him." This directive was issued following a High Court appeal lodged by the Association of Civil Rights and Kav La'Oved against the Israel Police, demanding investigation of complaints by migrant workers whose passports had been retained by their employers (H.C. 2117/97).

¹⁰¹ Records, Administrative Tribunal for the Review of Detention of Illegal Aliens, March 17, 2002.

¹⁰² Records, Administrative Tribunal for the Review of Detention of Illegal Aliens, July 31, 2002

¹⁰³ Records, Administrative Review, November 2, 2000. In the period preceding Amendment 9 to the Law of Entry to Israel, the Ministry of the Interior operated an Administrative Review in Ma'asiyahu Prison. The Administrative Review was replaced by an Administrative Tribunal upon enactment of the Amendment on November 7, 2001.

less serious ones, he would be deported. In practice, these guidelines have not been complied with and in most cases, migrant workers accused of an offense are detained and deported, irrespective of whether they are in the country legally or not.

The result is that migrant workers are denied fair legal recourse, or the opportunity of defending themselves against criminal charges. In fact, any complaint, however unfounded or suspect (as in the case of employers who trump up charges against workers in order to avoid paying them wages) helps inflate Israel Police statistics on migrant workers' so-called involvement in crime. In this way the Israel Police promotes fears of all migrant workers, fanning xenophobia among the Israeli public.

Arrest of single parents

Estimates indicate that there are about 2,500 children of migrant workers in the Tel Aviv area alone.¹⁰⁴ Some of these are being raised in single-parent homes. The arrest of a single parent leaves a minor without proper care or supervision, and in some cases, when no one apart from the parent knows of the child's existence, places him in danger.

Section 13 (vi) of the Law of Entry to Israel determines that a Border Control Officer may release a suspect on bail if his arrest would leave a minor without supervision. Once again, however, there is a gap between theory and practice. On September 2, 2002, a priest carrying his one-and-a-half year old daughter was accosted by the police. Although he informed the police that the baby's mother was in Nigeria, and that he was raising the child on his own, he was arrested. Witnesses reported that the baby would not stop screaming after the policemen took her father away. She was taken to a woman in the community, but refused to eat until her father returned. The Border Control Officer could have released him on the same day, but refused.¹⁰⁵ The father was released only a week later by the Administrative Tribunal in prison.¹⁰⁶

The above incident took place several months after the Hotline for Migrant Workers had called for a meeting with the Knesset Committee for Foreign Workers, in response to a number of cases where children had been left unattended following their parents' detention. At that meeting, which was held on February 19, 2002, Hagai Herzl, adviser to the Minister of Internal Security, said that "even before the amendment to the law [Law of Entry to Israel], we issued an internal directive to the effect that a parent in charge of a minor would not be deported as long as no solution were found for the minor", adding, "It is up to the Border Control Officers to prevent things of this kind from happening."¹⁰⁷

Although the Law of Entry to Israel does not refer explicitly to the detention of minors, in some cases minors have been arrested, in contravention of international conventions to which Israel is a signatory. In August 2002, a 16-year-old girl from Sri Lanka was taken to Neveh Tirza Prison, after escaping from the Palestinian Authority. IDF soldiers handed her over to the Israel Police, who arrested her and sent her to jail pending deportation. Only after over fifty days in detention, and with the help of MK Tamar Gozansky, who was approached by representatives of the Hotline, was the girl sent home under escort of an Embassy staffer.

¹⁰⁴ According to Tel Aviv Municipality's Messilah Center for Assistance and Information for the Foreign Community.

¹⁰⁵ Deportee Detention Form, September 3, 2002.

¹⁰⁶ Records, Administrative Tribunal for the Review of Detention of Illegal Aliens, September 10, 2002.

¹⁰⁷ Minutes of the Knesset Committee for Foreign Workers, February 19, 2002.

Violation of freedom of religion

“Illegal” migrant workers enjoy many advantages that legal ones do not. This explains why workers with permits, who are effectively “bound” to their employers, prefer to be free and enjoy the freedoms they have been deprived of, even if this entails forfeiting their work permits. Although dogged by the fear of deportation, at least they can choose whom to work for, and change employers if they are not satisfied with their work conditions and pay. They are able to conduct their private and communal life – including religious practices – as they see fit. One would expect that Jews in their own country, with their history of religious persecution, would be particularly sensitive to the religious rights of ethnic minorities in their midst.

This is not the case, as the following story illustrates: On the night of May 30, 2001, plain-clothes policemen broke down the door of the Ghanaian Pentecostal Church located in the basement of a building in South Tel Aviv, and, after searching the premises, arrested the three men who were praying there. One of the detainees, who was the church’s priest, was interviewed for an article in *Ha’ir* newspaper. The article so incensed policemen in the Aliens Division that they have since made a habit of raiding the Church and arresting worshippers.¹⁰⁸

In September 2002, residents of Tel Aviv’s Hatikvah neighborhood demonstrated against the opening of a church in their neighborhood. The demonstration was unusual, given the good relationship between the local inhabitants and the migrant workers residing there. Neighborhood committee chairman, Shlomo Maslawi, was quoted in an article as saying: “The demonstration nearly ended in violence. Luckily, there were no migrant workers around... Evidently, the residents are jumping on the bandwagon...”¹⁰⁹ Maslawi was alluding to the fact that the government’s deportation policy has influenced Israelis’ attitude to migrant workers. Eventually, after numerous incidents in which the migrant workers were spat and cursed at, and their holy books were destroyed, the Church was closed down.¹¹⁰

Violation of freedom of association

In recent years, the Israel Police has arrested several dozen people who were leaders of communities of migrant workers in Israel, or who held key positions in these communities. The list of detainees includes Patricio Diaz and Juan Carlos Polavco, two of the leaders of the South American Workers Union, Elmer Canday, chairman of the Israeli chapter of UPIMA (International Organization of Migrant Filipino Workers), Francisco Espinoza, president of the Chilean Club, and his deputy, Nelson Marcel, Juan Carlo Jaramillo, editor and publisher of a South American periodical, and church leaders such as Johnson Dejraft, George Opuko, and Israel Morkiano, as well as John Cruz and Cesar Alvarado, two major activists affiliated with St. Peter’s Church.

On March 12, 2001, Patricio Diaz, a leader of the South American Workers Union, published a personal letter in an Internet journal. The letter, addressed to Prime Minister Ariel Sharon, stated the following: “I would like to ask some questions of someone who has the answers. How can I touch your heart? What must we do in order to be seen as equals, to ease our terrible burden? What must we do in order not to be considered enemies to be hunted down

¹⁰⁸ Idit Avrahami, “Prayer Interrupted”, *Ha’aretz*, June 22, 2001.

¹⁰⁹ Ruth Sinai, “In the Hatikvah Neighborhood people are saying: Let the foreigners pray, but not here”, *Ha’aretz*, September 27, 2002.

¹¹⁰ Itai Asher, “The Migrant Workers’ Church has been Closed”, *Ma’ariv*, September 29, 2002.

in the streets, have their homes broken into, and be arrested in their beds, in front of their children?”¹¹¹

Thirteen days later, policemen from the Aliens Division broke into Diaz’s home and arrested him. Following his detention and that of another leader, the Hotline for Migrant Workers filed an appeal with the High Court of Justice, accusing the police of harassing leaders of migrant worker communities who were trying to help members of their community.¹¹² The police responded that the arrest of these two persons was purely accidental and not preplanned. The judges turned down the appeal on the grounds that the leaders of migrant workers must themselves be legal residents. This proviso, however, is unrealistic, given the working and living conditions of legal migrant workers, which allow them very little freedom of movement or time. Moreover, legal workers are afraid that if they take up the cause of their fellow countrymen, they will be considered “troublemakers” by their employers and deported. Chinese migrant workers are not allowed to engage in political or religious activity – a stipulation explicitly specified in the contracts which they sign.

Violation of freedom of expression

In August 2002, the first edition of the *Manila – Tel Aviv Times*, designed to serve the Filipino community, was published. In its wake came fury, culminating in the publication of a lengthy article in *Zman Tel Aviv* [“Tel Aviv Times”].¹¹³ The article stated that Elbert Canday, the newspaper’s editor, had attacked the government’s deportation policy, and called for migrant workers’ rights to be upheld. Three days later, policemen from the Aliens Division raided the newspaper’s offices, but failed to find Canday. Undeterred, they returned two weeks later with a photo of him, and arrested him. Once again, the police claimed that the arrest bore no connection to his political activities. Canday, however, claimed otherwise: “They arrested me and told me that by criticizing the government’s deportation policy, I was criticizing Israel. They told me that I was not a legal resident, and was not allowed to write anything against the government.”¹¹⁴

Denying detainees the right to collect their personal belongings

Migrant workers who are imprisoned are taken straight from prison to plane, under police escort. It is therefore extremely important that, when arrested, they be allowed to collect their personal belongings and money. In reality, this possibility is often denied them, and many migrant workers leave all their belongings and money behind. Some are still wearing summer outfits when deported to cold climates, while others have no money to travel from the airport of arrival to their homes, thousands of miles away.

Sometimes, the detainees themselves are reluctant to collect their belonging, fearing that the police might arrest their roommates, migrant workers like themselves. This fear is based on precedent. The police have been known to arrest the roommates of migrant workers who have come to collect their belongings. However, on several occasions, the police refused to allow detainees to collect their belongings, even if the detainees asked to do so or were arrested at home. The police later claimed that it was the detainee who refused.

Following complaints by the Hotline for Migrant Workers, policemen from the Aliens Division began insisting that detainees sign a form “relinquishing all claims to their possessions” prior to deportation. The form, which is in Hebrew, states that the detainee

¹¹¹ Patricio Diaz, “How can I touch your heart?”, www.walla.co.il web site, March 12, 2002.

¹¹² H.C. 5903/01, Patricio Diaz v. Israel Police.

¹¹³ Dana Somberg, “Eli Yishai determines the deadline”, *Zman Tel Aviv*, August 30, 2002.

¹¹⁴ Dana Somberg, “I shall not bow”, *Zman Tel Aviv*, September 20, 2002.

relinquishes his right to collect his personal belongings. Testimony collected by Hotline volunteers shows that in numerous cases, the detainees did not understand what they were signing, and sometimes were forced to sign. Even the Administrative Tribunal in prison has issued an admonition: **“Police, please refrain from the unacceptable practice of asking detainees to sign a Hebrew form whose contents they do not understand”**¹¹⁵

After several pointed protest letters by the legal department of the Hotline for Migrant Workers, the police began translating the form into various languages, but did not stop demanding that detainees sign it. R.G., a Filipino national, was arrested in his home by policemen from the Yiftah police station, on the night of April 18, 2002. He was asked to sign the form relinquishing his personal belongings in Hebrew and English. R.G. claims he refused to sign, and asked to be allowed to collect his belongings. The policemen refused, and wrote on the form “refuses to sign” in Hebrew, in the place meant for his signature.¹¹⁶

Denying detainees the right to contact lawyers or notify friends or relatives of their arrest

According to the Law of Entry to Israel, a migrant worker who is arrested as an illegal alien is entitled to notify a friend or relative, an attorney, and a representative of his country, of his arrest.¹¹⁷ Once again, however, the discrepancy between law and practice is vast. The Hotline for Migrant Workers receives almost daily requests for help in tracing migrant workers who have disappeared. It transpires that in some police stations, detainees are not given access to a phone. In others, they are allowed access to a public phone only, but if the detainee had no money or phone card on him when he was arrested, he cannot use it. Sometimes many days go by until the detainee is able to make a phone call. These are days of uncertainty and anxiety for his relatives and friends.

Delays in the provision of plane tickets

Until 1998, migrant workers spent a long time in prison until their deportation, if they were unable to pay for a plane ticket home. Following an appeal by the Association of Civil Rights in Israel (ACRI), the High Court of Justice ruled that the State must pay for the ticket of migrant workers who had no alternative source of funding, within fourteen days of their detention.¹¹⁸

Despite the High Court ruling, the Aliens Escort Division of the Israel Police, which until recently was responsible for purchasing plane tickets and coordinating deportees’ flights home, was prone to drag its feet, and many deportees languished in jail until they were eventually deported. The Hotline for Migrant Workers approached the authorities on several occasions on behalf of detainees who wished to return home and had the requisite documents. Some of these were detained for a period far exceeding the fourteen-day limit set by the High Court ruling.

¹¹⁵ Adv. Sharon Bavly-Lary, records, Administrative Tribunal for the Review of Detention of Illegal Aliens, in the case of Y.H., February 7, 2002. Emphasis added.

¹¹⁶ A letter sent by Adv. Nomi Levenkron of the Hotline for Migrant Workers to the Public Complaints Division of the Israel Police, on December 11, 2001, describes a number of similar cases. In one case, the police made a man sign the form, not knowing what he was signing, and despite his express wish to collect his belongings. In another case, a man who was living alone and therefore had no reason to fear that his roommates would be arrested, requested permission to collect his belongings but was refused. In another case, a person was arrested at home, but was still not allowed to take his belongings with him.

¹¹⁷ Section 13 (i) (e), Law of Entry to Israel, 1952.

¹¹⁸ H.C. 199/98, V. L. v. the Minister of the Interior.

On July 28, 2002, Advocate Sharon Bavly-Lary, Presiding Judge of the Administrative Tribunal in prison, wrote in her decision concerning V.A., a Russian national who was arrested on May 1, 2002: “The detainee received his passport on July 9, 2002, and has since been waiting for a plane ticket. If he is not sent back within a week – I shall consider releasing him on bail.” On the same day, V.P., A Georgian citizen who had been arrested five months earlier, also appeared before the Tribunal. In his case, Adv. Bavly-Lary wrote: “The detainee received his passport over two months ago, and has since been waiting for a plane ticket. This contravenes the High Court ruling that a person may not be detained for more than two weeks pending provision of a plane ticket. If he is not sent back within a week, I shall consider a conditional release.”¹¹⁹ It should be noted that since the establishment of the Deportation Police in September 2002, there has been a substantial improvement in this area and plane tickets are purchased much more quickly nowadays. However, in some cases, the Deportation Police were so intent on deporting the worker as soon as possible that they did so before the 72 hours required by law to be given to the worker so that he may contest his deportation.¹²⁰ It seems that the authorities have gone from one extreme to the other.

Conclusion

The government’s detention policy toward illegal migrant workers, particularly as implemented by the Israel Police, reveals numerous violations of human rights. One would not be mistaken in concluding that the police, who are responsible for law and order and law enforcement, often disregard and trample on the law where migrant workers are concerned. This policy does not tally with the concept of the rule of law. In the final analysis, a heavy price is being paid, not only by the migrant workers themselves, but by all citizens of Israel.

¹¹⁹ Records, Administrative Tribunal for the Review of Detention of Illegal Aliens, July 28, 2002.

¹²⁰ Section 13 (iv), Law of Entry to Israel, 1952.

MIGRANT WORKERS' CONDITIONS OF DETENTION PRIOR TO DEPORTATION

“In a democratic country, whose constitution is governed by the overriding principle that ‘basic human rights in Israel are based on the recognition of the human worth, the sanctity of human life and the fundamental liberty of human beings...,’ detention without trial must take place only in exceptional and unusual circumstances. The rule is liberty. Detention is the exception.... Even when there is justification for restricting liberty, such restriction should never exceed that which is strictly necessary.”

*President, Supreme Court, Justice Aharon Barak*¹²¹

The Israeli authorities hold migrant workers who have been detained for being illegal aliens in prisons until they are deported. They are kept in jail despite the fact that they are not awaiting trial, nor are they prisoners who have been tried and convicted. This is in spite of the fact that the prisons are overcrowded to such an extent that Israel Prison Service (IPS) Commissioner, Brigadier-General Orit Adatto, has defined the situation as a “ticking bomb.” According to Adatto, the IPS has had to stop accepting criminal prisoners because hundreds of them are already sleeping on the floor, and prisons in Israel allocate just 3.5 square meters per prisoner, less than half the norm in Western countries.¹²² Such overcrowding has given rise to judicial intervention: “Prisoners must not be forced to sleep on the floor, in telephone booths or cubicles where lawyers meet with their clients,” stated Justice Miriam Naor in a ruling on a petition submitted by the Physicians for Human Rights in Israel organization protesting the inhuman conditions at detention centers.¹²³ Given the gravity of the overcrowding, at the beginning of July 2002 the Knesset Constitution, Law and Justice Committee passed a new detention standard which stipulated that no more than 7,500 prisoners were to be held in Israel’s jails. Since more than 10,700 people were actually in detention at that date, this decision meant that the IPS would release prisoners who had only a short period of their sentences left to serve. However, instead of letting prisoners who have been sleeping on the floor take up the vacant places, the authorities chose instead to house migrant workers in Israel’s overcrowded jails.¹²⁴

Detention facilities

Male migrant workers who have been detained as illegal aliens are transferred to Ramle’s Ma’asiyahu Prison. Currently, three wings are allocated to this inmate category, with 400 places. Wing No. 3 has a courtyard around which there are 15 rundown cells, into each which eight people are crammed in four bunk beds. These cells are stiflingly hot in the summer, and freezing in the winter. Wings 4 and 5, which are situated in 2 two-storey buildings, similarly house 6-8 prisoners per room. Since the rooms have no sanitary facilities, inmates are allowed to go out into the corridor on their floor which has an ablutions room containing one cubicle, three urinals, and five showers which serve the floor’s 70 inhabitants. Female migrant workers who have been detained as illegal aliens were held until recently at Neve Tirza women’s prison, and since December 2002 have been detained at the Michal Detention

¹²¹ Criminal Procedure 2316/95 Ganimat v. State of Israel, PD 49(4), 589, 649.

¹²² Television interview (Channel Two), March 13, 2002 with Brigadier-General Orit Adatto, Israel Prison Service (IPS) Commissioner, on Gabi Gazit’s night-time program.

¹²³ Interlocutory order dated February 11, 2002 pursuant to H.C. 545/02, Physicians for Human Rights v. Minister of Internal Security.

¹²⁴ Yehuda Golan, “Prisoners to be released because of overcrowding”, *Ma’ariv*, July 2, 2002.

Facility in Hadera, which can hold up to 84 detainees. Generally speaking, their conditions of detention are better than those of male workers.

Conditions of detention

Migrant workers who are kept in prison are not criminals, neither have they been convicted of any offense. They are kept in custody for the sole purpose of ensuring that they will leave the country. Nevertheless, the conditions under which they are detained are worse than those of criminal prisoners:

- Only a few hours are given for “outings” for fresh air and the opportunity to stretch their legs, similar to the amount of time allotted to prisoners housed in the prison’s punishment wing. Prisoners in Wings 4 and 5 are able to walk around between the rooms on their own floors during most of the daylight hours, and they have access to the public phone in the corridor. They are allowed to go out to the tiny entrance hall for two hours a day, but have recently reported that the time allowed for “outings” has been cut back to just one hour. In Wing 3, the prisoners are released from their cells for two hours a day. Since the public phone is in the courtyard, access to it is similarly limited to these hours. Inmates spend their “outing” waiting in line for the phone, and do not always manage to call. Prisoners have no access to the canteen, so that all of their food comes from the prison kitchen. There are numerous complaints about the quality of food, and on occasions they have been given food which was not fresh.
- The lack of access to the canteen forces the prisoners to acquire telephone cards from a private hawker who comes in twice a week and sells cards at exorbitant prices.
- They are given no opportunity to work, even when they are detained for extended periods of a year or more.
- There is no television in the cells. The Hotline for Migrant Workers offered to donate a TV set to the visit room, but the Prison Service refused, making acceptance of the offer conditional on the provision of a television set for each cell, to be replaced if it went wrong.
- The visit room in Wing 3 is locked throughout the day to prisoners, being opened up only for proceedings of the Administrative Tribunal and visits by lawyers and families.
- Every inmate is entitled to a half-hour visit every week. Because of the shortage of IPS warders, visitors are kept waiting for a long time at the gate.
- No cultural activities whatsoever take place apart from a festive Jewish New Year meal. So far, the IPS has allowed the Hotline’s volunteers to arrange a New Year’s party for the morning of January 1.

These difficult conditions of detention have led to a number of hunger strikes. The most recent of these took place in June 2002, and lasted for three days. A letter from the hunger strikers handed over to the Hotline for Migrant Workers explained: “We are striking in protest at the fact that the public telephones in the wing are out of order, that we have no way of placing collect calls, and that we are sold phone cards at exorbitant prices. We are also fed up with being given Acamol [paracetamol] as the only medication for all our ailments.”¹²⁵ The strike was called off without having achieved its goals.

Representations by the Hotline for Migrant Workers have brought about minor improvements in conditions. The organization’s volunteers are allowed to bring clothing, cigarettes and

¹²⁵ Excerpt from letter handed to Hotline for Migrant Workers volunteer on June 16, 2002 at Ma’asiyahu Prison.

phone cards into the prison, as well as newspapers and books in a variety of languages. The prison governor has granted the Hotline's request and now allows employers and relatives to bring in money and personal items for the inmates on any day, not just on the weekly visiting day. However, these instructions do not prevent visitors from being held up at the gate, and not infrequently intervention by the prison governor is necessary before they are allowed in. In addition, today each inmate is permitted to have NIS 400 in his or her possession, as well as to receive phone cards and cigarettes without restriction. The Hotline has also managed to arrange for cigarette and drinks vending machines to be installed in the wings.

Conditions of detention in police custody facilities

Most of the foreign nationals who are incarcerated are held for days or weeks at the various police stations and lockups until a place in prison becomes available for them. The longer migrant workers are held in lockups, the longer they will be locked up in total, because the processing of their deportation – obtaining passports, financing, and coordinating flights – does not start until the workers are transferred to jail, even though the submitting of a passport application, for example, involves the straightforward process of forwarding a form from the police station to the appropriate consulate. Only lawyers are allowed access to detained migrant workers at lockups, and hence they are unable to benefit from the legal and humanitarian assistance provided free of charge by the volunteers of the Hotline for Migrant Workers in prison. In addition, detention in lockups prevents some of them from appearing before the Administrative Tribunal in jail within 14 days as required by law, thereby making their detention illegal.

The difficult conditions at lockups are documented in a report submitted by the Public Defenders Office to the Attorney General in January 2002. Of the 35 lockups investigated, 19 were found to have problems of overcrowding, with inmates sleeping on the floor in eight of them. In Ashdod, 18 inmates were crammed into cells intended for eight detainees. At Haifa's Kishon detention facility, 115 detainees had to sleep on the floor.¹²⁶ In a June 2002 visit to the Kishon lockup by representatives of Physicians for Human Rights, it was found that 448 detainees were being held at the facility, although it had only 340 beds. Inmates reported that because of the overcrowding, they were forced to step on each other, leading to violence. They complained that it was difficult to breathe in the foul-smelling rooms. One prisoner asked to sleep on a mattress in the corridor because of the stifling atmosphere and the overcrowding.¹²⁷ In May 2002, three Ghanaian nationals were arrested and taken to the suburban police station in Tel Aviv. One of the prisoners, a clergyman, described the conditions as follows: "I was locked in a room. It had just two beds, and there were six of us. The room was flooded, and we stood up in the water all night. The fans were going all the time. In the end, you were so cold that it was impossible to think."¹²⁸

Countless media reports about the overcrowding and conditions at police lockups show that this is not an unusual situation, but rather an ongoing state of affairs. The authorities are aware of this, and Uzi Landau, Israel's Minister of Internal Security, has admitted to the Knesset Constitution, Law and Justice Committee that "the police not infrequently refrain from arresting an offender because of the shortage of beds in lockup rooms."¹²⁹ These

¹²⁶ "Conditions of Detention at Police Lockups and Other Detention Facilities of the Israel Police in 2001", Public Defenders Office Report, January 2002, pp. 5-6.

¹²⁷ Physicians for Human Rights, "The Price of Overcrowding", June 2002.

¹²⁸ Idit Avrahami, "Prayer Interrupted", *Ha'aretz*, June 22, 2001.

¹²⁹ David Regev and Tova Tsimuki, "Minister Landau: Criminals Aren't Being Arrested Because the Jails Are Full", *Yediot Aharonot*, January 9, 2002.

difficult conditions are suffered by all detainees, irrespective of whether they have been arrested on suspicion of committing a criminal offense or are migrant workers. However, since the legal status of migrant workers is a gray area, the way in which they are treated varies: some stations and police officers allow them to receive items, while at other facilities this is forbidden. Sometimes they are allowed to make a phone call to report that they have been arrested, while elsewhere, this is not the case.

Amount of time in custody

In the report published by the Labor Ministry's Workforce Planning Authority at the beginning of 2002, it was noted that in the course of 2001, detainees were held in jail for an average of 7.5 days prior to being deported.¹³⁰ In contrast, figures collected by Hotline for Migrant Workers volunteers show that the time that workers are kept in jail is far longer, averaging 21 days.¹³¹ This figure does not include the time that detainees have already spent in police lockups prior to their transfer to jail. In the case of female migrant workers, the situation is even worse. Most of them are victims of trafficking in women who were arrested at brothels, generally without documentation or with forged IDs. As a result, they are kept in jail for even longer – on average over a month – until representatives of their countries identify them and issue them with transit documents which will enable them to be deported.¹³²

People refused entry to Israel – Ben-Gurion Airport

Every year, thousands of people arriving at Ben-Gurion Airport are informed by the border control police that they will not be allowed to enter the country. They are then taken to the “refused entry room,” a detention facility at Ben-Gurion, until they are returned to the country from which they came. The January 2002 report of the Public Defenders Office states: “The rooms at Ben-Gurion Airport where people refused entry to Israel are held ... are one of the locations with the worst conditions in all of the Israel Police detention facilities.”¹³³

The following account describes what happened to one of thousands of tourists, businessmen, artists and migrant workers who come to the country and find themselves locked up:

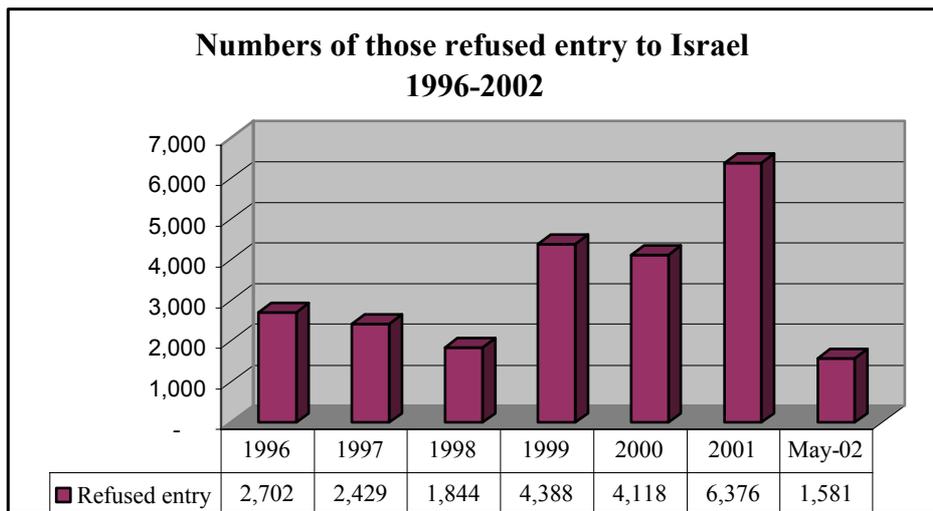
On the night of December 25, 2000 S., a Colombian national, landed at Ben-Gurion Airport in order to visit her mother, who is a permanent resident of Israel. S. was in the seventh month of pregnancy when she was taken to the “refused entry room,” where for two days she had to sleep on the floor. Her mother asked the Ministry of the Interior to take account of her daughter's condition and to release her for a week so that she could recover from her long flight and prepare herself physically for the return flight. She even offered financial pledges as surety that her daughter would leave the country, but to no avail. The Ministry of Interior refused to authorize her daughter to enter the country, on the grounds of fears that she intended to settle in Israel. Two days later, when a seat became available on a flight to Bogota, S. was put on the plane. Her health had deteriorated so much during these two days that the plane had to make a forced landing in Athens, where S. was hospitalized in an attempt to save the baby. S. had to cover all the medical expenses.

¹³⁰ Roni Bar Tzuri, (2002) “Migrant workers without permits deported from Israel in 2001”, Workforce Planning Authority, Ministry of Labor and Social Affairs, Jerusalem.

¹³¹ Based on statistics collected by Hotline for Migrant Workers volunteers during biweekly visits to Ma'asiyahu Prison January-August 2002.

¹³² Nomi Levenkron et al., “Trafficking in Women in Israel”, Hotline for Migrant Workers, December 2001, p.9.

¹³³ “Conditions of Detention at Police Lockups and other Detention Facilities of the Israel Police in 2001”, Public Defenders Office Report, January 2002, p.18.



Source: Report of the Inter-Ministerial Committee on Foreign Workers and the Establishment of an Immigration Authority, July 2002, p.21¹³⁴

Since 1996, over 23,000 people have been refused entry to Israel and detained in the “refused entry room.” In 1998 the Director-General of the Ministry of Foreign Affairs reported that “senior Ministry figures visited the locale and saw the difficult conditions there.”¹³⁵ The Public Defender’s Office report paints a similar picture: “There is major overcrowding in the rooms, which have no windows, nor any showers or toilets. Some of those refused entry to the country are forced to sleep on mattresses on the bare floor, and the only separation in the rooms is between men and women. The sick are in no way separated from the healthy, nor are those with criminal histories kept separate from those without criminal backgrounds, with minors and babies being kept together with everybody else.”¹³⁶ Reports received by the Hotline for Migrant Workers from people who have been held at this facility contain further details: the rooms are crammed with bunk beds, and there is minimal ventilation from a tiny window near the ceiling. Graffiti in all languages decorate the walls. There are no sanitary facilities: the toilets are outside the rooms, and a police officer has to be called whenever someone has to use them. Those who have been refused entry are not always allowed to make a call in order to report that they have been delayed. Countless complaints are also heard about money and valuables disappearing from their luggage which has been impounded by the authorities.

In reaction to media exposure of this situation, the head of the Interior Ministry Population Registry, Herzl Gedj, commented in March 2002: “We are making rapid progress towards solving the problem of the refused entry room. There is a budget from the Treasury, and I very much hope that we will move within six months. People who have been refused entry are not criminals or lawbreakers, and they must be treated first and foremost like human beings.”¹³⁷ Nearly a year has passed, and people who have been refused entry to Israel are still being detained in the same location and the same conditions as previously.

¹³⁴ According to the report of the Director-General of the Ministry of Internal Security at a conference on enforcement which was held by his Ministry on January 25, 2001, in 2000 entrance to Israel was refused to a total of 7,093 people.

¹³⁵ Shachar Ginossar, “Go outside”, *Yediot Aharonot*, March 8, 2002.

¹³⁶ “Conditions of Detention at Police Lockups and other Detention Facilities of the Israel Police in 2001”, Public Defenders Office Report, January 2002, p.19.

¹³⁷ Shachar Ginossar, “Go outside”, *Yediot Aharonot*, March 8, 2002.

Conclusion

The imprisonment of migrant workers until their expulsion, the conditions in which they are incarcerated, and the treatment of people who have been refused entry to Israel, all constitute a breach of human rights. The State of Israel treats migrant workers as if they were dangerous criminals, keeping them in worse conditions than those in which convicted prisoners are maintained. The State of Israel – a state of migrants *par excellence* – should adopt a more humane policy which would not necessarily be any the less effective.

FLAWS AND SHORTCOMINGS IN THE APPLICATION OF THE LAW OF ENTRY TO ISRAEL

When the Law of Entry to Israel was originally enacted in 1952, its purpose was to regulate foreign citizens' stay in Israel.¹³⁸ The law was amended in 2001, with the addition of a number of sections which have far-reaching human rights implications for migrant workers.¹³⁹ The amendment to the law was made in the wake of a petition brought in 1998 by the Association for Civil Rights in Israel (ACRI) against the Interior Minister concerning three Sierra Leone nationals who had been held in jail for a lengthy period. The purpose of the petition was to elicit judicial review of the detention of migrant workers who, for a variety of reasons (such as absence of ID, or insufficient money to finance an airline ticket), had to spend a considerable time in jail prior to their deportation from Israel.¹⁴⁰

In the course of the legal arguments over the petition, the parties agreed that an interim procedure should be developed pending the amendment of the Law of Entry to Israel, which inter alia stipulated that an administrative review procedure was required in the case of detained migrant workers. Some of the provisions in the regulation were subsequently adopted in the amendment to the law, but even then it was still a seriously flawed instrument. The amendment to the law regulated the detention and deportation processes, giving them "sanitized" names – "custody" instead of "arrest", and "removal" instead of "deportation". Since the amendment came into force, deportation orders have been issued against some 9,000 foreign nationals.

The process by which migrant workers are arrested and the review of such arrests under the amendment to the law fail to comply with accepted criteria in Israeli law concerning arrests. The amendment drastically curtails foreign nationals' right to personal liberty, the right to equality, and the right to dignity, and is in conflict with the provisions of Israel's *Basic Law: Human Dignity and Liberty*. This section examines both the flaws in the law itself and the shortcomings in its application.

The detention and deportation processes

A police officer, or an inspector with the appropriate authorization from the Interior Minister, has the power to detain for 24 hours a foreign national who is suspected of residing in Israel unlawfully ("illegal alien"). The police are required to bring the detainee before a border control officer acting on behalf of the Ministry of the Interior within 24 hours. The officer must investigate whether the detainee is indeed in the country unlawfully, meet with him, and allow him to submit his own arguments. The border control officer has the authority to issue a warrant for the detention of the migrant worker, so that he can be held in custody until he is deported. Alternatively, under certain circumstances the border control officer has the power to release the worker on bail: if, for example, he has been convinced that the migrant worker will leave Israel of his or her own free will, having been unlawfully present in the country in good faith, on the grounds of age and health, or for other humanitarian reasons.

The Law stipulates that where a border control officer has issued orders for an individual to be detained, that person must be brought before an Administrative Tribunal for the Review of

¹³⁸ Law of Entry to Israel, 1952.

¹³⁹ Law of Entry to Israel (Amendment No. 9), 2001. The amendment came into force on November 7, 2001.

¹⁴⁰ H.C. 4963/98, Hassan Sessai et al. v. the Minister of the Interior.

Detention of Illegal Aliens (referred to below as “the Tribunal”) as soon as possible, and in any case within 14 days at most. The Tribunal’s role is to undertake judicial review of the decision to keep the person in custody. This is an administrative body, whose members can include any persons who are competent to sit as magistrates, and who are familiar with the rules of entering and leaving Israel. Judges on this tribunal serve for a three year term of office. While the Tribunal does not have the power to overturn a deportation order, it is nevertheless competent to lay down conditions for the release of the migrant worker until his or her deportation. The Tribunal’s proceedings take place at the location where the detainee is being held, i.e. detention facilities or prisons.

Shortcomings in the Law of Entry to Israel

Bringing a migrant worker before the Tribunal within 14 days

As stated above, the law requires all migrant workers who have been arrested to be brought before the Administrative Tribunal for the Review of Detention of Illegal Aliens as soon as possible, and in any case, within 14 days at most. This section discriminates against migrant workers compared with the treatment of Israeli nationals suspected of criminal offenses, whom the police are required to bring for judicial review within 24 hours.¹⁴¹ A survey of detainees held in jail carried out by the Hotline for Migrant Workers shows that on average, men spend six days in custody before appearing before the Tribunal; 20% of them have to wait longer than a week, while 4% wait over 14 days, in violation of the Law’s provisions.¹⁴²

What these statistics show is that large numbers of detainees who actually meet the conditions for release on bail are forced to spend many days in custody until the Tribunal considers their case and releases them. On November 20, 2001, T.A., a Philippine national, was arrested for being in the country unlawfully. Her three-year old daughter was left on her own without a minder, while her mother was held in custody until she was released two days later by the Tribunal following intervention by her lawyer. On February 18, 2001 K.M., a Chinese national, was arrested for being in the country unlawfully. Only two days later, when he appeared before the Tribunal, did it become clear that he had a valid visa, whereupon he was released. On September 17, 2002 A.P., a Nigerian national, was arrested even though he was suffering from a heart condition and the arrest was in breach of the declaration by the Deportation Police that it does not arrest people who are sick. Only 13 days after his arrest did A.P. appear before the Tribunal: he was then released after posting a cash bail bond.¹⁴³

Because of the considerable delay between the day on which individuals are arrested and their appearance before the Tribunal, it is quite likely that there are migrant workers with valid work and stay visas who are wrongly arrested and deported before being brought before the Tribunal.

¹⁴¹ By way of comparison, we would point out that in H.C. 6055/95, *Tsemah v. The Minister of Defense*, PD 53 (5) 241, the Supreme Court ruled that the Military Justice Law, which empowers a disciplinary officer to issue an order to detain a soldier for 96 hours before he is brought before a judge, is in breach of the *Basic Law: Human Dignity and Liberty*. In the wake of the petition, the section was repealed and the period of custody was reduced to 48 hours.

¹⁴² The survey was carried out between November 7, 2001 and August 30, 2002, covering 1,085 migrant workers out of a total of 3,250 held as potential deportees in Ma’asiyahu Prison during that period.

¹⁴³ Record, Administrative Tribunal for the Review of Detention of Illegal Aliens, September 30, 2002 (detainee no.3715).

Subordinate relationship between the Tribunal and the Ministry of the Interior

The Law of Entry to Israel is the only Israeli statute to authorize an administrative tribunal, rather than an ordinary court of law, to undertake judicial review of detention. The Tribunal's decisions have far-reaching implications for the migrant worker's liberty, and it must therefore be judicially autonomous and independent. In confirmation of this, the Law of Entry to Israel stipulates, "In performing its duties, the Tribunal is answerable solely to the law."¹⁴⁴ However, the way in which the Tribunal is appointed creates a relationship of dependence between it and the Ministry of the Interior, whose decisions it is supposed to review. The Tribunal's judges are appointed by the Minister of Justice, from the ranks of the Civil Service, **on the recommendation of the Interior Minister**. Furthermore, unlike an ordinary court where judges' appointments last until they reach retirement age, the Tribunal's judges are appointed for just three years. This state of affairs increases their dependence on the Ministry which recommended their appointment, i.e. the Ministry of the Interior. In this connection it should be noted that the two women and man who were appointed as judges on the Tribunal were Interior Ministry employees until their appointment, and their salaries are still paid by the Ministry. The upshot is that the Tribunal cannot readily take impartial decisions.

Corroborating this analysis, the Tribunal tends to consult Interior Ministry representatives before deciding to grant bail. Furthermore, it grants them 24 hours to appeal the decision, while the detainee remains in jail. If the worker claims to be in Israel legally, the Ministry of the Interior is given an extension (generally 3-7 days, or more during holiday seasons) for submitting its reaction to the Tribunal. In most instances the Ministry does not bother to react until numerous phone calls and reminder letters on the part of the Hotline's volunteers are made. On September 4, 2002 V.A., a Romanian national, appeared before the Tribunal and claimed to be in Israel and working in the country legally. The Tribunal ordered the Ministries of Labor and of the Interior to investigate his claims and to respond within three days. The Ministry of the Interior failed to respond, and it was not until two weeks later that the worker was released, after his employer attested that he was indeed telling the truth.¹⁴⁵

Furthermore, the Interior Ministry representatives are not required to present the Tribunal with any proof as to the unlawful presence of the detained migrant worker. In instances where opinions differ as to whether a particular detainee's visa is valid, the Ministry's version takes precedence over the detainee's. As an illustration of this, on September 1, 2002 a Ukrainian national who was the holder of a valid visa was arrested at a grocery store. The cause of the arrest was that he was allegedly working in the store and hence was in breach of his visa conditions. In the proceedings before the Tribunal, he denied the charge, claiming to have entered the store simply in order to make some purchases. The Tribunal gave the Ministry of the Interior three days to react to the detainee's claims.¹⁴⁶ The Ministry's reaction was that the detainee was caught working in the store. No checks were made with the storeowner, the Ministry's position was accepted, and the detainee was deported.

As a result of this subordination on the part of the Tribunal, in some cases the Ministry of the Interior refuses to recognize the Tribunal's authority over it. For example, on November 29,

¹⁴⁴ Section 13 (xiii), Law of Entry to Israel, 1952.

¹⁴⁵ Record, Administrative Tribunal for the Review of Detention of Illegal Aliens, September 4, 2002 (detainee no. 3286), and reply of the Administrative Tribunal for the Review of Detention of Illegal Aliens to the question asked by the Hotline for Migrant Workers on September 17, 2002.

¹⁴⁶ Record, Administrative Tribunal for the Review of Detention of Illegal Aliens, September 4, 2002 (detainee no. 3415).

2001 the Tribunal decided to release on bail D.S., a Jordanian national, given the fact that the Office of the UN High Commissioner for Refugees was processing his application for refugee status. The head of the Interior Ministry Population Registry wrote on the release decision, “delay release at this stage,” and in fact the detainee’s release was delayed until the matter received media publicity.¹⁴⁷ The Ministry of the Interior also has a habit of making releases on bail subject to certain conditions which are more stringent than those laid down by the Tribunal. For example, while the Tribunal has never required the guarantor for the release of a migrant worker to be an Israeli national, the Ministry of the Interior has on many occasions refused to accept bail posted by an individual who is not an Israeli citizen. In July 2002 the Hotline for Migrant Workers lodged a petition on behalf of K.T., a Ghanaian national, regarding this matter. The Tribunal had ordered K.T.’s release subject to the posting of a cash bail bond, but the Ministry of the Interior would not release him since the person posting the bond was a migrant worker residing without a permit in Israel.¹⁴⁸ Only after the petition had been lodged was the worker released.

The flouting of a judicial decision by an administrative authority constitutes a serious violation of proper governance. Moreover, this Ministry of the Interior requirement forces migrant workers to rely on the assistance of Israeli citizens, sometimes for a financial consideration, in order for bail to be posted on their behalf, restricting still further their already remote chances of being released on bail.

The Tribunal’s modus operandi

As indicated above, the Law of Entry to Israel is Israel’s only statute that authorizes an administrative tribunal, rather than an ordinary court of law, to undertake judicial review of detention. According to the stipulations of the Law, the Tribunal is not required to observe the rules of evidence, nor is any proof required other than the Ministry of the Interior’s claim that the detainee is indeed in the country unlawfully.¹⁴⁹ Likewise, the Law fails to lay down rules for the Tribunal’s working procedures, which are therefore set by the Tribunal itself. The Tribunal’s sittings are conducted on markedly different lines from those of an ordinary court. Since it sits in a prison, it is in breach of the principle of public deliberations, one of the basic principles of Israeli law. The dates on which the court will sit are not published, and the Tribunal has no publicly known address, no post office box, and no fax number through which it can be contacted and documents submitted to it. Nor are the Tribunal’s records published. They can be obtained through Hotline for Migrant Workers volunteers, or by application to the Tribunal’s judges, who can be contacted by mobile phone.

Even though the Tribunal has jurisdiction to rule in cases involving people who speak limited or no Hebrew, it operates without interpreters. Inevitably, the language barrier creates communications difficulties which impair the Tribunal’s operations, making a fair hearing difficult if not impossible, and depriving the detainees of the possibility of defending themselves before it. The problem is particularly grave in the case of migrant workers who speak no other language than that of their country of origin. As a result of these communication difficulties, combined with the unofficial nature of the Tribunal’s sittings, generally held in the prison’s visiting hall, at the end of the procedure quite a few detainees have been surprised to hear from the Hotline’s volunteers that they had just appeared before a Tribunal. Another reason for this state of affairs is the fact that detainees are given no

¹⁴⁷ Record, Administrative Tribunal for the Review of Detention of Illegal Aliens, November 29, 2001 (detainee no. 191).

¹⁴⁸ Administrative Appeal 21277/02 Tel Aviv, K.T. v. the Minister of the Interior.

¹⁴⁹ Section 13 (viii) (b), Law of Entry to Israel, 1952.

information about their rights and the procedures they are likely to undergo until they are deported, let alone the Tribunal's procedure, its powers, and how it might be able to assist them.

Today, the Tribunal has three judges, who visit the prison regularly. The Tribunal does not operate during holidays, at which times there is no review whatsoever of people's detention. Given the ever growing numbers of detainees held at jails, the judges try to keep the proceedings short so as to cover as many detainees as possible on each occasion. Sometimes this means expediting several dozen cases a day. Inevitably, however, this conflicts with fair hearings, and notwithstanding the judges' best efforts, the time that detainees spend in jail awaiting a Tribunal hearing is constantly growing, and, as indicated above, on some occasions exceeds the legal limit of 14 days.

Release on bail

For Israeli citizens, detention is the exception and liberty the rule. The Arrests Law stipulates that “a judge shall not order an arrest ... if the purpose of the arrest can be attained by setting bail and conditions for the posting of a bond, which impact less on the liberty of the suspect.”¹⁵⁰ In contrast, migrant workers’ situation is the complete opposite. The Law of Entry to Israel stipulates that a migrant worker must be held in custody “unless” certain conditions have been met under which a border control officer “may” (but is not required to) release him.¹⁵¹

Indeed, border control officers have made use of the power granted them to release migrant workers from custody in only a few cases.¹⁵² According to Israel Prison Service statistics, 15% of the migrant workers who come to Ma’asiyahu Prison, all of whom had been interviewed by a border control officer and denied bail, were subsequently released on the grounds of wrongful arrest. This figure speaks eloquently of the major human cost exacted by the policy under which detention is the norm and liberty the exception.¹⁵³ The Hotline for Migrant Workers has documented six cases in which single parents were arrested, leaving their children without appropriate supervision. Two cases happened before the amendment to the Law of Entry to Israel came into force, but in four other cases although a border control officer saw and heard the detainees’ arguments, he did not see fit to release them even though the law permits him to do so. The individuals in question were only released after they had been brought before the Tribunal in prison. Furthermore, the Hotline has documented five cases in which migrant workers were arrested despite the fact that they had been recognized by the UN as refugees and their stay in Israel was lawful, as well as four cases in which the children and grandchildren of non-Jews awarded the title of Righteous Among the Nations (Righteous Gentile) for saving Jews during the Holocaust were arrested for unlawful presence in the country.¹⁵⁴ In all these instances a border control officer heard the detainees’ arguments, but refused to release them. They were only released by the Administrative Tribunal after being held further in jail for several more days.

The same thing happened to G.A., a Ghanaian national. He was arrested on March 6, 2002 for unlawful presence in the country, at an Interior Ministry office while attempting to make arrangements for himself and his wife to travel to the USA subsequent to winning a Green Card. At that time, G.A.’s wife was in an advanced stage of pregnancy, and her doctors had insisted on complete bed rest in order to avoid the danger of a miscarriage. G.A. applied to be released on bail in order to help his wife, but his request was rejected by the border control officer. The following day, the Tribunal ordered his release on humanitarian grounds.¹⁵⁵

Even the Tribunal, however, does not authorize release on bail in many instances. According to data provided by the Ministry of the Interior to a journalist from the *Yediot Aharonot* newspaper, only 10% or so of detainees brought before the Tribunal are granted release on

¹⁵⁰ Code of Criminal Procedure (Enforcement Powers, Arrests) 1996.

¹⁵¹ Section 13 (i) (b) and Section 13 (vi) (a) of the Law of Entry to Israel.

¹⁵² A question about the number of migrant workers arrested and released by border control officers was sent to the Ministry Interior nine months before this report was written, under the Freedom of Information Law. At the time of writing, no reply has been received. The statement is based on information collected by the Hotline for Migrant Workers during its visits to Ma’asiyahu Prison.

¹⁵³ A question about this subject, under the Freedom of Information Law, was submitted to the Israel Prison Service. This finding is taken from the Spokesperson’s reply, dated August 8, 2002.

¹⁵⁴ Mazal Muallem, “Deportation Order Against Son of Righteous Gentile Overturned”, *Ha’aretz*, May 18, 2001.

¹⁵⁵ Record, Administrative Tribunal for the Review of Detention of Illegal Aliens, March 7, 2002.

bail or subject to restricting conditions.¹⁵⁶ In a few cases in which the Tribunal granted applications for release, detainees were required to post high amounts of bail, varying between NIS 10,000 (around US \$5,000) and NIS 50,000 (some US \$10,000). Compared with the conditions of release on bail set for Israeli offenders, these amounts are particularly outrageous. When a court sets bail for an Israeli detainee, it tends to take account of his economic status and the severity of the offense that he is alleged to have committed. For example, in proceedings concerning the bail conditions for releasing an individual suspected of trafficking in women, an offense which everyone agrees is worse than illegal residence, Judge Ayala Procaccia ruled that bail conditions were to be set which would ensure that “we will not be witnesses to situations in which detainees spend long periods in custody simply because they have not managed to produce bonds without their case being reconsidered in an attempt to adjust the scope of the financial conditions imposed to suit the capacity and the objective possibilities available to the accused.”¹⁵⁷ The defendant in this case was released on bail of NIS 5,000 (around US \$1,000). The District Court criticized the Tribunal’s practice of setting high levels of bail, stating: “Bail should be within the reach of the appellant, since otherwise setting bail at an amount which he cannot afford is tantamount to deciding about his remaining in custody.”¹⁵⁸ Since then, the Tribunal has tended to take somewhat more account of migrant workers’ financial circumstances, but the bonds set are still high relative both to economic ability and to the figures set for Israeli citizens.

Adverse effects on minors

The amended version of the Law of Entry to Israel also contains no reference to minors who are residing without a permit with their parents, and hence there is nothing to prevent their detention. However, as long as illegal residents are held at detention centers, the police do not arrest children, since there is nowhere that they can be kept until being deported. However, the Renaissance Hotel in Nazareth has been modified so as to hold migrant workers prior to deportation and is serving as a detention center since January 2003. In future the families of migrant workers might also be held there.¹⁵⁹ The Law ignores difficult issues such as the fate of children whose families have been arrested, the conditions for holding minors who are to be deported, what services they are to be given at the detention facility, and so on.

It should be noted that the deportation of families whose children have been born in Israel is likely to be considerably delayed because the children may have no passports. Furthermore, since in some cases the two parents are nationals of different countries, deportation will involve separating parents from their children since it will be impossible to deport them to the same country. It is unclear to which country the children will be deported in such a case, and certain countries are also known to make difficulties in such instances.

Arrest by Labor Ministry inspectors

Up to the end of 2000, Labor Ministry inspectors would arrest migrant workers, even though under the law they were not authorized to make arrests. The Association for Civil Rights in Israel made a number of applications to the Attorney General, insisting that he instruct the Ministry’s inspectors to desist from this practice. At the beginning of 2001 the Attorney-General issued an instruction to the Ministry of Labor to this effect.

¹⁵⁶ Nurit Palter, “He’s Done His Bit – Now He Can Go”, *Yediot Aharonot*, September 3, 2002.

¹⁵⁷ Misc. App. (Crim.) 3153/00 Arnold Shlomov v. State of Israel.

¹⁵⁸ Decision of Judge Keling in Administrative Appeal 151/02.

¹⁵⁹ Baruch Kra, “Renaissance Hotel in Nazareth Wins Prison Service Tender and Will House Foreigners Before Deportation,” *Ha’aretz*, September 13, 2002.

The amendment to the Law of Entry to Israel circumvented this problem, stipulating in Section 13 (iv) (a) that the Interior Minister had the power to appoint inspectors who would be authorized to make arrests of migrant workers. This amendment generates a situation in which Ministry of Labor inspectors actually have two conflicting roles: while their primary function is supposed to be to protect the rights of workers, including migrant workers, they will also arrest them. Worse than this, as a recent article in the *Globes* newspaper reported, with the recent introduction of a Deportation Police, the Ministry of Labor has instructed its inspectors to perform activities aimed exclusively at deporting migrant workers.¹⁶⁰ The upshot is that migrant workers whose rights have been violated will now be afraid to contact Labor Ministry inspectors in case they are arrested. As it stands, the Law underpins a policy that considerably reduces the chances of migrant workers approaching the Ministry of Labor for assistance. Even were they to do so it is highly doubtful whether such help would be forthcoming, since the bulk of the Ministry's efforts and resources are now focused on arresting migrant workers, with practically nothing available to help them implement their rights as workers.

Shortcomings in the application of the Law by the enforcement authorities

Bringing detainees before the Tribunal after 14 days in custody

The Law stipulates that a border control officer must release somebody who has not been brought before the Tribunal within 14 days of arrest.¹⁶¹ In practice, so far border control officers have refused to release detainees who were not brought before the Tribunal within the fixed time limit. Since the amendment to the Law came into force, the Hotline for Migrant Workers has documented 42 cases in which detainees have been held for longer than 14 days. None of these was released by a border control officer.

During the initial period following the coming into force of the amendment to the Law, the Administrative Tribunal at Ma'asiyahu Prison automatically released detainees who had not been brought before it within the time limit. An example of such practice was the freeing by Advocate Sharon Bavly-Lary on December 13, 2001 of eight Chinese and two Jordanian nationals who had been held at the Kishon Detention Facility without seeing the Tribunal.¹⁶² In her decision of August 7, 2002 in the case of P.S., a Jordanian national who was not brought before the Tribunal until 17 days after being arrested, the Presiding Judge, Advocate Bavly-Lary, wrote: **“I view it as scandalous that an individual held for illegal residence has been in custody for 17 days when the Law of Entry to Israel expressly stipulates that he must be brought before the Administrative Tribunal within 14 days of his arrest. The Israel Police acts with regard to illegal aliens as if the Law does not apply to it, showing contempt for its provisions and trampling on their dignity and rights. [...] I call upon everybody involved to make sure that the Israel Police starts observing the law. I would point out parenthetically that an extremely high percentage of cases in which people in custody are ‘forgotten’ involve the Kishon Detention Facility, and this state of affairs should at the very least be investigated and procedures updated!!!!!!”**¹⁶³ (Emphasis in original).

Recently, the Tribunal at the prison has stopped releasing deportees who have not been brought before it within the time limit. Numerous representations were made by the Hotline

¹⁶⁰ Zahava Dovrat, “All Labor Ministry Inspectors Expelling Foreign Workers”, *Globes*, October 2, 2002.

¹⁶¹ Section 13 (xiv) (d), Law of Entry to Israel, 1952.

¹⁶² Record, Administrative Tribunal for the Review of Detention of Illegal Aliens, December 13, 2001

¹⁶³ Record, Administrative Tribunal for the Review of Detention of Illegal Aliens, August 7, 2002

for Migrant Workers to the Border Control Officer and to the Tribunal requesting the release of the detainees who were being held unlawfully. All were rejected, citing the pretext that the Tribunal has the right to provide post factum approval of the arrest of migrant workers who have been detained for longer than permitted under the law.¹⁶⁴ In light of the Tribunal's dependence on the Ministry of the Interior, it may be reasonably assumed that this change is a result of the Ministry's policy.

Failing to inform deportees of their rights

The Law of Entry to Israel stipulates that migrant workers who have been arrested must be informed of their rights twice: first, upon their arrest, they should be informed, as far as possible in a language which they understand, of their rights under the law, as well as of their right to notify of their arrest somebody close to them, a lawyer, and their country's diplomatic or consular representation; and a second time at the detention facilities and prisons in which they are held until their deportation. The law requires that detainees' rights be displayed in a prominent place, in Hebrew and English.¹⁶⁵

In practice, detainees are not informed of their rights when they are arrested, and consuls are only notified that they are being held in custody after they have been transferred to prison. Generally speaking, people held at police lockups are not given any possibility of making a phone call to report that they have been arrested. Even in prison the Law is breached, and to date, more than a year after the amendment to it came into force, the information sheets have not been put on display. Moreover, it should be noted that it is not enough to make the information available in Hebrew – of which most detainees have no knowledge whatsoever, and English – which only some of them understand: the Law should have stipulated that the information sheets should be translated into a variety of languages, particularly the languages of those countries from which migrant workers have come at the invitation of the authorities.

In the absence of the appropriate information, detainees are unaware that they have the right to appeal the deportation order issued against them, on the grounds of such reasons as being in possession of a valid work visa, having refugee status as recognized by the UN, or being a Righteous Gentile. Nor will they know that they are entitled to be represented by a lawyer, or some other person; that they are entitled to a hearing by the Tribunal within 14 days; or that they can apply to be released on bail. In the absence of information, detainees are also completely in the dark about Israel's standard procedures for deportation and what will happen to them until they are deported, and many of them experience great shame at the very fact that they are held in jail, even though they are not criminals.

The Hotline for Migrant Workers has tried to fill the gap on its own initiative. The Hotline has contacted the Israel Prison Service a number of times, asking for permission for its volunteers to distribute to the migrant detainees information sheets which have been written and translated into various languages. These information sheets have been submitted to the Israel Prison Service for approval, but to date, more than a year after the first application, the Hotline's request has not been approved. Such conduct on the part of the authorities gives the regrettable but unavoidable impression that they are doing everything they can to withhold from the detainees the information that they need in order to utilize their rights to the fullest. Not only do the law enforcement agencies themselves flout the Law, which requires them to

¹⁶⁴ E.g., Record, Administrative Tribunal for the Review of Detention of Illegal Aliens, Adv. Sarah Ben Shaul Weiss, September 4, 2002 in re Zang Hong, Chinese national, who was arrested on August 18, 2002 was brought before the Tribunal only 17 days later.

¹⁶⁵ Section 13 (i) (e) and Section 13 (viii) (f) of the Law of Entry to Israel, 1952.

inform detainees of their rights, but some view the efforts by Hotline for Migrant Workers volunteers to fill the gap as “incitement.” On numerous occasions the volunteers have been given an unmistakable message to the effect that if they continue to inform detainees of their rights, their permits to visit the prison will be withdrawn.

Failure to serve deportee with deportation order

The Law of Entry to Israel requires detainees to be served personally with their removal (deportation) orders.¹⁶⁶ Such orders, pursuant to the Law, must indicate the conditions for release on bail, although in most cases such release is denied. Furthermore, according to the provisions of the Law, an individual must not be deported unless three days have lapsed after service of the deportation order, so that it can be appealed. In practice, this article is regularly flouted, since today many migrant workers are deported without being personally served with any deportation order whatsoever.

Non-separation of deportees from suspects and convicted criminals

Because of the difference between a migrant worker awaiting deportation for illegal residence in the country, a lesser offense, and a prisoner who has committed a criminal offense necessitating detention or imprisonment, the Law of Entry to Israel stipulated, in the spirit of international law, that Israeli prisoners must be kept separate from migrant workers.¹⁶⁷ Here too, however, what the legislator has specified is one thing, and what actually happens is another, since in the overwhelming majority of police stations and detention centers there is no such separation.

Conclusion

The flaws in the Law of Entry to Israel itself as well as in its application combine to greatly prejudice the rights of migrant workers – rights which are well grounded in Israel’s Basic Laws. The Law provides an incomplete and inadequate setup to deal with the issue of the detention and deportation of migrant workers who are unlawfully present in the country. Its main flaws are:

- the protracted amount of time which elapses prior to judicial review;
- the characteristics of the Tribunal that has the power to undertake this review, and its lack of independence in respect of the Ministry of the Interior;
- release on bail is the exception, and detention the rule;
- the fact that the Law ignores the issue of minors;
- Ministry of Labor inspectors have been endowed with far-reaching powers which are in contradiction with what was supposed to be their primary role – enforcing the labor laws.

The application of the Law is also fraught with shortcomings which result in the violation of detainees’ rights:

- even after 14 days, detainees are not brought before the Tribunal;
- detainees are not provided with information about their rights;
- detainees are not always served with a removal order, even though this is required by the Law;
- migrant workers who are being detained prior to deportation are not always separated from criminal detainees.

¹⁶⁶ Section 13 (iv), Law of Entry to Israel, 1952.

¹⁶⁷ Section 13 (viii) (b), Law of Entry to Israel, 1952.

The Law and the way in which it is applied infringe migrant workers' rights of personal liberty, dignity, and equality. We can but quote what Justice Elon has written about this:

“... Of all the liberties that it is our duty to safeguard, the paramount and primary defense is the right of the isolated and “gray” individual, to whom many are frequently indifferent, and who is forgotten in his struggle not to be deprived of his liberty and not to suffer his freedom to be impaired... Beloved is man, for he was created in the image of God – every single human being, the small and the great, the insignificant and the famous alike...”¹⁶⁸

¹⁶⁸ Misc. App. 1/87, Danneshvili v. State of Israel, PD. 41 (2) 281 at 289.

SUMMARY AND RECOMMENDATIONS

Israel's policy as reflected in this report is extremely damaging in many ways, causing systematic violation of human rights and the trampling of the rule of law. The harm done is not only to the migrant workers themselves; the price is paid by many Israelis, particularly workers who have become redundant and whose working conditions have deteriorated drastically. Moreover, the government's strong-arm policy has failed to deliver what it had set out to achieve – reducing the number of migrant workers.

The Hotline for Migrant Workers proposes a fundamental change of approach and urges the government to adopt a solution which is both humanitarian and efficient. If the authorities were to enforce the existing protective labor laws in respect of employers, this would prevent the exploitation and enslavement of migrant workers, ensuring that their wages and work conditions are in line with those of Israeli workers. Employers would no longer automatically prefer to hire migrant workers, who would leave Israel of their own volition and seek their fortunes elsewhere. This is a practical solution which could be already applied in the short term. Its principal components are:

To abolish the “binding policy”: Grant the workers work permits for a specified period of time, and allow them to freely choose their own employers. Workers can be channeled to specific industries by issuing permits for certain trades only, such as construction, agriculture, and caregiving.

To enforce the law on employers: Labor Ministry inspectors will revert to their original task of enforcing the protective labor laws – such as the Minimum Wage Law and the Foreign Workers Law. Enforcement of these laws will reduce the current economic advantages to the employer of hiring foreign labor, and will put a stop to trafficking in human beings.

To stop bringing in more migrant workers and integrate those already in Israel: Allow undocumented migrant workers to register with the Employment Service, where their professional skills will be recorded, thus giving the workers a chance to find a job in a trade where is a shortage of Israeli workers. A possibility to be considered: requiring a deposit as guarantee for the worker's eventual voluntary departure from Israel.

To revoke the decision to carry out mass deportation, and stop manhunting migrant workers: Expulsion should be carried out with the utmost caution and only as a last resort, after all other ways of reducing the numbers of people unlawfully present in Israel have been explored.

To enable migrant workers to exhaust all legal procedures and not to arrest, imprison or forcibly expel them: The authorities should encourage migrant workers to testify against those who break the law – inter alia by issuing temporary work permits.

To stop the fanning of hatred of foreigners, and to create an atmosphere in which they are treated with respect and dignity as human beings and as workers.

If these recommendations are accepted, they will help to strengthen Israel and will be a worthy lesson reverberating throughout the history of the Jewish people, for we too were once strangers...

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