Worker's Hotline | **Hotline for Migrant Workers**

Freedom Inc.

Binding Migrant Workers to Manpower Corporations in Israel

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Hotline for Migrant Workers

A nonpartisan and not-for-profit organization protecting the rights of migrant workers, refugees and victims of trafficking in humans in Israel, in order to create a more just, egalitarian and democratic Israeli society promoting tolerance and protection of the weakened. The NPO provides information about legal rights, legal and paralegal counseling and representation. It also acts to raise public awareness and change government policy in these issues in order to prevent the establishment of modern slavery in Israel. HMW is gratefully dependent on the labor of volunteers and the kind support of private individuals and funds, headed by the New Israel Fund.
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1. Introduction

In May 2005, following many years in which migrant workers were employed based on the so-called "binding arrangement" the State of Israel began implementing a new employment system in the construction sector. Recently, it also began to formulate new arrangements for employing migrant workers in the agricultural, care-giving and industrial sectors, which are supposed to replace the current employment system in these sectors.

According to the former arrangement in the construction sector, any migrant worker working in construction was directly employed by his contractor, and therefore, resigning or being fired meant losing one's residence permit, and becoming an illegal alien liable to arrest and deportation. According to the recently adopted employment arrangement, on the other hand, migrant workers are employed by manpower companies (or "corporations" in official parlance), whereby they are ostensibly allowed to change employers.

The present report seeks to examine the new employment system in the construction sector, after having been in force for about two years. Our objective is to assess any changes since May 2005, and in particular, to ascertain whether the move to employment by manpower corporations has indeed improved the wages and working conditions of such employees, and whether it has remedied the severe exploitation of workers employed under the previous arrangement. The report also assesses whether, in enacting the new employment system, the State of Israel has broken the "chains" binding migrant workers to their employers, or the new system remains just another form of "binding".

Beyond examining the abstract principles of the new employment arrangement compared to the old, the present report explores the actual implementation of the new arrangement. This is based on the analysis of in-depth interviews with dozens of migrant construction workers conducted by the Hotline for Migrant Workers and of hundreds of complaints filed against manpower corporations by their employees through the Worker's Hotline organization.

The report also analyzes the new employment arrangement in the care giving sector. Since its actual implementation has been repeatedly put off by authorities, and since it is not yet in force at the time of this writing, the present project could not evaluate empirical findings related to care giving employees. Therefore, we will only review them in general terms. Finally, in other sectors

of the Israeli economy where migrant workers are employed, the new employment arrangements have not yet even been determined, so that we will not be able to refer to them here.

The present document is the conclusive report of an annual project spanning the period July 2006 to July 2007. In March 2007, an interim report was published (in Hebrew only), outlining the nature of the new system based on an analysis of data collected during the project's first six months. The present report analyzes not only those preliminary data, but also new data collected over the second half of its lifetime. The interim report referred exclusively to the construction sector, assuming more data on the new employment arrangements in the other sectors could be collected by the end of the project year. As already mentioned, however, the State of Israel has yet to meet its obligations in terms of the deadlines for enacting those arrangements.

2. Background

2.1 The Employment of Migrant Construction Workers in Israel

Before we begin to discuss the employment arrangements of Israeli migrant workers, we present a brief historical review of the employment of migrant workers in Israel. Ever since the occupation of the Gaza Strip and the West Bank in 1967, most construction and agricultural workers in Israel were Palestinian residents of the Occupied Territory who were issued with entry and work permits. Following the First *Intifada*, however, the Gaza Strip, and later also the West Bank, were subjected to closure, significantly limiting the number of work permits. At the same time, huge immigration waves from the former Soviet Union led to prosperity in the construction sector. Consequently, organizations such as the Association of Contractors and Builders began pressuring the Israeli government to allow the entry of migrant workers.[1] Accordingly, from the early 1990's onwards, the Israeli authorities began recruiting migrant workers to meet the employers' need for cheap manpower to replace that of the Palestinians.

Israeli authorities perceived the entry of migrant workers into Israel as nothing more than a means to serve the end of market demand for low-cost labor. Consequently, migrant workers are brought to Israel and employed here under conditions destined to perpetuate the temporary and provisional nature of their role in the labor market, and in Israel in general,[2] and to restrict them to a limited number of sectors – construction, agriculture, care giving, manufacturing and low-level services – characterized by low pay.

Prior to 1996, no significant numerical caps were enforced on the entry of migrant employees. In that year, however, the government adopted a new policy of reducing the overall numbers of migrant employees, believing them to represent a growing phenomenon with significant and negative socioeconomic implications,[3] including the exclusion of Israeli citizens from the labor market due to their relatively high employment costs.[4] Starting that year, Israeli labor policy has

[1] A. Kemp and R. Reichman, "Migrant Workers" in Israel, *Information about Equality, Vol. 13* (June 2003), Adva Center (in Hebrew); A. Kemp and R. Reichman, "Aliens" in a Jewish State – the New Politics of Migratory Work in Israel, *Israeli Sociology, C* (2001), 79, 86 (in Hebrew); D. Bartram, Foreign Workers in Israel: History and Theory, *International Migration Review, Vol. 32*(2), 303 ;D. Bartram, *International Labor Migration: Foreign Workers and Public Policy* (Palgrave Macmillan, 2005), pp. 66-97.

[2] Guy Mundlak, "Workers or Aliens in Israel? The Basic Contract and the Democratic Deficit", *Legal Reviews, 27*(2003), 423, 433-34 (in Hebrew).

[3] Report by the Interministerial Committee on Planning the Employment System of Alien Workers in Israel and Conditions for Issuing Permits for the Employment of Alien Workers (August 2004), p. 12.

[4] Bank of Israel Report 1997, pp. 117-121 (in Hebrew).

been guided by the conception that "decisive action" must be taken to reduce the numbers of migrant employees in the Israeli labor market, in order to allow more Israeli citizens to participate in it.[5] This conception informs government policies both concerning the number of employment permits allotted and concerning arrests and deportations of migrant employees.[6]

As seen in Table 1 below, despite this new, exclusionary approach adopted in 1996, until 2001 the number of migrant workers continued to rise. Therefore, in 2002, a new body was created – the Immigration Authority – and charged with arresting and deporting "illegal" migrant employees. Following its early and decisive activities, the number of migrant workers in Israel has indeed been reduced.[7]

Table 1

Migrant Workers in Israel in 1997-2006 (in thousands)

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Construction sector permits[8]	57	44	36	34	44	27	23	20	15	15
Migrant cons. workers without permit[9]	11	20	23	27	30	48	23	No figures	No figures	No figures
Total no. of migrant cons. workers[10]	68	64	59	61	74	75	51	No figures	No figures	No figures
Care giving sector permits[11]	12	14	14	22	34	39	39	34	37	39
Total number of migrant workers[12]	**150**	**164**	**184**	**214**	**248**	**232**	**208**	**188**	**194**	**[13]189**

[5] Bank of Israel Report 2005, pp. 164-165 (in Hebrew).
[6] On this policy of reducing the numbers of migrant employees in Israel from a legal standpoint, see High Justice Court 9722/04 *Polgat Jeans Ltd. and 50 Others vs. the State of Israel* (Verdict, Dec. 7, 2006); Tel-Aviv (District Jerusalem) 4410/02, *Shani ADA Ltd. et al. vs. SoI* (Verdict, Dec. 3, 2006).
[7] Importantly, the data shown in Table 1 do not include Palestinian workers residing in the Occupied Territories, who've been continually employed in Israel, albeit to a relatively limited extent. The issue of Palestinian workers is beyond the scope of the present report, not least because their employment system is basically different from that which is discussed here.
[8] The data on the number of permits actually allotted in 1997-2005 have been taken from a summary of 2004 by the Unit for Alien Workers, appearing in the Ministry of Industry, Trade and Labor's website (http://www.tamas.gov.il/NR/rdonlyres/0DC08C38-4110-4913-AC29-B2663FD09FA8/0/sum2004.doc). The number of permits for 2006, seen in the table, has been determined based on the construction employment figures for 2006, predetermined in Government Resolution 3021, January 6, 2006. Importantly, this last figure is not necessarily precise, since reviewing earlier government resolution points to a gap between predetermined and actual figures in many cases.
[9] Andorn Committee Report, p. 20.
[10] *Ibid.*
[11] Permits figures in the care giving sector are based on data presented in the report of the Interministerial Team on Reviewing the Care giving Sector, September 3, 2006, p. 2.
[12] Bank of Israel Annual Report, 2001, p. 117; Bank of Israel Annual Report, 2005, p. 168.
[13] Bank of Israel Annual Report, 2006, p. 170 (in Hebrew).

2.2 The "Binding" Arrangement

As already mentioned, until May 2005, migrant construction workers were employed under the so-called "binding" arrangement. Today, this arrangement also applies, at least in principle, to migrant workers employed in the agricultural, care giving, manufacturing and services sectors. The new arrangement in the construction sector is purported to release the workers from their binding, but as we shall see below, this is very much in doubt.

According to the new arrangement, Israeli citizens interested in employing migrant workers should apply to the Alien Workers Unit of the Labor Service for employment permits.[14] According to the binding arrangement, the identity of any migrant worker's employer is determined prior to the former's arrival in Israel; the residence permit issued to migrant workers is contingent on working for that specific employer, and until recently, the employer's name even used to be imprinted on the worker's passport upon arrival in Israel. According to this policy, any disruption in labor relations such as employer bankruptcy or demise, employee resignation or dismissal, automatically led to revoking the migrant worker's residence permit, turning him into an illegal alien and exposing him to possible arrest and deportation.

Migrant workers employed under the binding arrangement are thus exposed to a harsh reality of severe and continuous violation of their fundamental human rights. The arrangement undermines their bargaining power vis-à-vis their employers, since the linkage between employer identity and residence permit further weakens he already weaker side in the employment relationship. Protected by this binding arrangement, employers can delay payment, underpay, avoid providing social rights, demand overtime, refuse leaves, house their employees in terrible conditions and illegally deduct portions of their pay. Employees who attempt legal action to protect their rights are usually fired, and consequently lose their residence permits. Thus, many employees are forced to keep working for exploitative employers in order to retain their legal status, while other prefer to walk away and risk arrest as illegal aliens.

Employers often choose to "relocate" their employees. Employers who do not require the services of all their workers in certain periods of the year, such as farmers growing seasonal crops or contractors experiencing temporary downturns, often offer their workers' services to other employers. In many cases, employers are moved to a construction sight or field owned by another

[14] Until May 1, 2003, the Labor Service was directly authorized to allot migrant worker employment permits. Following Government Resolution No. 2327, July 30 2002, and after the addition of Art. 1(13) to the Alien Workers Act, 1991, in 2002, this authority was delegated to the Alien Workers Unit of the Ministry of Industry, Trade and Labor.

employer without realizing this. In other cases, they have to accept the "relocation" in view of their original employer's power to dismiss them and turn them into illegal aliens. Thus, the binding arrangement means that such "relocated" workers are considered to have violated the conditions of their residence permit. Any migrant worker caught working for an employer who's not his "registered employer" is liable to arrest, loss of residence permit and deportation.

The binding arrangement means that many migrant workers arriving in Israel lose their residence permit and are deported even before having completed the period of their expected employment in Israel. As a rule, migrant workers are permitted to reside in Israel for the purpose of work for no more than five years and three months.[15] Most migrant workers arriving in Israel naturally expect to work here for several years. They are recruited in their countries of origin by manpower corporations or brokers who charge between $5,000 and $20,000 for their services – a veritable fortune in the developing world. Many migrant workers are forced to mortgage all their assets or take loans from friends and relatives, and in the grey market.[16] In some cases whole families or even villages collect the necessary funds. In most cases, all the money earned by the migrant worker during their first few months, or even years, in Israel is dedicated to repaying such loans. Losing one's residence permit as a consequence of the binding arrangement before having managed to repay one's debt often spells a disaster for the migrant worker and his family overseas.

In view of the severe violation of migrant workers' rights due to the binding arrangement (and for other reasons as well), it was attacked from many directions. As early as 1998, The State Comptroller's Annual Report criticized its tendency to increase the dependence of migrant workers on their employers and prevents free competition between employers for the services of migrant workers.[17] Several annual Bank of Israel reports also criticized the arrangement, and more recently, it was also attacked by the Advisory Committee on Reviewing the Israeli Immigration Policy, which labeled the binding arrangement "cruel", as it indentures workers and prevents many of them from repaying the debts they have been forced to incur in order to finance their arrival as legal workers in Israel. Accordingly, the committee recommended that the binding arrangement be

[15] Sections 2(a)(2) and 3(a)(a) of the Entry to Israel Act, 1952. Nevertheless, the Minister of the Interior is authorized to extend the stay of migrant workers employed in the care giving sector beyond that period, when replacing this worker would severely harm the patient's well-being, and assuming certain conditions are met (Section 3(a)(b)). The minister is also authorized to extend a migrant worker's stay in Israel "under special and unique circumstances of contribution by the migrant worker to Israeli economy or society" (Section 3(a) (c-1).
[16] See State Comptroller and Ombudsman Report 53B, April 30, 2003, p. 649 (in Hebrew).
[17] State Comptroller and Ombudsman Report 49, p. 279 (in Hebrew).

revoked, and that migrant workers be permitted to stay and work in Israel for a period of three years, with an option for a two-year extension.[18]

Consequently, the injustices of the binding arrangement were slightly "softened" by two procedures, but even these were not enough to prevent violation of basic human rights. The first procedure – "transfer from one employer to the other" – enables the migrant worker to work for a new employer under very limited circumstances. The second – "closed skies" – was promulgated following the government's decision to prevent the entry of any additional migrant workers in July 2002.[19] This procedure allows an arrested migrant worker to renew his residence permit and be "replaced" under an Israeli employer in construction or agriculture. This allows for "whitewashing" migrant workers whose residence permit has been revoked following their resignation, dismissal or "relocation" by their employees. This procedure can also be operated only under very limited circumstances. Most importantly, it declares in its opening statement that "the objective of this procedure is to provide a solution for employers suffering from labor shortage… This procedure is *not* intended to provide an employment solution for alien workers interested in continued employment in Israel" (our emphasis).[20]

Despite the fact that most migrant workers who wished to take advantage of these new procedures and be placed under a different employer are victims of the binding arrangements which has denied them a series of fundamental human rights and indentured them to their employers – turning them, in practice – into illegal aliens, the procedures were applied to a very small number of cases, raising the suspicion that the Ministry of the Interior is interested in nothing but reducing the total number of migrant employees in Israel. In their capacity as administrative courts, district courts faced hundreds of pleas against the ministry, following refusal by the latter to enforce the new procedures. They failed the test: in most cases, the courts countenanced decisions by the Ministry of the Interior to deport migrant workers who've become illegal aliens strictly as a result of the binding arrangements. These fairly uniform court rulings served to justify and reinforce the binding arrangement, as they seemed to adopt its implicit rationale.[21]

In June 2002, six human rights organization appealed to the Supreme Court, in its capacity as the High Court of Justice, to revoke the binding policy due to the severe violation of human rights it

[18] The Advisory Committee on Reviewing the Israeli Immigration Policy, Interim Report, February 7, 2006, p. 13. This report was submitted already after the initial implementation of the new manpower corporation-based employment policy.
[19] Government Resolution 2328, July 30, 2003.
[20] Closed Skies Procedure – Amended June 1, 2004 – Arts. 2-3.
[21] Amiram Gil and Yossi Dahan, Between Neo-Liberalism and Ethno-Nationalism: Theory, Policy and Law with respect to the Deportation of Migrant Employees from Israel, *Law and Government*, *1* (2007), 347 (in Hebrew); Oded Feller and Jonathan Berman, Shame on Us, *Globs*, May 16, 2005 (in Hebrew).

entails. After almost four years of deliberations, the verdict was rendered in March 2006.[22] In its verdict, the High Court of Justice accepted the appellants' claims. Justice Edmund Levi stated that the binding arrangement is in violation of a series of inalienable fundamental migrant worker rights, including the right to dignity, the right to liberty and the right to autonomy and freedom of individual action, and leads to the "effective annulment of the right to resign". In his own opinion appended to ruling, Justice Michael Cheshin even called the binding arrangement "a modern form of slavery", and insisted that under this arrangement, the migrant worker becomes his employer's "vassal".

The court stated that "the respondents… are hereby called upon to formulate a new employment arrangement – of a more balanced and proportional nature – in reference to migrant employees in these sectors [agriculture, care giving and manufacturing], which will not be based on binding the worker upon his arrival in Israel to a single employer, and avoid linking the act of resignation with any sanction whatsoever, including loss of legal status in Israel". The respondents were required to do so within six months.[23] Since this ruling was rendered about a year after a new employment arrangement was enacted in the construction sector, the court avoided ruling concerning the legality of this new arrangement, but commented on it, saying it raises certain difficulties, and even recommended that some of its details be reviewed.[24] We will refer to the court's comments on this matter below.

To complete the picture, note that despite the fact that at the time of this writing, the deadline set by the High Court of Justice for implementing a new employment arrangement instead of the old binding arrangement has already transpired no new employment arrangement has yet been implemented in the agriculture, care giving and manufacturing sectors. On September 28, 2006, two days before the court's deadline, the State of Israel requested an extension. It informed the court that it had met the deadline concerning the agriculture and care giving sectors, since new employment arrangements had been "formulated", that a new arrangement will be in force in the care giving sector in January 1, 2007, and in the agricultural sector in April 1 of that year. As for manufacturing and services, the State notified the court that no new arrangements have been formulated yet since only few migrant workers are employed in these sectors, so that "the problems involved in the binding arrangement… are not as acute as in other sectors of the economy", and that "an extension of several more months" is required to formulate new arrangements for these

[22] High Justice Court 4542/02 *Worker's Hotline et al. vs. State of Israel*, March 30, 2006. (The appeal was submitted by Worker's Hotline, Hotline for Migrant Workers, Association for Civil Rights in Israel, Physicians for Human Rights – Israel, Adva Center and the Commitment to Peace and Social Justice Organization through the Tel-Aviv University Law School Law and Welfare Program).
[23] *Ibid.* par. 62 of Justice E.A. Levi's ruling.
[24] *Ibid.* par. 61 of Justice E.A. Levi's ruling.

sectors.[25] In practice, however, no new employment arrangement was implemented in these sectors at the times reported to the court, and at this point it is still unclear when exactly they will be implemented.

[25] State's request for extension in ruling 4542/02, submitted on September 28, 2006, Section 9.

3. Employment by Manpower Corporations

3.1 The New Arrangements and Their Background

Based on a resolution by the Israeli government,[26] the Minister of Finance appointed an interministerial team (hereinafter, *the interministerial team* or *the Andorn Committee*) to formulate a resolution that will "make the employment of alien workers more costly, ensure fair conditions and proper oversight on their employment and provide an appropriate solution for the issue of transfer of alien workers from one employer to another". The working assumption of the interministerial team, as expressed in a report submitted on August 5, 2004 to the Minister of Industry, Trade and Labor is that a new employment arrangement is required in order to "let market forces operate freely so as to assist the government in reaching its objectives".[27]

Space limitations prevent us from detailing all the team's recommendations, as they cover more than 50 pages. In its executive summary, the Andorn Committee recommended that migrant workers will no longer be employed *directly* by their actual employers, but *indirectly* by manpower companies (dubbed "corporations"). The team recommended that a limited number of manpower corporations be allowed to employ a certain number of migrant workers (500-2,000) in a specific sector. It also recommended not issuing any more employment permits to the actual employers. Under the proposed arrangement, the manpower corporation will be held primarily responsible for ensuring payment and appropriate employment conditions, but if it failed to do so, the actual employer will have to do so, and will be held both civically and criminally liable in that regard.

In addition, the team recommended that following the adoption of this proposed system, the migrant workers' employment conditions will be subjected to more stringent oversight, through transparency of the manpower corporations' accounts and government access to their computerized systems. Nevertheless, the team's approach was that "the primary enforcement tool should be the economic incentives created by the proposed system. A system which operates properly thanks to economic incentives, and not due to the existence of a 'watch dog' running around, is expected to operate more efficiently and appropriately".[28] The team also recommended a series of fees and duties to cover, at the very least, the difference between the cost of employing an Israeli worker and that of employing a migrant worker, so as to reduce incentives to prefer the latter.

Although the committee stated that they "view ensuring migrant workers fair conditions as an indispensable condition", and that they "believe this matter must be reemphasized", their actual conclusions show that migrant worker rights were "offset" by bureaucratic expediency. Thus, for

[26] Government Resolution No. 1141, December 12, 2001.
[27] Andorn Committee Report, p. 2.
[28] Andorn Committee Report, p. 49.

example, the option of allowing the migrant worker to move freely among manpower corporations was rejected, and the recommendation was to determine a minimal duration of working for a corporation, since "free" mobility between corporations "involves accounting related to the permit fees… and additional bureaucratic procedures".[29]

Moreover, the report shows that although the suggestion of completely abandoning the "binding" of migrant workers to their employers and allow free mobility between employers has been discussed, other interests eventually prevailed. The interministerial team reasoned that the objective of ensuring that migrant workers leave Israel on time overrides the workers' basic rights and that "free mobility of alien workers between employers will also prevent, in practice, any possibility of accumulating sums on his behalf, to be given only on condition that he left Israel, which would preclude one of the most efficient incentives for getting workers out of Israel".[30] Moreover, the objective of making the employment of migrant workers more costly (as opposed to raising their wages) in order to encourage the employment of Israeli citizens also overrode the migrant workers' basic rights, as further explained below.

In August 2004, ten days after the submission of the Andorn Committee Report to the Ministers of Finance and of Industry, Trade and Labor, the government adopted the reports regarding workers in the construction sector.[31] In its resolution, the government enjoined the relevant authorities to make sure the new arrangement recommended by the committee is implemented in the construction sector by March 1, 2005, and stated that "a separate discussion will be held in reference to the agricultural sector".

3.2 The "Corporate Arrangement" in the Construction Sector

Implementation of the new employment arrangement in the construction sector – or the "corporate arrangement" – began in early May, 2005. At that time, employees were offered the opportunity to be registered as manpower corporation employees by June 15, 2005. Importantly, the appeal against the legality of the "binding arrangement" referred to above was not yet ruled upon. During the deliberation of this appeal, prior to the formulation of the new employment arrangement, the state often requested to delay the ruling due to the "staff work" conducted at the time concerning the formulation of the new arrangement in the construction sector. The court judges recommended in oral discussions for the state to collaborate with the appellants in

[29] Andorn Committee Report, p. 47.
[30] Andorn Committee Report, p. 36.
[31] Government Resolution No. 2446, August 15, 2004.

formulating the arrangement, but in practice, the procedure which determined the principles of this arrangement was formulated without any such consultancy, submitted for their comments at the end of April 2005 only after its writing had been completed, and published in its final and binding version in the Ministry of Industry, Trade and Labor's (MITL) website several days thereafter, before the appellants' comments had been received. The new employment arrangement was thus shaped by the relevant government ministries without any participation by the organizations which represent the migrant workers' interests and rights, not to mention the workers themselves.

The said procedure's title was Procedure for Employing Alien Workers by Manpower Contractors in the Construction Sector. At the end of 2006, a revised procedure was published, which came into force on January 1, 2007. These procedures are quite lengthy, so that they will only be summarized here. The procedures established a triple-based employment method, in which Israeli corporations, whose sole purpose would be to employ migrant construction workers, would be permitted to act as manpower contractors in this sector subject to detailed conditions. Migrant construction employees would be actually employed by construction contractors, but registered as corporate employees. The procedures determine the system of allotting permits to corporations, so as to give preference to corporations interested in employing a large number of workers. The corporations would be responsible for paying the workers' wages and for protecting their social rights, and also for providing them with medical insurance. Should the corporations fail to meet these obligations, the actual employer would be held responsible for doing so.

As already mentioned, the new employment arrangement suggested in the Andorn Report is also designed to allow free mobility between employers.[32] Based on the said procedures, employees are allowed to change corporations once quarterly. Should a worker complain about rights violations by the corporation, he would be entitled to move to another corporation during the same quarter, but only if his complaint has been found justified by the Employee Rights Commissioner in the MITL. Workers interested in moving to another manpower corporations and cannot find one are required to do so within thirty days, during which they may not work, and following which they must leave Israel if they had fail to find an alternative corporation.[33]

According to the procedures, the manpower corporation must find work for the migrant worker, provide information about the contractors in question and let him choose his actual work site. They require the agreement between the construction contractor and the manpower corporation to state

[32] Andorn Committee Report, pp. 32-33.
[33] These provisions are also included in the Alien Worker Regulations (Changing Employers Who Are Manpower Contractors in the Construction Sector), 2006.

that the contractor will not prevent workers from moving to another contractor. The manpower corporation is required to pay wages based on working hours, but in any case, it must pay wages equivalent to no less than 236 hours a month, even if the worker had actually worked less.[34] Recently, as shown below, this number was reduced to 211.

The procedures state that each manpower corporation will deposit 700NIS a month – deducted from the migrant worker's severance pay and pension – in a separate and dedicated bank account, designed to ensure that the worker will leave Israel. Any worker leaving Israel will receive all the money deposited thus, unless he failed to leave on time. A certain ratio is deducted out of this sum for every month of delay past the deadline for leaving the country – delaying for more than six months leads to its complete seizure. All the money thus deducted will be used by the government of Israel to ensure the rights of migrant workers.

The procedures also require corporations to inform their employees, in their own language, about their rights, and about how to contact the Employee Rights Commissioner in MITL, and also to appoint one worker as a liaison between the employees and the commissioner. In addition, control and oversight mechanisms were established: corporate accounts are to be completely computerized and transparent through online connection to the MITL's Alien Workers' Unit.

Finally, the manpower corporations have to pay a series of fees: corporate registration fee, and the following fees for each employee: annual request, annual permit, annual tax, and unlimited warranty.

[34] At the same time, Section 1-14(1)(B1) of the Alien Workers Act, 1991, determined that "regarding permits for employing alien workers in the construction sector – the employer is required to pay the alien worker wages calculated based on a number of hours exceeding that of a fulltime position as defined by the minister, even if the actual number of hours was less than the aforesaid extent, so long as the provisions of this sub-paragraph do not detract from the alien worker's rights according to any law".

4. The "Corporate Arrangement" in the Construction Sector: Theory and Practice

In this section, we seek to examine the "corporate arrangement" in the construction sector from two perspectives. In the first subsection, we analyze the shortcomings of the arrangement itself and its implementation by the authorities. In the second subsection, we look into its practical implications arising from in-depth interviews with employees, analysis of complaints submitted to Worker's Hotline against manpower corporations and other sources.

4.1 The Arrangement's Shortcomings

In its ruling on the "binding arrangement" referred to in the previous section, the High Court of Justice referred to the "corporate arrangement" only briefly. The court ruled that in view of the short time which had elapsed since the new arrangement came into force, "it is too soon to rule as to its constitutionality".[35] Nevertheless, the court did not shy of criticizing the new arrangement as well, and called upon the state to introduce several changes even at this early stage, before the issue of its legality is brought before the court. The following is the (nearly) complete statement of the High Court of Justice on this matter.

> At first glance, the appellants' arguments concerning the corporate arrangements are sound. Some of them are based on difficulties related to the very nature of the proposed employment pattern, which imposes brokerage by a third party on the labor relationship…. Others require investigation into the actual implementation of the arrangement, in order to assess their substance (for example, the argument concerning cartelization). We are naturally unable to assess these last arguments since the arrangement has not been in force for a sufficient amount of time.
>
> Under these circumstances, I do not find any reason to review the corporate arrangement – which is currently applied only in the construction sector – in itself. Therefore, the appellants are hereby invited to reapply to the court, following a reasonable period of time, and should this prove necessary. As for the respondents, they are hereby enjoined to stringently oversee the application of the new arrangement, and mainly see to it that freedom of movement by workers among registered corporations, and among actual employers, is actually maintained, as stated in their responses. Having said that I find it

[35] *Ibid.* par. 61 of Justice E.A. Levi's ruling.

> necessary to add that I saw reason to assess some of the provisions of this arrangement even at this early stage – primarily the provision allowing movement between registered corporations only once in every quarter – in view of the principles outlined in the present ruling and the privileged status of the rights violated due to this limitation. I do not believe that the fact that such movement "involves accounting related to the permit fees… and additional bureaucratic procedures" is enough to justify it. The respondents will do well to consider this right now, before the arrangement is reviewed again by the courts, should it be reviewed.[36]

These words fell on deaf ears. As already mentioned, at the end of 2006, the MITL published a revised procedure, which came into force at the beginning of 2007, concerning the new employment arrangement in the construction sector, with only minor revisions. The authorities thus ignored the court's recommendation to rescind the restriction on mobility between manpower corporations and allow complete freedom of movement at all times.

Although it does simplify the process of changing corporations, the new arrangement is still based on the wrong assumption that there's linkage between being employed by a certain employer (or in this case, a certain manpower corporation) and the legality of the employee's stay in Israel. Until recently, the manpower corporation's name was stamped on the worker's passport, just as in the former arrangement. In May 2007, the Ministry of the Interior discontinued this practice, but this is no more than a cosmetic change since the ministry still registers the name of the employer for which the migrant worker has to work. The authorities' starting point is always that a worker taking advantage of his right to leave his employer loses his residence permit and "automatically" becomes an illegal alien, unless he acted in a certain way. This means that just like the notorious "binding arrangement", the new employment system also links the employer's identity and loss of legal status in Israel, and likewise, breeds negative phenomena, such as false reports by employers that their workers have left them even in cases where they have been unjustly dismissed or prevented from working. The net result is that the corporations have the power to practically revoke migrant employees' resident permits.[37] In this sense, the "corporate arrangement" does not meet the conditions outlined in the court ruling on the "binding arrangement", which stated that any

[36] *Ibid.* par. 61 of Justice E.A. Levi's ruling.

[37] This possibility is illustrated in a ruling by the National Labor Court Ruling on Malgam Manpower Management, Ltd. – *Malgam Manpower Management, Ltd. vs. MITL,* May 17, 2006. Malgam is one of the manpower corporations permitted to employ migrant construction workers under the new arrangement. The ruling shows that the corporate reported that a certain employee left it on a certain date, but as later discovered, on that date he wasn't in Israel at all but on leave in his homeland. As argued by the worker in his appeal (2699/05), upon returning to Israel he approached the manpower corporation but it informed him that it has no work for him and that he should wait for a new actual employer to be found for him. Following this, the worker was arrested for violating the conditions of his residence permit, and immediately upon his arrest, the corporation stated that the worker left it several days earlier, mentioning a date in which he had actually been abroad.

arrangement for employing migrant workers must be such that it does not link the act of resignation or dismissal with any sanction, including that of losing legal status in Israel.

This symbiotic linkage between employment by a manpower corporation registered in the Ministry of the Interior as the migrant worker's only "legal" employer and the worker's residence permit in Israel provides ample opportunities for exploitation. A worker whose rights are violated by his employing corporation might be forced to choose between continuing to work for the same corporation and waiving his rights and resigning to become an illegal alien. As already mentioned, the procedures of employment by manpower corporations allow workers to change corporations even before the quarter is over, in cases where they had filed a justified complaint with the Workers' Rights Commissioner in the MITL. But this is not enough to ensure their rights. The investigation by the commissioner might take a while, and during that time, the worker might find himself trapped by his employing corporation. As will be seen below, the MITL Commissioner institute is problematic and functions only partially, creating a difficulty in conditioning the right to move to another corporation during the quarter on its consent. Moreover, a worker whose rights have been violated by his employer and is interested in changing corporations might avoid doing so, fearing not enough evidence will be found to justify his complaint. The very act of filing a complaint, which might eventually be deemed unjustified, is liable to sour his relationship with the manpower corporation to which he is "bound" until the end of the quarter. Therefore, the possibility of untying the chains "binding" the worker to the corporation in the middle of the quarter only if he can prove that his rights have been violated is far from sufficient.

Our view that the new employment arrangement does little to untie the chains "binding" employees to their employers is also shared by the Bank of Israel. In its report on Fiscal Year 2005, dated April 2006, the bank referred to this arrangement as follows: *"This arrangement retains the bond between the worker and the manpower company and allows for only partial and limited mobility. Moreover, the arrangement creates another brokerage link, which might make the employment of these workers more costly without raising their pay".*[38]

Another fundamental difficulty with those procedures relates to the possibility of moving to another actual employer without changing manpower corporations. Although the corporation may be changed once quarterly, the procedures seemingly do not impose any restrictions on changing actual employers within the same corporation. Nevertheless, it is far from clear how this transition is carried out in practice. The procedures require the manpower company to find workplaces for the worker, to inform him about them and to allow him to choose between them. They also require it

[38] Bank of Israel 2005 Annual Report, p. 182.

not to prevent workers from changing actual employers. In fact, however, it seems that such worker "mobility" from one contractor to another within the same corporation is entirely subject to the corporation's goodwill. Consequently, during the quarterly the worker is not only "bound" to the manpower corporation, but might even find himself "bound" to the construction contractor.

Furthermore, the procedures include no restrictive provisions regarding the relationship between manpower corporations and construction contractors. Although they do not allow the issuing of permits to interrelated manpower corporations, no similar restriction is imposed on the relationship between corporations and contractors. The corporation may therefore be subsidiaries or affiliates of construction companies, thus totally undermining the intention to separate the actual employer from the manpower corporation and creating a disincentive for corporations to allow workers to move from one construction contractor – their actual employer, who's also the manpower corporation's parent company – to another.

The concern that manpower corporations be created by construction contractors is far from theoretical, and it seems that the authorities' agreement to allow this resulted from pressure by contractors seeking to bypass the new restrictions, which would have been in force, had complete separation between the actual employer and the manpower corporation actually obtained. Our source of information on this matter is no other than MITL itself: *"As part of our understandings with the Contractors' Association, it has been agreed that construction companies will be allowed to create manpower corporations. In agreeing to that, we have made a concession in favor of the contractors, in order to promote the [new] system on the basis of mutual understanding and full cooperation with them. The 'price' of this concession on our part was well worth the return, seeing that, in practice,* only a third [sic] *of the corporations are construction company subsidiaries".*[39]

Another difficulty arising from the new procedures is the creation of an incentive for manpower corporations to promote the deportation of employees who've left them and haven't registered in other corporations. According to the Alien Worker's Act, manpower corporations must pay an annual charge of 4,000 NIS [about $1,000],[40] plus an annual permit fee of 6,800 NIS for each worker employed.[41] In its previous version, the procedure stated that *"a proportional ratio of the permit fee and the annual charge paid for an alien worker formerly employed by a permitted corporation and currently employed by another corporation with a different permit who paid the permit fee and the charge for that same worker will be reimbursed; the same applies to an alien worker who left the country within the period of his permitted stay according to the provisions of*

[39] Letter by Adv. Tehila Luger-Friedman of the MITL Legal Bureau to Adv. Jonathan Berman of the *Hotline for Migrant Workers*, September 19, 2005.
[40] Section 1-J (A1) of the Alien Workers' Act, 1991 (the updated annual charge for 2007 is 4,135 NIS).
[41] Section 1-J-1(B) of the Alien Workers' Act, 1991 (the updated permit fee for 2007 is 7,030 NIS).

the Entry to Israel Act, from the time of his leaving". The new procedure which came into force on January 1, 2007, states as follows: *"The permit fee and annual charge must be paid for a whole year. However, for the corporations' convenience it has been determined that actual collection would be on a quarterly basis. Had a worker left a corporation during the year, for whom the permit fee and the annual charge have not been paid by another corporation, and as long as it hasn't been proved that the worker has left Israel or passed away, the corporation would be required to pay the full permit fee and annual charge for that worker until year's end".*

These provisions mean that a when a worker leaves a manpower corporation without registering in another, the corporation has a real economic interest in forcing him out of Israel, so as not to bear the costs for the time in which he is not employed.

Note that in the past, the state used to require the employers of migrant workers to deposit collaterals to ensure that their workers leave Israel. In view of this incentive, organizations protecting the rights of migrant workers received, at the time, many reports of violence and coercion meant to force migrant workers who've abandoned their employers to leave Israel; in many cases, financial rewards were offered to anyone who could locate such "runaways". In 2000, the collateral requirement was revoked.[42] Now, however, the new procedures state that manpower companies employing construction workers will not be required to pay the remaining fees for a worker who's left them, whether he has registered in another corporation or left the country. This new provision reawakens the concern that migrant workers will be forced to leave Israel by their employing corporations using wrongful means.[43]

An additional shortcoming, also identified by the High Justice Court in its "binding arrangement" ruling, concerns the fortunes of workers during the interval between having left their former

[42] In 1997, several employers of migrant workers appealed to the court asking that the state be instructed to stop charging collaterals from employers, that are seized when migrant employers do not leave Israel at the end of their employment period, claiming that these are charged without due authority (High Court of Justice 155/97, *AGA Alonim Services Company, Ltd. et al. vs. Minister of the Interior et al.*). The Association for Civil Rights in Israel and Worker's Hotline were included in the appeals as the Friends of the Court and argued that the appeal must be accepted, due to the violation of migrant workers' rights, stemming from the incentive for employers to force migrant workers out of Israel. On April 27, 2000, the state informed the court about its decision to revoke the collateral requirement due to the resultant violation of migrant workers' rights. Consequently, the appeal was dropped on February 12, 2001.

[43] On September 12, 2006, Worker's Hotline applied to the Minister of the Interior and the Minister of ILT through Adv. Dory Spivek demanding the revocation of Regulation 5(E) of the Entry to Israel Regulations, 1974, holding the employer responsible for the migrant worker's departure from Israel, violating migrant workers' rights as described above. In her response on November 13, Adv. Anat Fisher-Zin of the Ministry of the Interior's Legal Bureau rejected that request, claiming that holding the employer responsible for the worker's departure is designed to protect the worker's rights and to prevent his "abandonment" by the employer. In view of this response, Worker's Hotline appealed to the High Court of Justice in April 2007 to revoke this regulation (3025/07, *Worker's Hotline vs. Minister of the Interior*).

workplace or been dismissed and finding a new manpower corporation. According to the procedures, any worker who's terminated his labor relationship with an employing manpower organization and hasn't yet found another employer has thirty days to find a new corporation. In response to our question regarding the possibility of working during that time, the MITL stated that *"a worker resigning from a corporation or dismissed by a corporation will receive an extension as provided for in the procedure. During that time, he will not be allowed to work, but will be allowed to reside in Israel in order to look for another job".*[44]

On this matter, we can only quote once more from the court ruling in the appeal against the "binding arrangement", in which the High Court of Justice criticized the "procedure of changing employers", leaving the worker no way of providing for himself following the termination of his labor relationship with his employer:

> According to this procedure, any request to change employers involves losing one's work permit in Israel for an unknown period of time: the procedure states that during the interim period between termination of work for the original employer and starting work for the new employer, the worker will receive a Type B/2 Residence Permit. This is no more than a temporary residence permit (usually given to tourists) which does not allow legal employment. It is therefore unclear how the worker is expected to provide for himself during that interim period, and more importantly, why his legitimate request to change employers must involve losing his work permit in Israel for an unknown period of time (particularly in view of the fact that the procedure provides for no mandatory timeframe for dealing with requests to change employers).[45]

Another problem, discovered in early 2006, concerns the implementation of the arrangement regarding the minimal wages required of the manpower corporations. As mentioned above, the procedures on the employment of migrant construction workers state that workers will receive pay for at least 236 working hours a month, even had they in fact worked less (this follows on the extent of actual employment, estimated by the authorities to be at least 50 more hours, while the official fulltime job is 186 hours). Following pressures by the manpower corporations, it was decided in January 2006 that the minimum wages will be calculated based on an annual, rather than a monthly average.

[44] Letter by Adv. Tomer Moskowitz, MITL Legal Advisor, to Ms. Shevy Korzen, Hotline for Migrant Workers CEO, June 9, 2005.
[45] *Ibid.* par. 42 of Justice E.A. Levi's ruling.

Enforcing this arrangement, however, is impossible when a construction worker changes several manpower corporations over the year. The only binding aspect of the payment settlement is for the annual average of the worker's monthly salaries to be equivalent to at least 36 working hours a month. In this situation, it is entirely unclear who exactly is responsible for paying this amount to a worker employed by more than a single employer over the year. Moreover, it is obvious that enforcing this requirement on manpower companies entails enormous bureaucratic difficulties, as the MITL would need to crosscheck figures provided by several companies for each construction worker. In June 2006, Worker's Hotline appealed to the High Court of Justice against the decision to base the calculation of monthly wages for 236 working hours on an annual average.[46] Following this appeal, it was determined that the calculation be made on a monthly basis, but at the same time it was decided to reduce the minimal number of hours for which the corporation would be required to pay to only 211 hours a month.

As already explained, the "binding arrangement" did not die with the move to the new employment system. Nevertheless, when it came into force, the state reasoned that there was no more point in enforcing the "closed skies" procedure referred to earlier on construction workers employed by manpower corporations. In other words, workers who've lost their residence permit after having terminated their labor relationship with a manpower corporation for whatever reason, and were arrested, could no longer register in a new manpower corporation to avoid deportation.

For several weeks in November 2005, authorities refused to allow construction workers who'd left their employers, lost their legal status in Israel and were arrested, to renew their residence permit based on the "closed skies" provisions, and they were subsequently deported. The Ministry of the Interior's response to a court appeal by one of these workers stated as follows: *"As for the request for replacement, since the appellant has left the corporation he cannot be replaced, since in the agreement between the MITL and Appellant 1 it was understood that the closed skies procedure would not apply to corporate abandoners".*[47]

Several days after this firm statement, the Ministry of the Interior backed off a bit and notified us, as part of a response to another appeal filed by the Hotline for Migrant Workers, that *"no definite*

[46] HCJ 5480/06, *Worker's Hotline vs. MITL et al.*, scheduled for deliberation on May 16, 2007.
[47] Adm. App. (Tel-Aviv) 2640/05, *Lin Chintha vs. Ministry of the Interior*, State's response to the injunction request of November 11, 2005. In this response, the State justified its decision based on the fact that "corporate employees have the option of changing employers once quarterly and moreover, had the employer violated their rights, they are entitled to apply to the Public Complaints Commission which allows transition to another corporation. Under these circumstances, since the corporation loses substantial amounts of money as a result of having been abandoned by the employee and in view of additional, broader consideration, worker replacement is not permitted in cases of abandonment, such as this".

position has yet been determined in the question of enforcing the closed skies procedure on workers who've abandoned their corporations".[48] In the end, the Ministry of the Interior completely withdrew from its former position, and informed us of its decision *not* to revoke the application of the closed skies procedure to construction employees employed by manpower corporations.[49]

4.2 The Arrangement in Practice

Here we review empirical findings collected for this report in order to assess the problems arising from the new employment arrangement. For the purpose of our Interim Report, we have collected qualitative data from 43 in-depth interviews with and 218 complaints by construction workers. The analysis herein is based on 122 in-depth interviews conducted by the Hotline for Migrant Workers from July 2006 to May 2007, and on 609 complaints received by Worker's Hotline over that same period. As already emphasized in the Interim Report, this is not a representative sample. However, although our qualitative data cannot perfectly reflect the situation of migrant construction workers employed by manpower corporations in Israel, they can certainly sensitize us to broad trends among workers in this sector and particularly, to the key issues arising from the new arrangement.

All of our 122 interviewees are Chinese nationals. Ninety-eight of them were interviewed in Worker's Hotline offices and the rest (24) in jail. Sixty-four of them had arrived in Israel before the new arrangement came into effect in the construction sector; 54 arrived afterwards, and the rest did not state their date of arrival.

Out of 609 construction workers whose complaints were analyzed for the purpose of this report, the great majority (553) were Chinese. The others were Moldavian (22), Rumanian (21), Bulgarian (6), Turkish (4), and Ukrainian (2). Of these, 122 had arrived in Israel before the new arrangement came into effect, 45 arrived afterwards and 51 chose not to answer that question.

Recruitment Abroad

Signing a contract in the country of origin

Most (83%) of our interviewees signed contracts in their countries of origin, 44% signed a contract but received no copy, and 39% both signed a contract and received a copy.

[48] Adm. App. (Tel-Aviv) 2601/05, *Zanhey Jang vs. Ministry of the Interior et al.*, State's response, November 24, 2005.
[49] Letter by Adv. Anat Fisher-Zin of the Ministry of the Interior's Legal Bureau to Adv. Jonathan Berman of the Hotline for Migrant Workers, December 20, 2005.

Visa period promised

One-hundred and five interviewees answered the question, what was the residence permit period promised to you by those who recruited you in China? The average period promised was three years and eight months. Our in-depth interviews clearly show that none of the workers were informed that their residence and work permit would expire at the end of the calendar year in which they'd arrive in Israel, and that it was not at all certain that they'd be renewed. We found that workers arriving in Israel rely on promises to stay here for long periods, in which they would be allowed to work in Israel, and pay high brokerage fees accordingly. These brokerage fees are *always higher* than any sum a worker could save during the time from his arrival in Israel until the end of the respective calendar year.

Brokerage Fees

One of our most substantiated and difficult findings, is that migrant workers are required to pay forbiddingly high brokerage fees in order to arrive in Israel. This phenomenon was referred to by the High Justice Court[50], the National Labor Court,[51] the Administrative Courts,[52] State Comptroller[53], and finally, the Andorn Committee[54] which reviewed the former employment arrangements of migrant workers in Israel and recommended the new, corporate-based arrangements.

Instead of fighting against this appalling practice, the state preferred to put a nice face on it by attempting to regulate it. While in the past, charging any brokerage fees whatsoever was strictly forbidden,[55] as of July 1, 2006, following new regulations in this matter, brokerage fees of up to 3,050 NIS [about $700] are allowed.[56] In practice, however, both before the new regulations came into effect and afterwards, the amounts charged from the workers are significantly higher, and the workers paying the highest amounts are the Chinese.[57] This sad reality has also been appreciated

[50] HJC 4542/02, *Worker's Hotline et al. vs. State of Israel*, March 30, 2006, par. 27 of Justice E.A. Levi's ruling.
[51] L (Haifa) 1565/05, *Rosner vs. MITL*, July 14, 2005.
[52] Adm. App. (Tel-Aviv) 2337/04, *Dexing Guo vs. Minister of the Interior*, August 23, 2004; Adm. App. (Jerusalem) 586/03, *Lin Yangul et al. vs. Minister of the Interior et al.*, March 27, 2003; Adm. App. (Jerusalem) 420/02, *Deng Lin et al. vs. Minister of the Interior* February 27, 2002.
[53] State Comptroller Report 53B, April 30, 2003; pp. 655-56.
[54] Andorn Committee Report, p. 11.
[55] Sections 69c-d of the Labor Service Act, 1959.
[56] Regulation 3 of the Labor Service Regulations (Brokerage Payments by Job Seekers), 2006.
[57] Note that Worker's Hotline applied to the Minister of the Interior several months ago requesting that no more Chinese workers be brought to Israel due to the high brokerage fees (letter by Adv. Dr. Yuval Livnat of May 11, 2006), but the Population Administration Director's response was somewhat disappointing: "We are currently examining this issue together with the relevant ministries" (response by Mr. Sassi Katzir, August 2, 2006). Consequently, Worker's Hotline filed an appeal against the continued recruitment of migrant Chinese workers (HJC 1193/07, February 7, 2007).

long ago by the State Comptroller, who estimated the brokerage fees paid by Chinese workers at $5,000-$10,000,[58] and human rights organizations in various reports.[59]

The brokerage fees paid abroad are divided between the recruiting organization abroad and the Israeli employer. Recently, however, with the introduction of a third party, namely the manpower corporations, they too wish to receive their own share of the brokerage fees paid overseas. It seems that the state is also keenly aware of the corporations' desire to bring new workers from abroad in order to receive some of the brokerage fees. In an action adjudicated by the Jerusalem District Court, in which several manpower corporations appealed concerning the system of allocating permits for bringing new migrant workers, the state's response from May 2006 read as follows: *"We are truly concerned that the appellants [manpower corporations] do not operate for the purpose for which they have been established,* i.e.*, employing workers, but [only] for importing employees and charging illegal commissions".*[60] The state continued and said that the very act of appealing *"raises the concern that the appellants intend to gain commissions by the very act of importing workers from overseas, and that all they can expect to lose is illegal commissions and nothing more. Otherwise, it is difficult to understand why they chose to appeal to the court, with all that this entails, for a difference of some ten migrant workers, who can [easily] be replaced by reserve employees or by employees of other corporations by offering improved employment conditions".*[61] Despite the state's position in this matter, as far as we know, there has be no investigation of corporations suspected by authorities of charging illegal brokerage fees, and no steps whatsoever were taken against them in this matter.

Out of 609 corporate employees who complained against their employers at the Worker's Hotline from July 2006 to May 2007, 345 (of which 316 were Chinese) agreed to report the amount of brokerage fees they had to pay. In view of the relatively low number of respondents from each of the other countries, we shall hereafter focus on illegal commissions paid in China.

Out of our 316 Chinese respondents, 117 arrived in Israel between 2001 and 2004 (hereafter, the first period). The rest (199) arrived in 2005-2006 (the second period), following the adoption of the new employment arrangement. ***Our data point to a dramatic rise in the brokerage fees charged from migrant workers recruited <u>after</u> the decision to adopt the new employment system.***

[58] State Comptroller Report 53B, April 30, 2003; pp. 656.
[59] Worker's Hotline, "Workers or Slaves? On Trading in Migrant Workers in Israel" (August 2002); Hotline for Migrant Workers, "Thou Shalt Not Oppress a Stranger – Modern Slavery and Human Trafficking in Israel (October 2002).
[60] Adm. App. (Jerusalem) 193/06 *Einat (Construction Manpower) 2005 Ltd. et al. vs. MITL*, Section 4 of the State's Response, May 9, 2006.
[61] *Ibid.* Section 68.

While the average commission charged from workers in the first period was equivalent to **$9,400**, the commission charged in the second period averaged **$15,760** – a dramatic rise of some **66%**. Over 40 workers who arrived in Israel following the application of the corporate arrangement reported brokerage fees of between $18,000 and $20,000.

As already mentioned, one of the explanations for this dramatic rise is the introduction of an additional broker, the manpower corporation, which demands its share of the commission. Another explanation, to which we will return in the following discussion of corporate employee wages, is that the adoption of the new system, which entailed a certain reinforcement of oversight on the employers and created competition (albeit limited) between manpower corporations for employees, led to a certain increase in employee wages (although even today, the average wage of corporate employees is lower than the legally determined minimum wage, as we shall see below). The higher wages expected by those arriving in Israel allow their recruiters to demand higher commissions, and their employers' share of this amount is supposed to "compensate" them for the "loss" caused by the increase in wages and the cost of employing migrant workers. Finally, it is also possible that the increase in brokerage fees is meant to "compensate" the manpower corporations for the relatively high government fess and charges involved in the new arrangement.

Our analysis of these in-depth interviews shows that in order to finance those huge brokerage fees, migrant workers have to collect all their personal and family savings, and take loans from friends, relatives, banks and the grey market. Many migrant workers are forced to mortgage all their assets as collateral for their loan. This means that deporting a worker from Israel before he has managed to return the loan destroys a whole family. In view of the low wages paid in the migrant workers' countries of origin, a lifetime of work would not suffice to return the loans taken to pay the brokerage fees. In view of the increased brokerage fees, which is out of proportion to the increase in workers' wages (see more below), the time it takes for a worker to return the loans taken to pay the commission becomes even longer, while the risk of losing his status in Israel, being arrested and deported before having returned the loan – in view of the structural shortcomings of the new employment system, referred to above – is higher.

Working Conditions in Israel

Pay

The average number of monthly hours actually spent working by workers who filed complaints at Worker's Hotline is 253, while their average monthly pay is 4,278 NIS [about $1,000]. The average minimum wage in Israel for this amount of work, including social rights (leaves, sick leaves and

holidays) and after deducting the maximal amount allowed (for housing, health insurance, water, electricity and income tax) is 5,058 NIS.[62] This means that on average, each of the employees surveyed received no more than **85% of the minimum wage.**

Since we do not have any precise data on the average pay under the old arrangement, we cannot determine the exact rate of change in average wage among migrant construction workers. Nevertheless, based on thousands of cases processed in recent years by Worker's Hotline and the Hotline for Migrant Workers, we estimate that before the new arrangement came into force, the workers' average wage had been *lower* than 85% of the minimum wage, and that the new employment system did in fact increase construction workers' pay. However, as shown above, the adoption of the new system meant that the brokerage fees paid by the workers surveyed here increased by 66% and it is obvious that this increase is much more significant than the wage increase.

We therefore conclude that the system of employment by manpower corporations has *improved* the conditions of workers who'd arrived in Israel *before* its adoption, since these have paid the "old" commissions, prior to their sharp increase, and also enjoy increased pay. However, the new system *did not improve* the lot of employees arriving thereafter. Even if they too receive more pay, they are forced to "subsidize" it in advance through the increased commissions they pay abroad.

Relatedly, according to MITL figures covering the period from May 2005 to August 2006, state revenues from charges, collaterals and permit fees charged from manpower corporations totaled 191,771,032 NIS (see below for more details).[63] Although it would seem that the state did manage to make the employment of migrant workers in Israel more costly, the figures presented above regarding the steep increase in brokerage fees actually show that even those sums are ultimately paid by the workers themselves.

Moreover, an average pay of 85% of minimum wage is an unfortunate figure, which the authorities responsible for enforcing protective labor laws cannot be proud of. In view of the recently enacted mechanisms for increased oversight on manpower corporations, we could have expected the authorities to combat this underpaying phenomenon, and present more impressive achievements than those shown here.

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[62] The basic pay for 253 working hours a month, assuming the employer meets his minimum wage obligations, is 5,466.51 NIS (186 hours at an hourly rate of 19.95 NIS, 50 additional hours at a rate of 24.94 NIS and 17 additional hours at 29.93 NIS). The maximum total deduction (for health insurance, housing, water, electricity and income tax) is 811 NIS a month. The minimal social rights that must be added to this sum (leaves, sick leaves, holidays, etc.) equal 411 NIS.

[63] Letter by Ephraim Cohen, Chairperson of the Alien Workers' Administration at MITL, to MP Zehava Galon, Chairperson of the Subcommittee on Women Trafficking, September 5, 2006.

Other Conditions

Apart from wages, we find no other significant evidence for further improvements in the employment conditions of migrant construction workers. Our in-depth interviews show that problems in housing conditions, already amply reported in the past, still persist: lack of heating in the winter, lack of cooking gas, lack of hot water for bathing, distant location, crowdedness and a higher-than-permitted ratio of workers to bathrooms.[64] Two-thirds of our respondents reported some housing defects, and in addition to those, 10% reported *subhuman housing conditions*, such as living in construction sites with no running water, gas, bathrooms or showers, etc. Moreover, despite the procedural duties of manpower corporations, over 15% of our respondents reported that they haven't received pay slips or that these have been received on an irregular basis, and even more of them – 42% – reported that their employer never gave them an attendance card, or did so irregularly.

The Binding Persists: Same Difference

As discussed above, the new employment arrangement does not really untie the chains "binding" the migrant worker to the manpower corporation, and just like its predecessor, it may lead to the worker's detainment and deportation. Ten out of 24 workers interviewed in depth while being under arrest, or 42%, were arrested as a consequence of the "binding" features of the new arrangement.

Two of those detainees believed their employer renewed their residence permit, while the latter, in fact, reported to the authorities that they had "abandoned" him, despite having continued to work for him. In three other cases, detainees were not given enough work by their corporation and didn't received pay for 236 monthly working hours as required by the procedures in force at the time, so they were forced to work for others. This additional work violated their visa conditions due to the remaining "binding" features of this arrangement. Consequently, they became illegal aliens and were arrested.

In another case, a worker sought to leave his employing corporation for another. The employing corporation refused. The worker nevertheless changed corporations without appropriate registration, became an illegal alien and was arrested. In another case, the corporation placed a worker with a construction contractor who gave him work he was not skilled for. The worker asked the corporation to work for another contractor, as required by the procedure, but the corporation

[64] For legal standards in this matter, see Regulations 7-8 in Alien Workers Regulation (Prohibition of Illegal Employment and Ensuring Appropriate Conditions) (Proper Housing), 2000.

failed to do so. Instead, it reported that the worker had "abandoned" work and called the Immigration Authority.

Finally, in two other cases, a corporation fired workers who had two more months left in their residence permit. No other corporation was willing to employ them under these conditions, and they lost their legal status and were arrested. In a similar case, a corporation fired a worker three months before the termination of his legal residence period; having found no other corporation willing to employ him, the worker became illegal and was arrested.[65] Possibly, the reason that he couldn't find an alternative corporation was the fact that he had been fired at the beginning of the calendar year, so that manpower corporations feared he would stay in Israel beyond the time limit allowed, causing them to lose their annual charge.

Analyzing minutes of the Custody Review Court, the semi-judicial body ruling in the matter of detained illegal aliens also shows that many of the arrested and deported migrant construction workers have lost their legal status as a direct consequence of the arrangement's "binding" nature. As part of our research project, we analyzed 500 protocols reviewing the cases of as many migrant workers who had arrived in Israel legally to work in the construction sector and were arrested between September 2005 and June 2007. More than half (55%), or 274 of the court's rulings involved construction workers arrested after having stayed in Israel for *less* than 63 months (the maximal legal stay). These workers became illegal aliens after having been found not to be working for their registered employer or after their visa had not being renewed on time by the corporation. This means that many of the so-called "illegal" construction workers in Israel lost their legal status due to the "binding" features of the new arrangement, and that contrary to the High Justice Court's ruling in this matter, *the new arrangement fails to prevent the sanction of loss of residence permit in Israel due to any disruption in labor relationships.*

Withholding Information

As seen above, the procedures for employment by manpower corporations in the construction sector require the corporations to inform every new worker about his rights and about ways of contacting the MITL Workers' Rights Commissioner in order to file complaints, and also to have the employee sign a contract in his own language. This contract has to state that the corporation

[65] In view of the fact that our findings regarding the various reasons for loss of permit and arrest are based on a relatively small number of cases, we may assume that they do not represent the whole range of negative consequences of the "binding" features of the new arrangement, which mean that workers lose their legal status due to the whims of their employers.

cannot prevent workers from changing actual employers. It seems that the manpower corporations fail to meet these obligations.

Most (78%) of our respondents reported not having received any general information about their rights. As for information about the collateral deposited to ensure that they leave Israel, 46% reported having received no such information from their corporation, 26% reported receiving oral information, and only 28% received this information in writing, as required.

The corporations' violations of their informational duties are even more severe when it comes to providing information about procedures to file complaints against the corporation. Out of 107 workers who responded to our question in this matter, *only three* reported having received this information from the corporation. All the rest received no information about the possibility and procedure of filing a complaint. Twelve reported that despite not having been informed by the corporation as required, they know it is possible to file complaints against employers with the Worker's Hotline organization.

Our findings are far from satisfactory also regarding the possibility of changing actual employers within their employing corporation – which the corporation must bring to the worker's knowledge explicitly, in an employment contact written in the worker's language – as well as the option of changing corporations at quarter's end. Of the interviewees who answered that question, 81% said they were not informed about the possibility of changing contractors within the same corporation, and 74% reported having been given no information about the option of changing corporations. Note that this information is critical, since otherwise the new employment system's ostensible objective of "unbinding" the worker could not be taken seriously.

Changing Actual Employers and Manpower Corporations

As discussed above, the new employment system allows migrant workers to change their employing corporations at the end of each quarter, and they may even change actual employers within the same corporation at all times. Moreover, workers who complained against their corporation and whose complaint was found justified, may move to another corporation even at the middle of the quarter, with permission by the Workers' Rights Commissioner.

Although, as we've seen, the corporations tend to withhold information about the possibility of moving to another corporation at quarter's end, it seems that some workers do take advantage of this right. Ninety out of 122 respondents (74%) sought to change corporations at one point or

another. Nine of these did not succeed. Three of those nine were told that moving to another corporation was not at all possible, and therefore did so without proper registration, became illegal aliens and were arrested; four received the same disinformation and decided not to move; and two left their corporation but the new corporation which was supposed to employ them claimed their employment was eventually not approved.

Our findings show that the time it takes a worker to move from one corporation to another is used by many corporations to violate workers' rights. Out of 81 respondents who reported having changed corporations, 19 reported that their salary for the last month before the transition had not been paid. In addition, some workers reported that upon moving, an amount dubbed "visa commission" was deducted from their pay for the time they spent working for their first corporation. One worker even reported having been "fined" to the tune of 4,500 NIS, and that 24 other workers who worked with him and moved to another corporation were similarly "fined".

As for moving to other contractors within the same corporation, our in-depth interviews show that this option not only hardly exists in practice, but is meaningless from the workers' point of view. The great majority (81%) of those who answered the question whether they had wished to change construction contractors within the same corporations reported that they had not, whether they did not know it was possible or because it meant nothing to them, since working conditions and pay were determined by the corporations and not by the contractors. The new employment arrangement was supposed to encourage competition for labor between contractors, thus improving the conditions they offered, but in practice, since it is the corporation who pays the employees, changing contractors fails to improve the workers' lot in any way.

Some of the few workers who *did* try to change contractors faced difficulties illustrative of the arrangement's problematic nature – clearly, changing contractors is completely dependent on the corporation's goodwill. Thus, for example, some workers reported that the corporation did not let them change their actual employer at all, despite having expressed the wish to do so. One worker reported that only two contractors worked with his employing corporation, and that he was not allowed to move from one to the other. Lastly, another worker reported having requested to leave his contractor since he had not given him work, but the corporation could not find an alternative contractor to provide him with regular work, and so "offered" his and other workers' services to a new contractor every day.

Difficulty Receiving the Deposit Money

As already mentioned, each corporation must deposit a monthly sum of 700 NIS for each employee, deducted from severance pay and pension allowance, to be used as collateral. The employee is supposed to receive the total upon leaving Israel. Whenever a worker leaves Israel after his visa has expired or been revoked, a certain ratio is deducted from this total; when the worker is late by six months or more, the whole sum is appropriated.

When the new corporate arrangement just came into force, construction workers leaving Israel could choose between receiving their collateral money at the airport and having the money transferred to a bank account of their own choosing. At the time, MITL informed us that only 1% of the construction workers leaving Israel chose the second option. In late 2006, however, authorities began imposing certain bureaucratic difficulties which led to the present situation, in which the great majority of departing migrant workers do not receive their money at all.

On December 10, 2006, the MITL website posted a circular according to which, as of the 17th of that month, only a week after this notice, the deposit money could no longer be received at the airport, but only through transfer to a bank account abroad, following departure.[66] This requirement, as explained in applications by workers' rights organizations, is highly unreasonable, since some of the migrant workers arrive from areas where it is difficult to open a bank account, and also because experience has shown that some manpower companies find ways to appropriate money transferred in this manner.

The circular also required migrant workers to present a statement about their bank account details, verified by a diplomatic representative of their country of origin; the required statement form was attached to the circular. However, Chinese workers who applied to the Chinese Embassy for that purpose were rejected, since the embassy was not at all aware of the new requirement. Later, MITL made it known that the deposit money could be received also upon presenting a statement verified by a lawyer or by going personally to the MITL payment branch offices in order to sign such a statement.

Despite repeated pleas to MITL, and although its representatives insisted that receiving the deposit money involves no particular difficulty,[67] the ministry itself reported in February 2007 that *none* of the migrant workers who left Israel after mid-December 2006 received their deposit money, due to

[66] Section Director Procedure No. 10/06, December 10, 2006.
[67] Letter by Adv. Shoshana Strauss of the MITL Legal Bureau to Adv. Yuval Livnat of Worker's Hotline, January 25, 2007.

errors made by MITL concerning the bank account details requested of the workers. Recently, MITL informed us that because of this failure, some 700 migrant workers who left Israel during that period did not receive their deposit money.

We were recently informed that as of July 1, 2007, migrant workers could again choose to receive their deposit money at the airport. In the meantime, however, it is not clear whether a way could be found to correct the injustice done to hundreds of workers who've left Israel over the past six months and lost their deposit money due to MITL blunders.

Sanctions against Manpower Corporations

According to information provided by MITL, since the adoption of the new employment arrangement, *nine out of forty-three corporations* were subjected to sanctions. This figure is concerning because of two reasons. First, it means that a significant part of the corporations – more than fifth, in fact – have broken the law to an extent which justified such sanctions. Second, in view of the accumulation of so many complaints against many more manpower corporations, we fear that enforcement by MITL is simply not stringent enough. Specifically, for the purpose of this project, Worker's Hotline collected complaints against *37* of these corporations.

Importantly, according to information provided by MITL, none of the corporations who've violated their workers' rights lost their license, and all of them are still active. Initially, the ministry did in fact revoke the license of two of these corporations, but eventually the authorities retracted. In one case, the ownership of a corporation was transferred without notice, in breach of license conditions. However, following an appeal to the administrative court and the court's recommendation, the license was not revoked; the only remaining sanction was that the corporation was no longer allowed to import new workers. In the second case, the corporation employed, as reported by MITL, "a senior public official with various offenses related to migrant workers to his record". Following an appeal by the corporation, the state retracted its initial decision to revoke its license and decided to make do with rescinding some of the permits given to the corporation and preventing it from importing any more workers.[68]

In another case, a corporation erroneously reported that one of its workers had abandoned it, thus leading to his arrest. Despite the fact that corporate blunder led to severe restriction of human freedom the only sanction applied against the corporation was to cut its quota of newly imported workers by 13 permits. The corporation even had the nerve to appeal against this sanction, but its

[68] Labor App. No. 10/06, *On Bone Manpower Services, Ltd. vs.*

appeal was rejected.[69] As can be seen from the court ruling in this case, despite the lenient sanction – considering the fact that the corporation employs hundreds of workers, and the fact that this sanction does not apply to recruitment of new workers in Israel itself – the corporation did not hesitate to claim that the decision would "damage it severely and make it exceedingly difficult for it to continue operating and maintain economic stability", no less.[70] As in the previous case, we must assume in this cast that the "damage" caused to the company is in terms of its inability to charge illegal fees from new workers arriving from abroad; otherwise, why not recruit the same 13 workers from among migrant workers already residing in Israel?

In another case, also brought before the National Labor Court, each of two manpower corporations was denied 37 permits to bring new migrant workers from abroad. This was due to a service provision agreement signed between them which was deemed a breach a requirement that they operate exclusively in importing migrant workers; more importantly, it meant, as stated by MITL and quoted in the court ruling on the corporations' appeals, that both corporations "were in fact one, or alternatively, affiliated corporations operating with full coordination".[71] As explained by the court, this coordination was meant to bypass the restrictions on the number of workers employed by the corporation, and smacked of cartelization.

In one case, where it was found that a manpower corporation had forged a work card registration, MITL thought a warning would suffice, and in three other cases of inappropriate housing conditions, MITL only rescinded quotas for importing new workers or reduced the number of work permits given to the corporations. For example, a ruling on an appeal by a corporation described the housing provided to 19 construction workers, who were in fact housed in the construction site itself, such that "in some of the worksites, workers had to live inside the construction skeletons they were working on, or in temporary shacks in the construction site described by MITL inspectors as 'partition-less burrows', lacking showers, toilets, kitchen, proper sewage, ventilation or heating arrangements and water sources.[72] Even after inspection by MITL, these deficiencies were not fully remedied. However, in this case as well, all the ministry's sanctions amounted to reducing the corporation's newly imported workers' quota by 23.

We believe that cutting the number of employment permits or cutting the number of imported workers do not represent an appropriate sanction in view of the seriousness of the employee rights violations described. Forgery, inappropriate housing and cartelization all constitute a severe breach

[69] Labor App. No. 2/06, *Malgam Manpower Management, Ltd. vs. MITL*, May 17, 2006

[70] *Ibid.*, par 10.
[71] Labor App. No. 4/06, *Total Manpower Services, Ltd. vs. MITL*; Labor App. No. 5/06, *Heichal Adam, Ltd. vs. MITL*, September 26, 2006, par. 3(e).
[72] Labor App. No. 3/06, *Chen Construction Manpower, Ltd. vs. MITL*, August 17, 2006, par. 3(b).

of the rights of already powerless employees, who find it difficult to protect their rights. The State of Israel allowed the manpower corporation to employ migrant workers in a way that subjugates the workers and "binds" them to the corporations, in a sense that leaving not at the "designated" time leads to the severe sanctions of loss of legal status, arrest and deportation. Under these circumstances, the authorities must be exceedingly strict about the corporations' obligations. Corporations who've proved themselves untrustworthy after having been allowed to operate in the lucrative but sensitive area of employing migrant workers must not be given a second chance.

Moreover, we are particularly concerned by the fact that the main sanction applied by the state is the denial of permits to import new workers. Theoretically, had the new employment system been operating properly, and had the legal restrictions been properly enforced, this should not have represented a significant sanction, since according to the new employment principles, a corporation prevented from importing new workers should have no difficulty recruiting any workers it needed from among migrant workers already residing in Israel. That the state views the denial of new permits alone as an appropriate sanction should therefore be construed as admission by the state itself of the fact that a significant portion of the corporations' profits comes from charging illegal brokerage fees. This admission, however, has yet to lead to any significant action on its part.[73]

State Profits from the New Arrangement and their Misuse

As already mentioned, the Andorn Report shows clearly that one of the objectives of the new arrangement is to raise the cost of employing migrant workers. In fact, this key objective is the reason for the continued binding of workers, this time to manpower corporations, since "allowing the alien workers complete freedom to move from one employer to the other would not sufficiently raise the cost of their employment".[74]

The method selected for raising employment costs was not to raise the wages paid to construction workers,[75] but to increase state profits by imposing a series of collaterals and fees on the corporations (as we've seen, these are financed by increasing the commissions workers are forced to pay in order to arrive in Israel in the first place). Direct state revenues as a result of the corporate arrangement are derived from collaterals deposited by the corporations, license fees, application fees, permit fees and the annual charge.

[73] In this matter, we refer again to the state's response of May 9, 2006 to Adm. App. (Jerusalem) 193/06, *Einat (Construction Manpower) 2005, Ltd., et al. vs. MITL*, wherein it informed the court that the only reason the manpower corporations are willing to fight in court over a small quota of permits to import new workers is their desire to continue charging illegal brokerage fees.
[74] Andorn Committee Report, p. 36.
[75] As done, for example, for industrial and service workers (Govt. Resolution No. 4617, December 14, 2005, approved by Supreme Court in its ruling of December 7, 2006 on HJC 9722/04.

According to MITL figures, at the end of August 2006, state revenues directly derived from the corporate arrangement totaled 191,771,032 NIS[76] from the day it came into effect. This figure does not include 152,115,600 NIS deposited as collaterals by manpower corporations in 2005, and 117,708,500 NIS deposited in 2006. In order to realize the huge profits earned by the state as a result of adopting the corporate arrangement, it would be interesting to compare these figures with those of the other sectors employing migrant workers, where the triple system has not yet come into force. During that same period – from January 2005 to August 2006 – direct state revenues in terms of fees collected from employers of migrant workers in agriculture, care giving, restaurants, hotels, manufacturing and services totaled a "mere" 41,503,286 NIS.[77]

According to information provided by MITL, all these revenues were transferred to the Ministry of Finance, including a total of 50,478 NIS deducted from the collateral deposited to ensure that migrant workers leave Israel (according to the procedure, this amount was supposed to be used to safeguard the rights of migrant workers in Israel).

Despite those huge sums, which could and should have been used to protect the rights of migrant construction workers, the authorities chose not to allocate appropriate funds for that purpose. According to the procedures for employment by manpower corporations, a Workers' Rights Commissioner was appointed in MITL, but she seems to lack the tools and resources required to effectively handle significant numbers of worker complaints. For example, the government does not employ Chinese translators and she cannot communicate with the complainants sufficiently. In view of their bad experience with the commissioner, voluntary organizations avoid directing workers to her, but only send her complaints filed with them. Even if they are aware of her existence, workers who have not applied to one of the organizations beforehand, cannot apply to the commissioner directly in order to file a complaint or have his matter taken care of, since she can hardly communicate with workers and offers them no regular reception hours, whether personally or over the phone.

Importantly, when activist organizations file complaints with the Immigration Authority, it usually summons the complainer to receive his testimony. However, the commissioner does not summon such workers, apparently due to shortage of manpower, and particularly interpreters.

[76] Letter by Ephraim Cohen, Chairperson of the Alien Workers' Administration at MITL, to MP Zehava Galon, Chairperson of the Subcommittee on Women Trafficking, September 5, 2006.
[77] *Ibid.*

The Workers' Rights Commissioner represents a critical junction in terms of minimizing the "binding" features of the new employment arrangement, since, as already mentioned, migrant workers are not allowed to leave their employing corporation during the quarter, unless it was found by the commissioner that their rights have been violated by the corporation. Under these circumstances, one would expect the state to invest at least a tiny portion of the huge revenues it earns by virtue of the new arrangement in making the commissioner effective.

5. The New Arrangement in the Care Giving Sector

5.1 On the "Formulation" Requirement – a Chronicle of Procrastination

As mentioned above in the Background Section, despite the High Justice Court's ruling in the binding issue and despite government pledges to the contrary, the actual implementation of a new employment method in the care giving sector has yet to begin, and the notorious "binding" arrangement continues apace. When we initiated the present research project, we hoped that by the time this conclusive report is published, we would be able to assess the implementation of the new employment system in the care giving sector, with a database covering at least a few months. It did not come to us entirely as a surprise, however, that initial delays in the new arrangement's coming into effect led to further procrastinations, and at the time of this writing, the new system has not yet been formalized. The present deadline is August 1, 2007, but in view of the past chronicle of procrastination, as well as the faulty state of preparations at present, we hardly expect the new arrangement to be implemented in the care-giving sector at the appointed time.

It is difficult to overlook the fact that these continued delays represent a disrespectful attitude by the state towards harsh statements by the Supreme Court (in its capacity as HJC) in its ruling against the "binding" arrangement. As mentioned above, the ruling dubbed the arrangement "a modern form of slavery", and ordered the state to "formulate a new employment arrangement" within six months. State authorities found refuge in the term "formulate" which appeared in HJC's operative remedy, and reasoned that creating a general outline for a future arrangement, which has yet to be put into effect nearly 18 months following the ruling, constitutes compliance with the ruling.

This approach was reflected in the state's request for an extension, filed on September 28, 2006 – only two days before the court's last deadline. In this request, the state asked for an extension to formulate an arrangement in the manufacturing and services sectors, and also presented recommendations by and interministerial team on changing the current employment practices in the care giving sector. As implied by this request, the very formulation of these recommendations, rather than their actual implementation, is viewed by the state as compliance with HJC's ruling. In fact, however, the "binding" arrangement invalidated by the ruling still stands.

As mentioned in our Introduction, in that same request, the state informed the court that it would begin implementing the new arrangement in the care giving sector no later than January 1, 2007. This was followed by a series of delays, so that even today it is not yet clear when the new

arrangement would come into effect. In the meantime, care givers who have lost their legal status due to the old "binding" arrangement are still being arrested and deported.

5.2 The Nature of the New Arrangement

Not only the postponements in implementing the new arrangement make us wonder about the seriousness of the authorities' intention to "unbind" care givers – the nature of the proposed arrangement is also far from satisfactory. Below is a brief review of the arrangement's details and lacunas. As opposed to the construction sector, where a new arrangement has already been in force for two years and its negative implications can be clearly seen, when it comes to the care giving sector, the arrangement's shortcomings could be put to the test only in days to come.

The new employment method in the care giving sector is based on recommendations by an interministerial team set up following a government resolution of August 2005. These were submitted to the Prime Minister, Minister of Finance and Minister of Industry, Trade and Labor on September 3, 2006 (although a previous government resolution had established a much earlier deadline – ten months beforehand).[78]

In its report, the interministerial team identified several failures in the current employment practices. It reported that unlike the numerical cap on the entry of migrant workers in the other sectors, care givers have been subject to no such cap. Consequently, it is conceivable for several migrant workers to be brought to Israel in order to ensure that one worker will always be available for a single employer – each time the employee enters Israel using a different work permit, and should she be found inappropriate, she could be easily dismissed and replaced. The manpower corporations are not required to find work for the original, dismissed employee and not even to select a new worker for her employer out of unemployed care giving workers already in Israel – they are allowed to import a new worker. The high brokerage fees paid abroad actually give them an incentive to *avoid* recruiting new workers in Israel. The inevitable result is a significant labor surplus, such that the number of care givers who arrived in Israel with a work permit is much higher than the number of permits held by patients. According to the report, between 2003 and 2005, some 12,000 new employees entered Israel, while the number of permits in the care giving sector actually *dropped* by 1,000 over that same period. Finally, the report referred to the difficulty of ensuring fair pay and working conditions in the care giving sector.

The team's recommendations show that apart from the system finally adopted, two alternative employment models were considered. The first – issuing general work permits "without appointing

[78] Section 10 of Government Resolution No. 4099, August 9, 2005.

a central authority that would be responsible for importing, securing employment for and staying in contact with them over their employment period". The team rejected this suggestion, since "we must make sure that importing alien workers into Israel is done by professionals subject to tight government oversight, so as to prevent workers from entering Israel for purposes other than care giving, but in order to illegally charge money from them in return for bringing them to Israel". Another reason for rejecting this suggestion was "the need for a central authority to continually monitor both worker and patient".[79]

The second model considered and rejected by the team was employment through corporations, similarly to the arrangement in the construction sector. The team rejected this possibility as well, "in view of the necessity of maintaining a direct employment relationship between the elderly patient and his employee, considering the personal nature of the services rendered".[80]

The model finally selected by the team is employment through "private offices licensed to import, broker and provide services for alien workers". This model was adopted in a government resolution of September 2006,[81] whose details were made public in May 2007, within a procedure titled Private Offices Procedure for Importing, Brokering and Providing Services for Alien Workers in the Care Giving Sector.[82]

What follows is a brief review of this procedure's relevant details. According to the procedure, migrant care givers would be imported and employed through "private offices". Unlike the construction sector, where the manpower corporations are considered employers, it is the patient – rather than the office – which is construed as the exclusive employer. The office is supposed to oversee working and housing conditions, employer-employee compatibility and pay, but unlike the current arrangement in the construction sector, it is not held directly responsible for these. It is the employer who's responsible for everything, including paying the worker's wages.

Operating such a private office would require government license, conditioned on its being an Israeli firm whose only purposes are importing, brokering and providing services for migrant care giving workers. To prevent cartelization, no affiliated or coordinated offices would be licensed. According to the procedure, employers would be allowed to employ care givers only if both parties have been registered by the office, and only if this registration has been reported to MITL. A single

[79] Recommendations of the Interministerial Team for Reviewing the Care giving Sector, Sept. 3, 2006, p. 8.
[80] *Ibid.*
[81] Government Resolution No. 448, September 12, 2006.
[82] For the complete procedure, see the MITL website at:
http://www.tamas.gov.il/NR/rdonlyres/5A4C03E7-08CC-4177-B45F-F08E59E0759D/0.2007נוהלסיעוד/doc

office would not be allowed to register *more* than 3,000 employees and 3,000 employers, and would lose its license had it registered *less* than 200 of each.

Furthermore, an office matching an employer with an employee should furnish both with "placement letters". The employee would be required to work only for the employer for which she had received the placement letter. She would be allowed to change offices, while those would not be allowed to prevent workers from changing either employers or offices. The office would also be required to offer a selection of new placements for employees who lost their previous jobs.

The procedure requires the private offices to employ at least one responsible social worker with at least three years of professional experience, "who is able to diagnose the care giving employers' needs, select an appropriate migrant worker for them, communicate with both the worker and the employee for diagnostic purposes and in order to resolve employment issues over the employment period, and to supervise the other social workers employed by the office". Moreover, the office would be required to see to it that a social worker visits the employer's home within 20 days following initial employment "in order to assess his needs and the worker's ability to meet them" and to ensure such visits at least once every three months.

The care giver's work permit, attached to her passport, would include neither her employer's nor her office's name. However, each employee would be issued a magnetic card with biometric details, other identifying details and employer details. Furthermore, the office which imported the employee to Israel in the first place would be required to provide her with work for at least one year; should it fail to do so, the collateral deposited as a condition for obtaining its license would be seized.

The procedure further determines that no worker is to be excluded from its registry of actual employees unless by her own request, in order to be included in the registry of workers not employed by a licensed office (see below), or to be registered in another office. Another unregistering option opens up a year after report by the office that the employee is no longer employed, and has not registered in another office or in the unemployed registry, has not left Israel or passed away; but only in condition that MITL has made sure that the employee indeed is not employed by her last registered employer and cannot be located. As explained below, continued registration of an employee by an office which does not actually employ her detracts from its ability to import new workers.

In order to deal with the aforementioned care giving labor surplus resulting in many of them losing their legal status, the procedure includes rules about employing migrant workers already in Israel and importing new ones. It envisions a registry of unemployed migrant workers that could be used by the private offices to select and employ. The procedure states that should the ratio of such unemployed workers reach 1% of the total number of migrant care givers in Israel, "the skies would be closed" and no new workers could be imported until this ratio falls under 0.5%.

At times when new workers could be imported, the only offices allowed to benefit from this option would be those legally employing at least 98% of their registered employees. This also sheds light on the rationale behind the aforementioned rule about avoiding the exclusion of unemployed workers for a period of one year. Each year, when permits are to be renewed, new employees could be imported by the offices only after meeting the following three criteria: a high rate of registered and actually employed workers; a high rate of registered employers entitled to a special services package from the National Insurance Institute (*i.e.*, severely handicapped patients); and general evaluation by the Head of the Alien Workers' Unit at MITL.

5.3 The New Arrangement's Shortcomings

As in the construction sector, it seems that with regard to the care giving sector, the state has failed to appreciate the conceptual transformation required of it following the ruling against the "binding" arrangement. Although the new arrangement in the care giving sector makes it easier for migrant workers to change employers, it still does not meet the condition determined by HJC for the legality of any migrant worker employment arrangement – that it has to be such so as "to prevent linking the act of resignation with any sanction whatsoever, including loss of legal status in Israel". This basic condition is not met by the new arrangement.

As already mentioned, the legality of a worker's stay in Israel is conditioned on possession of a "placement letter" by an office, and on her actual employment by the patient mentioned in that letter. Any worker who fails to meet these conditions automatically becomes illegal, liable to arrest and deportation. Although the procedure states that the visa attached to the worker's passport would not mention either the employer or the office's name, but only the words "care giving sector", this is nothing more than a false pretence meant to disguise the offensiveness of actually naming an employer or a manpower company in one's passport. The Ministry of the Interior's and MITL's databases would still show the name of the migrant worker's employer, working for whom is a condition for the legality of her status. The offensive passport registration would be replaced by the

"placement letter" and the information on the magnetic card envisioned by the procedure, where the worker's biometric details would appear right next to her employer's details.

The procedure is wary about providing for the revocation of residence permit or arrest and deportation acts, but its provisions nevertheless make it clear that residence permit in Israel is conditioned on employment by a specific employer. This is shown most clearly in Section 7(14): "any worker found employed by a patient with a permit for care giving, but has not been sent to this employer by the office, will not be deported, unless she continued her employment by the said employer, or failed to register at the office or the registry (as the case may be) within thirty days after having been given a written notice to settle her registry at the office. Had 30 days gone by without the worker's having settled her employment status, she will be required to leave Israel; should she fail to do so, her right to the money deposited as collateral on her behalf shall be incrementally invalidated". The procedure does not explicitly state the fate of workers found employed by *un*authorized employers, but clearly, they too would be liable to lose their residence permit and be deported (and perhaps without the aforementioned thirty days of grace).

The procedure also fails to deal with further implications of the "binding" arrangement, which are already clearly evident. For example, we often witness the phenomenon that care givers working under the present arrangement are placed with employers who are not yet authorized to employ them, or placed temporarily with employers in order to replace other migrant workers for short periods of time without being issued a work permit for the temporary employer. Consequently, such care givers are considered to have violated the conditions of their visas and become illegal aliens. Even according to the new arrangement, despite not being allowed to do so, it is far from clear what exactly should prevent offices from sending employees to unauthorized employers, since the employees have no power to resist, and may not be even aware of the illegality of their situation. In an employment system where the worker suffers no potential sanctions, this breach may not have been so critical. But under the new system, with its continued linkage of employer identity and the residence permit, it threatens to severely violate workers' rights.

As already mentioned, the interministerial team rejected the option of issuing general care giving work permits, since "we must make sure that importing alien workers into Israel is done by professionals subject to tight government oversight, so as to prevent workers from entering Israel for purposes other than care giving, but in order to illegally charge money from them in return for bringing them to Israel", and because of "the need for a central authority to continually monitor

both worker and patient".[83] It is difficult, however, to accept those reasons as justifications for the need to link leaving one's employer with the severe sanction of losing legal status. It is difficult to believe the candor of the claim that protecting the employees, in terms of commissions charged from them, and supervising employees and employers, require revoking the residence permit of an employee found to be working for anyone but her registered employer. Above all, it is hard to see why those two lofty objectives cannot be achieved through an arrangement which includes a registration system similar to the one envisioned by the procedure, but does not apply any sanction against a worker employed by anyone other than her registered employer, and imposes sanctions against offices which *knowingly* register false information about the employer's identity, or against patients who employ unregistered workers. If the purpose of the registration system is indeed to protect workers' rights, as asserted by the report, we find it impossible to understand why it should be necessary to revoke the visa, arrest and deport a worker employed not by her registered employer.

Another "binding" aspect can be found in reference to workers employed by the severely handicapped. According to the procedure, anyone employed by such a patient would not be allowed to leave her employer in the first three months of her employment unless the Workers' Rights Commissioner found that the employer had violated the employee's rights or that the office had not informed the employee about her employer's unique condition.

Clearly, the purpose of this provision is to protect the severely handicapped, but nevertheless, we hold that conditioning the residence permit of a care giver on continued employment by *any* employer, even a severely handicapped one, is unacceptable. Just as it would be inconceivable for authorities to restrict the right of an *Israeli* care giver to resign her work for a severely handicapped person and punish her severely, to the extent of denying her very freedom, so as to protect the patient, we refuse to accept the audaciousness involved in literally "binding" migrant care givers to severely handicapped patients. It seems that in this respect, as well, the authorities failed to acknowledge HJC's clear message, in specific reference to the care giving sector, when it ruled that even the possibility that patients will be hurt due to abandonment by their care givers cannot justify linkage between such abandonment and loss of legal status.

Our position is that the difficulty of persevering care giving for severely handicapped patients should be resolved by offering *incentives* to the employees, rather than by "binding" them. Where

[83] Recommendations of the Interministerial Team for Reviewing the Care giving Sector, Sept. 3, 2006, p. 8.

higher wages still do not resolve the difficulty, the authorities must accept the fact that the patient is handicapped to a degree which justifies the employment of two care givers in shifts.

Apart from retaining the "binding" features of the old arrangement, many of its other provisions fail to remedy the various failures which can already be seen in the employment of migrant care givers, and result in severe violation of their rights. For example, despite the oversight required of the offices, unlike the liability enforced on the corporations in the construction sector, the care giving offices are not required to actually pay salary (other than to workers who have not been employed over their first year in Israel or during part of it).

As explained above, the interministerial team which developed the recommendations envisioning the new arrangement had rejected an arrangement similar to that which prevails in the construction sector "in view of the necessity of maintaining a direct employment relationship between the elderly patient and his employee, considering the personal nature of the services rendered." However, we fail to understand why this personal nature of care giving should lead so automatically to the conclusion that the office be relieved of its duty to *ensure* (rather than oversee) payment.

Holding the office liable for paying the worker in cases where her direct employer has failed to do so may be even more critical in the care giving than in the construction sector. The average pay of migrant care giving workers is about 1,000 NIS [around $250] *lower* than the minimum wage, even before taking into account the fact that they are employed around the clock and receive no extra money for overtime. Considering the low state allowances to patients in need of care, many of the employers in this sector are completely unable to pay minimum wage as required by law. In many cases, there is no point in starting legal actions against them: even if the court requires them to pay their worker, they would be unable to comply. Under these circumstances, only holding the offices liable for payment – as they are have the "deeper pocket" in the employment triangle envisioned in the report – would ensure legal payment of wages, as purported by new employment system. Moreover, it is difficult to see how the "personal nature of the services" justify relieving the offices from liability for wages not paid by employers, unlike the construction sector where the corporations are held responsible.

The private offices' lack of liability for workers' payment is reinforced by the difficulty of giving them the supervisory authority. First, in a sector where private employers do not issue pay slips, a problem which could easily be solved by holding the offices responsible for payment, any

assumption that the offices would supervise payment of their own accord is a fiction. More importantly, however, in view of the nature of the care giving sector, it would seem that the offices have a *disincentive* to ensure payment.

As already mentioned, since migrant care givers in Israel far outnumber their authorized employer, care givers would agree to waive some of their rights and work under substandard conditions, so long as they are still employed in Israel and do not lose their visa, while their employers can easily avoid providing them with minimal conditions and constantly threaten to replace them with others, in such a saturated labor market.

Beyond that obvious result, however, the nature of the care giving sector also affects the offices' willingness to truly monitor workers' rights. Even without labor surplus, we fear that the private offices, operating for a profit, will not properly oversee the employers, who are their own clients. This fear is naturally greater under conditions of labor surplus. Where there is no shortage of migrant workers willing to work under any conditions, and where authorized employers are rare, there would indeed be competition among the offices, as sought by the procedure, but this would not be competition for labor, but rather for employers. While a caregiver employed by an office which fails to properly monitor her working conditions will hesitate to leave and move to another office (risking not finding a new employer), an employer dissatisfied with the oversight on the payment he offers could easily move to another, more "lenient" office. This competition for employers might result in "race to the bottom", wherein the more lenient the oversight, the more attractive the office becomes to employers. Under the present conditions of labor surplus, we therefore believe it is improper to impose the oversight duty on the private offices.

Just like in the construction sector, we believe that the new arrangement in the care giving sector also does not resolve the issue of high brokerage fees paid by migrant workers prior to arriving in Israel. The lip service rendered by the interministerial team concerning the need to tackle this problem and the oversight arrangements it numerates for that purpose (most importantly, the existence of a Workers' Rights Commissioner at MITL, an online system connecting the private offices with MITL and duty of disclosure on several matters) cannot be viewed as serious attempts to deal with that ugly phenomenon. If any proof is necessary, our abovementioned construction sector figures show that in reality, the brokerage fees only increased under the new arrangement.

The new arrangement suggested for the care giving sector, like the one already implemented in the construction sector, clearly shows that authorities expect the private offices to charge illegal

commissions. The procedure suggested by the interministerial committee on care giving clearly implies that they view limiting the number of permits to import new workers a severe sanction. As already mentioned, the offices are to be evaluated so as to determine their relative order of priority in importing new employees. How can the authorities hope to combat the illegal commissions when allowing the offices to import new workers is viewed as an incentive for proper management? How can this be construed otherwise than an assumption by the formulators of the new arrangement that it alone is far from sufficient to put an end to the unfortunate state of affairs?

In the section on the new arrangement in the construction sector, we explained how the calculation of the permit fees and annual charge required of the corporations might give them an incentive to force their own employees out of Israel. In the procedure suggested for the care giving sector there are other provisions which give a similar incentive to the private offices. As already explained, one of the criterions for determining the offices' entitlement to import new workers (and reap a nice commission) is the rate of its actually employed workers (an office where more than 2% of its registered workers are not actually employed would not be permitted to import new ones). We also referred to the fact that even when an office reports that a worker has stopped working under its auspices, that worker will not be unregistered for a whole year, unless she has left Israel, passed away, registered in another office or registered as unemployed. This means that the office has a clear interest in forcing unemployed workers out of Israel in order to reduce the number of its registered but not actually employed workers. As shown previously in regard to the construction sector, such and other incentives for forcing migrant workers out of Israel has a tendency to lead to dishonest and even violent behavior by employers.

Another important concern is the effectiveness of the oversight mechanisms envisioned by the procedure for the care giving sector, in view of the documented failure of similar mechanisms in the construction sector. As seen in that regard, the Workers' Rights Commissioner (WRC) at MITL is simply incapable of handling the burden, as it lacks the necessary manpower, is unable to proactively monitor violations of workers' rights, employs no translation services, and is neither accessible to individual workers nor attentive to complaints by advocacy organizations, to the point that the latter do not even bother contacting it anymore. The procedure's provisions do not make it clear whether MITL really intends to provide WRC with even more work in the care giving sector, or whether a dedicated commissioner is to be appointed. Either way, without any willingness to provide appropriate funds for this institute and make it truly accessible to migrant workers, nothing is to be expected of it in terms of the new arrangement.

More funds will also be required to make the registry of unemployed migrant workers accessible to the workers themselves. Access to this registry is critical to a worker's ability to leave her employer and find a new one, especially in the labor saturated care giving sector. In view of the difficulties some migrants will face in accessing the registry on-line, we believe MITL should devote staff for that purpose in various branches in Israel, to receive migrant workers on regular hours and register them as unemployed should they wish to do so.

In addition, the procedure is unclear as to the question which workers would be allowed to register as unemployed once the new arrangement takes effect. It is unclear whether only a care giver who has been dismissed or resigned after or just before the introduction of the new arrangement would be entitled to it, whether anyone entering Israel with a work permit could do so, or whether interim provisions will apply to such registration. As we have already shown, the presence of so many migrant care givers who entered Israel legally and who now have no work permit is a direct result of the policy of allowing unrestricted entry of migrant care giving workers into Israel. Many of these workers are unemployed due to this omission by the authorities, and have consequently become illegal aliens after having spent a fortune just to get here. The State or Israel is responsible for their fate. We therefore believe that any migrant worker who's arrived in Israel with a permit to work as a care giver and who has stayed in Israel for less than the maximum period allowed (63 months) should be allowed to register as unemployed, regardless of her duration of illegal residence or the sector in which she works today.

Importantly, in view of the gap between the number of authorized employers and the number of migrant workers, we must assume that even after registration, many of these care givers would remain unemployed. We therefore suggest that once the registry has been open for a certain period, all workers who have yet to complete their 63-month stay and have not yet found an employer should be issued a work permit that would allow them to work in any sector and for any employer over the remainder of their permitted stay. It is the state that's responsible for the labor surplus in the care giving sector, and it the state alone that can and should remedy it. Deporting all the "excess" care givers who relied on their visa and paid a fortune in illegal commissions is not the appropriate solution.

According to the procedure, training newly imported workers will take place in their countries of origin, and allowing them into Israel will be contingent on the office's presenting a formal authorization to that effect by a state authority in the country of origin. Our experience in handling complaints by migrant care givers shows, however, that all too often, the "training" they've received abroad is a sham, designed to extort additional payments out of them. This provision

requiring training overseas thus violates both the rights of migrant workers and the interests of their patients. Accordingly, we believe that the offices must be required to train migrant workers in Israel, at the expense of the state, the office, or the employer in question.

A final difficulty that is expected to arise immediately once the new arrangement takes effect has to do with provisions designed to ensure workers' rights. One of the conditions for licensing a private office is depositing collateral of 500,000 NIS, designed to ensure that it meets its obligations to the workers. However, the law states that such collateral is to be charged according to regulations by the Minister of Finance with the approval of the parliamentary Labor, Welfare and Health Committee.[84] The procedure itself states that prior to such regulation, no collateral is to be charged,[85] and the state has even recently informed the Supreme Court as much in its response to an appeal by manpower companies in the care giving sector against parts of the new arrangement.[86] Even when it comes to the provision requiring the offices to pay the workers' wages over the first year of their stay even if unemployed, the law permits delaying its application until new regulations are in force,[87] and in this matter as well, the state undertook, in its reply to the aforementioned appeal, not to enforce this provision pending the new regulations.

We believe that requiring the offices to pay the migrant workers' wages over the first year, even if unemployed, is a *sine qua non*. One of the most unfortunate phenomena of today's migrant labor market is the so-called "flying visa". These are cases where manpower companies import care givers, ostensibly to work for an authorized employer, although no one has any real intention of employing them, just in order to charge their brokerage fees. Immediately after landing in Israel, these migrant care givers become unemployed and without a residence permit. Requiring the offices to pay wages for the first year would undercut the incentive of importing care givers with no intention to employ them. The collateral should ensure the enforcement of this requirement.

Our experience shows that the time it takes for new regulations regarding the employment of migrant workers to be formulated can be very long. For example, today, two years after the corporate arrangement came into effect in the construction sector, the collateral deposited by migrant workers has yet to be formally regulated. The parliamentary Labor, Welfare and Health Committee received a proposal in this matter in October 2006, but have yet to approve it. We fear

[84] Section 65(a)(2) of the Labor Service Act, 1959.
[85] Section 14(c) of the Procedure of Private Offices for Importing, Brokering and Providing Services for Alien Workers in the Care giving Sector.
[86] State Response of June 10, 2007 to HJC 4957/07, *Ahioz, National Association of Manpower Companies for Alien Workers' Employment Brokerage vs. MITL et al.*, an appeal submitted on June 5, 2007.
[87] Section 65(c) of the Labor Service Act, 1959.

that the regulation of those two matters would thus drag on, and that in the meantime, private offices will not hesitate to take advantage of the lucrative opportunity of importing migrant care givers without any true intention of employing them, for the purpose of charging illegal brokerage fees.

6. Summary and Conclusions

Our main conclusion is that the "binding" arrangement ruled out by the Supreme Court did not perish with the adoption of the new employment arrangement. This can be seen both when analyzing the basic principles of the corporate arrangement, and in the light of its actual implementation. This is also true for the principles of the new arrangement formulated for the care giving sector. As shown above, there is still direct linkage between the employer's identity and the employee's residence and work permits. Realizing the basic right of leaving one's employer still entails the sanction of losing those permits. The mechanism allowing for changing corporations or actual employers in the construction sector, or changing private offices or direct employers in the care giving sector, is nothing but a more "sophisticated" version of the old "procedure of changing employers". Remember that the Supreme Court has ruled that this procedure does nothing to remedy the violations of migrant workers' rights inherent in the "binding" arrangement, because it still relies on the basic assumption that the employee *belongs* to the employer, and that leaving the latter, not according to the procedure's provisions, carries the sanction of losing legal status in Israel. This is just as true for the new procedures.

As shown here, not only are the provisions of the new arrangement in the construction sector "binding" in principle, but their actual application often causes migrant workers to lose their visa and freedom, and finally to be deported, whether due to resignation "against regulations" or to wrongful conduct by their employer.

While the new system seemingly led to a certain rise in the wages of migrant construction workers, and certainly made their employment more costly through a variety of fees, those who actually bear the additional costs are the workers themselves, who are now required to pay significantly higher brokerage fees. Apart for the figures shown above, this is also attested to by the fact that despite the additional costs and the higher average wages of migrant workers, employers still prefer them over Israeli workers, and are even willing to go to court in order to protect their permits for importing even a few new workers.

Despite the oversight mechanisms it includes, the new system has failed to put an end to the unfortunate practices of exploitation and violation of workers' rights. For example, despite the probable rise in wages, the average actual wage of a migrant construction worker is still no higher than 85% of the minimum wage in Israel, a requirement which legally applies also to migrant workers.

In view of the above, we recommend applying the following principles in every future employment arrangement.

Abolishing the Binding to the Employers and Manpower Corporations

We have shown how the new arrangements in the construction and care giving sectors failed to "unbind" migrant workers. They make it easier for them to change employers or manpower corporations, they may reduce the number of workers losing their legal status as a result of the arrangement, but they *do not* abolish the linkage between working for a particular employer and keeping one's residence permit. It must therefore be enacted that a migrant worker entering Israel could work only in a certain sector, but apart from that he or she must be subject to no restrictions.

In order to protect the rights of migrant workers, an employer and employee registry must be compiled, but that this registry *must not* be linked to residence and work permits. Employers without an employment permit or those employing an unregistered worker may be penalized, and migrant workers found working not for their registered employer must be made to realize that they must find an employer with a permit or register as employees for this employer or the other, but a worker's work permit must not be revoked under such circumstances. We believe that this is the only way of putting an end to the absolute dependence of workers on their employers and to significantly reduce the multiple opportunities open to employers to exploit and violate the rights of migrant workers.

We also recommend that the residence permit of migrant workers be issued in advance for the maximal period allowed by the state, such that unemployment or any violation of the permit conditions would not automatically lead to its revocation.

Preferring Migrant Workers Already Residing in Israel Rather than Deporting Them

Due to the high commissions paid by migrant workers before arriving in Israel, brokers and employers prefer importing new workers to employing those who are already here. This "revolving door effect" has led, for example, to a severe labor surplus in the care giving sector. The result is that unemployed migrant workers have a hard time finding new employers, and are forced to leave Israel long before the expiration of the maximal stay period.

The new arrangement attempt to create incentives for employing resident workers, but are far from sufficient. The state must allow importing new workers only after all resident workers who've stayed here for less than the maximal period have found work. In cases of labor surplus, as in the care giving sector, authorities must allow resident workers to work in *other sectors* for the remainder of their legal stay.

Excluding the Manpower Corporations

Our extensive experience with helping migrant workers and dealing with manpower corporations has taught us that the latter should no longer be allowed to meddle in the affairs of the former. Should the State of Israel wish to continue relying on cheap labor for important sectors in its economy, it should become fully involved, rather than let pure business interests manage the migrant labor market and dictate the workers' fate.

The State of Israel knowingly chose to let in tens of thousands of migrant workers in order to provide labor to undermanned sectors. It may be that conducting their affairs directly would entail considerable costs, but the authorities simply have to make up their minds: are they interested in giving up on cheap labor, or are they willing to take over the role hitherto played by the notorious manpower corporations.

As explained here, it is doubtful whether the manpower corporations are at all interested in protecting the rights of their migrant workers, particularly in situations of competition over employers. Moreover, a significant portion of their revenues derives from (mostly illegally inflated) commissions charged from migrant workers prior to their arrival here. The State of Israel does nothing to enforce the ban on such commissions, and it seems that the only way of putting a stop to them is to nationalize the operations of importing migrant workers and placing them in Israel.

Reinforcing the Workers' Rights Commissioner

We have pointed to the problematic nature, to put it mildly, of the WRC mechanism. In its present form, it can hardly do anything to protect migrant workers' rights. There is urgent need for a properly funded mechanism, with appropriate human resources and translation services. Authorities must also actively inform the workers of the existence of such a service and how to contact it, and clear and regular opening hours, including over the phone.

Selecting Countries of Origin

The State of Israel is certainly aware of the fact that the brokerage fees charged in certain countries are significantly higher than in other, and also of the fact that in certain countries, the worker "export" market is infected with government corruption. It must therefore avoid importing workers from those countries so long as this unfortunate situation does not change radically.

Moreover, we believe that the State of Israel should work diligently towards signing bilateral agreements with countries from which it is interested to continue importing migrant workers. These agreements must refer, among other things, to the practices of recruiting workers abroad, and to stipulate that such recruitment will only be done through the International Organization for Migration (IOM), rather than through private or government entities. We believe that after having

signed such agreements with several countries, Israel must resolve to import migrant workers only from these countries.

Finally, we believe that migrant workers should arrive only from countries with an official representation in Israel. Migrant workers from other countries are even more vulnerable than others to exploitation, as they have no one to turn to when asked to submit identifying papers or travel documents, or require other services from their countries of origin.

Involving the Israel Money Laundering Prohibition Authority (IMPA)

For some odd reason, the brokerage fees charged abroad are perceived as some sort of ineluctable natural disaster. The state is clearly aware that most brokers (if not all) charge these fees illegally, and as we've seen, has even made a statement to that effect in a legal procedure. Still, it does nothing. In some of the cases where workers complain about inflated commissions, the authorities act on it, but as far as we know, nothing is done proactively to detect such cases as they occur, so that most cases are not dealt with at all. We believe that so long as manpower companies are involved in the business of importing migrant workers to Israel, and so long as these workers are recruited not on the basis of bilateral agreement, the IMPA must be involved, and act proactively to identify manpower companies which charge illegally inflated brokerage fees.

Using Arrest and Deportation as Last Resorts

Out key recommendation is to abolish the linkage between violation of visa conditions and its revocation, so that employer identity would become completely irrelevant as far as the Immigration Authority are concerned, as also implied by the Supreme Court ruling against the "binding" arrangement. Nevertheless, so long as such improper linkage exists, the use of arrest as deportation as primary and almost exclusive sanctions must be radically reevaluated.

The Ministry of the Interior, in charge of issuing arrest warrants against illegal aliens seems completely indifferent to the migrant workers' right to freedom, and does not treat it with the proper respect. Arresting migrant workers is considered the first legal step against them, and the ministry views jails as legitimate passageway between employers, when a worker is caught working for other than his registered employer.

So long as the State of Israel requires workers to register with and work for the same employers as a condition for the validity of their residence permit, a more gradual and prolonged process of warnings and fines must be used in cases of violation of permit conditions. Under no circumstances should the arrest and deportation sanctions be used against those who can regain their status by working for another employer, and they must be used *only as a last resort* against those who've resided in Israel for longer than the maximal legal period.