Kav La'Oved **Hotline for Migrant Workers**

IMMIGRATION ADMINISTRATION OR EXPULSION UNIT?

Joint report – May 2003

THE IMMIGRATION ADMINISTRATION AND "ILLEGAL" WORKERS

On July 23, 2002 Israel's Inter-Ministerial Committee on Migrant Workers and the Establishment of an Immigration Authority, chaired by Yuval Rechlevsky (head of the Finance Ministry's salary division), submitted its conclusions to the government for approval. The committee's recommendations included setting up a government authority, by January 2004, to act as a central body for issuing entrance permits for workers, tourists and students. The report also recommended not increasing the existing quota of migrant workers, but rather trying to reduce it. In this spirit, the committee recommended the expulsion by 2005 of 100,000 migrant workers unlawfully present in the country.

A month later, in August 2002, the Prime Minister, Ariel Sharon, announced the goal of expelling 50,000 "illegal" migrant workers by the end of 2003. The declared overall goal of these measures, according to statements made by government representatives on the media, was to "remove aliens working unlawfully in Israel with the aim of encouraging Israelis to become integrated in the work market".

In order to implement the mass expulsions, the government set up a temporary administration – the body known as the "Immigration" Administration. The task of actually carrying out the expulsions was entrusted to the Israel Police, which assigned 400 police officers for this purpose, with a generous budget of 200 million shekels from the Finance Ministry. Israel Police Chief Insp.-Gen. Shlomo Aharonishky stated that his force would tackle the task like a "military operation".(1)

The Immigration Administration (IA) took vigorous measures. At Ma'asiyahu Prison, the only jail used for "illegal" workers before the IA's establishment, the number of places was increased from 260 to 400. At Nazareth's Renaissance Hotel, which was converted into a detention facility for migrant workers, 500 places were earmarked. In the south of Israel, a new detention facility called Tsohar was opened, initially with 67 places for detainees but soon slated to have room for 300 inmates. In Hadera, a police facility was turned into a special jail for migrant workers known as Michal, for 84 detainees. As a result, a total of some 1,300 places will be available to the IA for housing detained migrant workers.

According to official data and surveys by the Central Bureau of Statistics and the Bank of Israel's Research Division, more than 60% of migrant workers in Israel are today defined as "illegal" and are therefore liable for expulsion. More than half of them came to Israel as workers with legal work permits conditional on working for a specific employer who received a permit to employ a migrant worker. Under this Interior Ministry procedure, known as a "binding arrangement", all workers who change employer because their rights have been infringed automatically become "runaways" under the law and lose their work permits. When workers are transferred by contractor companies and manpower companies from one employer to another, they also lose their legal status. The same applies to workers whose employers fire them, go bankrupt, or die before the expiry of the validity of their workers' permits.

The caregiving sector is the only one where it was possible for workers to move from one employer to another, but this possibility was subject to the condition of showing a letter of "discharge" (or release) from the former employer. In the wake of a petition submitted to Israel's High Court by Kav La'Oved, the Interior Ministry issued new procedures for moving from one employer to another which did not require workers to obtain such a letter of discharge. However, workers who tried to apply this procedure, including individuals who had been fired or who had terminated their employment with the employer's consent, discovered that the Interior Ministry was continuing to insist on the "discharge letter". In certain cases it turned out that the employer or the manpower company reported to the Interior Ministry that the workers had "run away" from them, and the Ministry accepted such claims without making any checks with the workers themselves. When they came to the Interior Ministry in order to regularize their legal transfer to another employer, they found that they were handed over to the "Immigration" Police.

The procedure gives workers whose employer has died or gone into a retirement home a one-month period of grace to find a new employer, but during that period they are forbidden to work, which makes it impossible for them to work for a "trial" period.

And what about the manpower companies which fail to provide an employer for licensed caregivers who have just arrived in Israel after handing over thousands of dollars in return for a placement with an employer with a permit to employ a migrant worker? The legal process involved in the worker bringing a claim against the manpower company is so complicated, complex and expensive that the worker has no chance whatsoever of persevering with it, in particular when the prospect of being arrested and immediately deported is a very real one. Like the "liberal" procedure of the right to change employers, the Immigration Administration's promises to respect workers' rights may perhaps soothe the consciences of those who are blind to the facts, but are not translated into action.

As a result, a large proportion of so-called "illegal workers" are in fact workers who have been cheated. These include people who without their knowledge have been transferred to an employer who is not entitled to employ them, or who decided to leave an employer who denied them their wages and other rights, or used violence against them: they all lose their legal status and are punished by being expelled. The state systematically and consistently rewards the transgressors and punishes their helpless victims. The Damocles sword of expulsion further increases the intensity of the power which the "binding arrangement" confers on employers. The worker has no actual ability whatsoever to lodge a complaint about

an abusive and exploitative employer, and cannot leave such employment without being arrested for being in the country unlawfully.

THE ADMINISTRATION AT THE SERVICE OF THE EMPLOYERS

1. Arrests of workers "commissioned" by an employer

The expulsion of legal workers was a very popular and common technique for employers looking for a way of avoiding paying those individuals. It is also standard practice in manpower companies interested in raking in high placement charges from new workers who are earmarked to replace their counterparts who have been expelled. All that is needed is a fraudulent report about a "runaway" worker - a report which is instantly input into the computer - and the Immigration Administration will immediately do the rest.

Offices of Kav La'Oved and the Hotline for Migrant Workers have collected scores of examples of how legal workers are handed over in this way to the Immigration Administration, and especially workers in the caregiving and construction sectors. On January 23, 2003 workers came to the Kav La'Oved branch in Beer Sheva to complain about failure to pay their wages. The workers had arrived in Israel at the beginning of September 2001 with a visa for "Euro Israel", a company involved in construction projects and investments. In their complaint to Kav La'Oved, the workers said that in the past two months they had not been paid their wages, and when they refused to carry on working without pay, the employer threatened to expel them. And in fact, on February 9, 2003 in the early hours of the morning, Immigration Administration police turned up where they were living and arrested the "runaway" workers.

The same thing happened to M.P., a Philippine national. She had worked for a year as a caregiver for an employer who lived with his four children. The worker had to look after not just the elderly man, but also all his children. Because of overcrowding in the apartment, she slept in the living room. M.P. asked to be moved to a different place of employment, but at her employer's request she waited six months in order to allow him to get a replacement. M.P. then asked one of the old man's sons for her last wages and other benefits due to her. What was the result? The police appeared on December 5, 2002 and arrested her. At the Custody Review Tribunal, Advocate Sarah Ben Shaul-Weiss observed in her ruling concerning the case of M.P.: "The hearing held for the detainee by the Interior Ministry also confirms her claim, and adds that her employer applied for her arrest before she ran away. It is not clear to me why a government ministry agreed to go along with this arrest, which constitutes preventive custody for an employer seeking to keep the worker with him until a replacement for her arrives, and then arranges for her to be arrested." (2) The detainee was not released even after this ruling was handed down. It was not until pressure was brought to bear on the authorities by the Hotline for Migrant Workers that she was finally released and went to work for an employer who had a legal permit.

The same thing happened to the workers of I. Tsarfati. Extensive media coverage aired the appalling exploitation of these men.(3) The same also applies to the 26 Burger King workers who were employed to clean the chain's branches at night and were not paid the wages due to them. Their plight was aired in the *Ha'Ir* newspaper(4), after which they began to be arrested one by one.

2. "Exempted" from paying debts to workers

Many workers are expelled without receiving all of their arrears of wages due to them for the period during which they were employed. Labor inspectors are assigned to the prisons, with instructions from the Labor Ministry's Enforcement Division to recover workers' wages from employers. The instructions to these inspectors are to demand that the employer pay the cost of flying the worker back home, as well as his or her last wages (but no more). Despite the inspectors' assiduity and goodwill, they frequently fail in this task. Moreover, employers almost always owe the worker more than the amount of his or her last wages, since it is routine for pay to be withheld for months.

And as if this were not enough, testimony from detainees held in jail indicates that Labor Ministry inspectors and employees of the Immigration Administration make the detained workers sign forms in which it says (in Hebrew only!) that the worker has no further claims against the employer and/or the State. In this way the Immigration Administration absolves the employers from paying their debts to the expelled workers. The sums which are "saved" in this way run into millions of shekels.

When workers become "illegal" because they have left employers who are breaking the law, expulsion becomes an extremely effective way of preventing them from bringing legal claims against their employers. Kav La'Oved has recently been forced to submit numerous applications to the labor courts for urgent hearings of the claims of workers facing expulsion. Generally the courts show a laudable degree of generosity in taking into account this situation of these workers. They respond positively to requests for early hearings in which the worker gives testimony and is examined before leaving the country, making it possible for prosecutions to be brought later without his or her presence. The Immigration Administration would, however, appear to have its doubts about whether migrant workers are entitled to appear in court in order to defend their rights. Despite the short waiting time before giving evidence (varying between two days and two weeks), the Administration tries to speed up the expulsion process so that the worker is deported before he or she has a chance to appear in court, or alternatively it does not bother to transport them from where they are in detention to the Labor Court. In a number of cases the Labor Court judges have issued orders preventing individuals from leaving the country (i.e. orders preventing the individual from being expelled), but these too have proved ineffective.

Here is an example of such a case. On February 7, 2003, a Romanian migrant worker, was arrested by the Immigration Administration after being proceedings in the Labor Court against the Aronson construction company, which he claimed had withheld his wages and deprived him of his accompanying rights. On February 12, 2003 the Labor Court (on the application of a Kav La'Oved lawyer) issued an injunction preventing the worker from being expelled until he had given his early testimony, which was scheduled from February 19, 2003. The worker was not brought to the preliminary hearing and the representative of the State Attorney's Office informed the court that he had left the country. The fact that the worker left the country against his will because the Immigration Administration failed to comply with the prevention order of the Labor Court was not mentioned in the State Attorney's statement.

27 migrant workers from Moldavia worked for a long time for the Peretz Bonei HaNegev company. The entire time that they worked for the company, their passports were kept by the company's owners, contrary to their wishes and in breach of the law. Their wages were paid

to them by check, but because they did not have their passports they had to hand over their wage checks to company representatives for cashing at the bank. When they were informed that the representative had been robbed and therefore they would not receive their wages, five of them refused to continue working and they were fired on the spot. The workers submitted a complaint through Kav La'Oved to the Labor Court, and shortly afterwards two of them were arrested. A date was set for them to give early testimony, but in this case too the Immigration Administration did not make arrangements for the workers to be brought to the proceedings. The court set a date for another hearing, and this time the workers showed up. They told the Kav La'Oved volunteer that they had been held at the Beer Sheva jail without a change of clothing, with no blankets and no beds. The police have still not investigated the complaint about their passports being held in breach of the law and the circumstances in which the robbery of their wages took place.

Two Chinese workers, who were legally employed by the Solel Boneh company, instituted proceedings against the company (through Kav La'Oved) for the withholding of wages amounting to many thousands of shekels throughout all the months that they had been employed. Shortly after this, the workers were arrested by the Immigration Administration. The court set a date for preliminary testimony, but an Israel Prisons Service representative notified the court, without offering any grounds, that he would not bring the workers to the hearing which had been set. When the workers failed to turn up for the hearing, a new date was set and the court issued a warrant for them to be brought to the hearing. The police and the Prisons Service failed to comply with this warrant as well, and once again failed to bring the workers to the hearing. It was only the third time round that the workers, by then worn out and exhausted from their lengthy imprisonment, were brought to the court. It may be assumed that workers who are kept in jail for extended periods and see how the date for their court appearance is constantly being put off will be prepared to compromise and to accept anything offered them.

Another Chinese worker, K.W. who brought a complaint through Kav La'Oved against Euro-Israel Ltd. for protracted withholding of wages was also arrested shortly after the complaint was filed. Judge Michaela Shidlovsky-Orr, who on March 2, 2003 heard an application for a stay of expulsion until his case had been examined, ruled that the worker had to lodge NIS 5,000 "in order to cover expenses caused by his expulsion", as a condition for delaying his expulsion. As the worker's legal representative pointed out, he was unable to raise the money. He was therefore expelled without being able to fully use his basic right to have recourse to a court of law.(5)

Another result of the mass expulsion is a drop in the wages of the migrant workers still in Israel, even when they have legal status. Workers holding visas are prepared to accept a deterioration in conditions and a drop in wages in order to avoid losing their legal status and running the risk of being expelled. Those without visas are under constant threats from the employers, and any complaints about their wages can lead to them being swiftly expelled. Today, all that the employer has to do is to threaten to inform on them to the Immigration Administration, or to ask the IA to expel a worker who is asking for his or her most elementary rights and is not "behaving nicely".

The next example is a perfect illustration of the severity of the situation that has developed. At the end of April 2003, three workers came to Kav La'Oved, representing 20 workers who had arrived in Israel in November 2002 with a work visa for a Haifa-based contractor called

"Shuvi Menashe". They said that they had worked between 10 and 12 hours a day and for the entire period that they had worked they had received in total 400 dollars per person, for subsistence purposes. It was suggested to them at Kav La'Oved that they stop working immediately and file a complaint with the police, but they were afraid to do so because three workers who had dared to complain to the employer had been arrested as a result by the Immigration Administration.

This deterioration in migrant workers' conditions of employment and pay makes the employer even keener on continuing to employ them rather than Israeli labor, further reducing the likelihood that Israeli workers will replace the migrant workers. The Immigration Administration, which has become a tool in the service of the employers, is therefore operating in a way that is utterly contradictory to the declared goal – employing Israelis in jobs which today are filled by migrant workers.

3. The police, the passports and the law

The Immigration Administration has declared on every possible occasion that it is fighting employers who break the law. In the previous section we showed how the IA is "fighting" employers who owe wages to their workers. In this section we will review what happens to employers who confiscate passports.

Many employers routinely confiscate workers' passports in order to increase their dependence and prevent them from "running away". Confiscating passports is a criminal offense, for which the maximum penalty is a year in jail and a fine. When the mass expulsion operation began, the police discovered that the absence of a passport delays the expulsion of workers from Israel. In order to put these people on a plane, they have to be in possession of a passport or traveling documents issued by their country's embassy. For the first time over the years that Kav La'Oved and Hotline for Migrant Workers have submitted innumerable complaints to the police about the confiscation of migrant workers' passports, police officers have now started to act. In October 2002 the police reported that they had found around 8,000 passports which had been illegally held by employers and manpower companies.(6)

On the same occasion the "Immigration" Administration stated that hundreds of investigations had been instigated against employers and manpower companies which had violated their employees' rights. The Administration ostentatiously announced that the employers would be prosecuted under the exploitation clause in the Penal Code. However, to the best of our knowledge the only charges that have been brought against employers have been for the offense of employment without a permit, and not for the offenses committed against the workers themselves. Those who have confiscated passports have not yet been punished, nor have the passports found by the police been handed over to the workers. The best case scenario is that they have been handed over to the embassies of the countries from which the workers came. In the worst case scenario, the passports were left in the hands of those who confiscated them in the first place and the police "asked" them to return them to the workers.

The Immigration Administration has claimed that in a number of cases where passports were found in the possession of employers, it was not possible to bring charges because the employers showed written authorization by the workers for the "safekeeping" of the passports. However, from the legal point of view such authorization is invalid, and keeping

the passports at the various embassies is also in breach of the law. The Attorney-General recently ruled that the very act of taking the passport from the worker is unlawful, irrespective of the identity of the person who keeps a passport in his possession.(7) Whatever the circumstances, this state of affairs constitutes a violation of an individual's liberty, freedom of movement, dignity, and above all of his or her ability to prove that he or she is in Israel legally.

It must however be stated that in one area there has been an improvement in enforcement since the establishment of the Administration: for the first time in years, serious investigations have been undertaken and charges brought against people who have forged visas – a flourishing and expanding area which until recently had gone unchecked. This enforcement, which is carried out in the framework of the operations of the Anti-Crime Unit which was set up under the Immigration Administration, has led to such results as the arrest of "border smugglers" who smuggled migrant workers across the Egyptian border in return for large amounts of money, as well as the forgers of visas, passports and identity cards. The smugglers and visa forgers made unsubstantiated promises to the migrants and then abandoned them to their fate. We are therefore happy that they have finally been arrested – four years since the Hotline for Migrant Workers first disclosed information about the activities of these smugglers and visa forgers to various police stations.

EXPULSION IN BREACH OF THE LAW

1. Police brutality

Kav La'Oved and the Hotline for Migrant Workers have received many complaints about police brutality during detention, resulting in serious injuries and significant damage to property.

The following description of their arrest was provided, for example, to Hotline for Migrant Workers volunteers by the Nesia family from Ghana: In the night of April 22, 2003 during Passover, the Jewish "festival of freedom", a police unit raided their house. After hammering down the entrance door, the officers dragged the two little girls (aged four and six) out of their beds and flung them on the floor in order to get the father, who was hiding under the bed, to come out. Both the father – and the mother, who tried to break free in order to help him – were severely beaten before the eyes of their two weeping daughters. As a result of the blows inflicted on the father, he was taken to hospital immediately after his arrival at Ma'asiyahu Prison.

During the course of an arrest on December 11, 2002 a police officer stabbed H.T.F., a Chinese national, in the abdomen. The knife blade caused damage to the liver. This is the only case to date, to the best of our knowledge, in which the Israel Police Internal Affairs Division recommended bringing charges against the police officer, who incidentally claimed that the Chinese worker stabbed himself in the belly.

On November 24, 2002 a Nigerian worker, P.N., was beaten up by the officers who had come to arrest him. As a result of the blows inflicted, P.N. required an operation on his knee and stitches to his lip.

J.U., a Ghanaian national, complained that on March 17, 2003 he was beaten by a police officer wielding a truncheon or night stick, resulting in a broken arm. As soon as the

policemen realized that the worker had sustained serious injuries, they left, ignoring his request that they take him to hospital. The worker did not make a complaint because he was afraid that the officers would take their revenge on him.

Only in six cases which have come to the attention of Hotline for Migrant Workers since September 2002 have the victims dared make a complaint. Dozens of workers who reported sustaining serious injuries and being humiliated by police officers in the course of their arrest refused to complain for fear of the consequences.

Dozens of complaints about damage to property have been added to the complaints about physical injuries. Since the Immigration Administration began its operations, the Hotline for Migrant Workers has received 43 complaints about doors and windows being broken in the course of arrests. This number shows that this is a routine occurrence and not an exception to the rule. There are also many reports of police officers breaking into apartments when their residents were not at home. The apartments remained wide-open, and when their tenants returned they discovered that all their possessions had been stolen. The victims do not complain about forfeiting their property in this way because they are afraid of being arrested as a result of filing a complaint with the police against the police themselves.

A rare example of a worker who dared to complain against police officers who broke into his apartment and inflicted damage amounting to dozens of thousands of shekels is D.S. from Gambia, who worked in Eilat. D.S., has refugee status and is lawfully present in Israel, and hence was not afraid of being expelled after filing the complaint. On November 20, 2002 police officers broken into his apartment while he was at work. When he returned home he found that the apartment door had been broken down, and all of his savings (totaling $15,000) had disappeared, as well as an expensive camera. The furniture in the apartment was broken, and according to the neighbors it was police officers who destroyed his property. The Eilat police confirmed the neighbors' claims, that it was the Immigration Administration police who broke into the apartment looking for "illegal" aliens.

2. Denying persons facing expulsion of their legal rights

On the face of it, the law gives persons facing expulsion a number of basic rights which are intended to ensure that they will not be expelled arbitrarily and that they will enjoy a fair procedure. These rights are anchored in the Entry to Israel Law and stipulate, inter alia, the following:

- The detainee must be given a copy of the expulsion order in his language and his rights must be explained to him, including his right to inform his family, lawyer and his country's consul of his arrest.
- A hearing must be held for him before a border control officer within 24 hours from the time of his arrest. The officer has the authority to release the detainee if he is convinced that he is in Israel legally, or that he lost his legal status in good faith, and may also set conditions for the detainee to be released on bail.
- The detainee must be given 72 hours from the moment that he is handed the expulsion order in order to appeal the order.

He must be brought as soon as possible, and no later than 14 days since his arrest, before an administrative tribunal operating in prison (8), and he must be given the possibility of being released on bail until he leaves the country independently.

There is a yawning gulf between the provisions of the law and what actually happens, with these rights being violated on a regular basis, as we will show below.

Failure to provide information about rights

The first and main obstacle to putting these rights into practice is the lack of knowledge. Despite what the Entry to Israel Law says, detainees do not receive information about their rights. The Immigration Administration has produced a "Form for a Suspect Held prior to an Expulsion Order", which is supposed to comply with this requirement, but the only right that is referred to on this form is the right to provide notification concerning the procedures undertaken against the detainee to a relative, a lawyer and his country's representation. The form does not inform the detainee of his right to appeal against the expulsion order, nor his right to apply for release on bail.

The Entry to Israel Law requires information about workers' rights to be displayed in Hebrew and English "in a prominent location" at detention facilities, but this provision is also breached. Not only do the authorities not bother to provide the workers with information about their rights: it seems that they also try very hard to prevent others from doing so. To this day, 17 months after it was submitted, no reply has been received to the request by the Hotline for Migrant Workers to distribute information sheets to the detainees being held in prison, despite numerous reminders. Leaders of the migrant workers' communities in Israel who have taken action to get essential information disseminated to the workers and provide support for their struggles for their legal rights, are arrested and expelled.(9)

Expulsion before 72 hours have lapsed since arrest

In its haste to expel as many workers as possible as quickly as possible, the Immigration Administration tends to adopt a high-speed process of expulsion before the end of the period of 72 hours following arrest. The Hotline for Migrant Workers has received testimony about workers who were forced by the use of threats to sign a document in Hebrew stating that they renounced their right of appeal and asked to be expelled as speedily as possible. These individuals included workers who had instituted legal proceedings against their employers and were waiting to give evidence.

Many workers were expelled without having any idea whatsoever of their right to appeal the expulsion order, or to apply for release on bail until they left Israel of their own free will. For example, on May 5, 2003 K.A., a Canadian national whose partner is an Israeli citizen, was arrested at his place of employment in Tel Aviv. He was taken to the Immigration Administration station in Holon, where he was required to buy a plane ticket to Canada for that same evening. According to his Israeli girlfriend, who tried to prevent his expulsion, they were not told about their right to appeal the expulsion order or to apply for his release on bail. Before his arrest K.A. was owed a large sum of money by his employer, but he was afraid to claim this for fear of being arrested. After his arrest the police did not tell him that he was entitled to sue his employer for his arrears of salary, and so he lost the opportunity to exercise this right.

Custody Review Tribunal: The right to a fair procedure?

Even a worker who has been given the opportunity to appear before a Custody Review Tribunal is not assured of the right to be legally represented, nor even of the right to understand the substance of the proceedings. Workers are not entitled to be represented by the Public Defenders Office, and hence most of them appear before the Tribunal either without representation or represented by volunteers from the Hotline for Migrant Workers. In certain cases workers are represented by a lawyer, whose fee is paid by the employer of those selfsame workers – an arrangement which would appear to be a blatant conflict of interests. The hearings before the Border Control Officer and before the Custody Review Tribunal take place without the assistance of interpreters, making it necessary to use the services of other detainees who speak very basic Hebrew only, or the hearing is held with the assistance of gestures. It is obvious that in these circumstances, the worker is deprived even of the ability to defend himself and to explain the circumstances which led to his arrest. Major misunderstandings resulting from this state of affairs make it impossible to hold a fair trial.

Of the practically unlimited budget allocated to the Immigration Administration, not even the smallest sum has been set aside to ensure a fair procedure for workers. The lawyers who act as the Tribunal see dozens of detainees a day (sometimes over 70). Given this fact, the Tribunal judges are under an unreasonable degree of pressure. Since most detainees are unaware of the significance of their appearance before the Tribunal, or what the Tribunal can offer them, most hearings last just a few minutes. At the time of writing, the undertaking given by the State to the Supreme Court four months ago to appoint an additional judge for the tribunal has not been acted on.(10)

To this day, the Tribunal has not been given any secretarial services, so that its judges have to write down the record of the hearings and their rulings themselves. The judge who sits at the Renaissance Custody Review Tribunal in Nazareth and the Michal facility in Hadera, who is supposed to hold hearings for over a thousand workers every month, has not even been allocated a computer for this purpose. In the absence of a secretarial service, there is nowhere to which to apply in order to obtain the Tribunal's rulings or to check when the hearings are to be held. We are forced to contact the judges directly. The pressure on them recently has been so great that they have been unable to send records of hearings to the Hotline for Migrant Workers and other bodies.

The Tribunal's hearings do not take place in a special setting, nor is there any external sign to indicate to the detainee who is brought to the hearing that he is actually before a court: there are no signs in Hebrew or in any other language, no emblem of the State, nor do the Tribunal's judges wear any official attire. This state of affairs must be added to the other factors which prevent the detainee from grasping the significance of this occasion and insisting on his rights. The absence of information about rights, the absence of legal representation, the absence of communication throughout the hearings, and the lack of respect shown for the Tribunal by the authorities make its proceedings a mere shell, a mockery rather than something designed to safeguard the workers' rights.

An additional flaw of this system is that the Tribunal has no power whatsoever to release a worker in order to take up legal employment, even if it becomes clear that he lost his status through no fault of his own (for example, when his employer did not arrange to extend the validity of his work visa). The Border Control Officer has delegated power from the Interior

Ministry to regularize the worker's status. However, in many instances the Immigration Administration makes every effort to organize or to finance a plane ticket for the worker, who is sent out of the country before the Border Control Officer has a chance to deal with his case. The fact that the worker lost his legal status through no fault of his own and without his knowledge does not help him in the slightest.

From our experience, even when the Tribunal orders a worker's release on bail, and even when the bail conditions are met, nothing prevents the Immigration Administration from carrying out the expulsion. Moreover, quite often the Immigration Administration makes a point of quickly putting detainees on the list of tickets for which financing is provided, at which point the Tribunal loses its authority to hold a hearing about the possibility of releasing a detainee on bail. Once a plane ticket is bought for the detainee – at the taxpayer's expense – the Tribunal cannot hear an application for release on bail, even if the worker agrees to buy the ticket out of his own money.

This is what happened on February 20, 2003 when Arnold Evangelista, one of the leaders of the Philippine community, was arrested. The Hotline for Migrant Workers managed to foil this attempt at expelling him at public expense and contrary to the law, which requires a stay of 72 hours following arrest.

The Hotline managed to contact the Immigration Administration in good time and asked for Arnold Evangelista's expulsion to be delayed until he was brought before the Tribunal and an application made for his release on bail. When, after seven days in custody, he was brought before the Tribunal, Advocate Sarah Ben Shaul-Weiss ruled that he should be released on bail. At that point it became clear that the Immigration Administration had made speedy arrangements and had bought a plane ticket for him (despite his declaration that he could pay for a ticket out of his own pocket), and therefore the ruling for his release had to be revoked. He was expelled from Israel the following day.

Despite the Hotline's complaint in this affair (which was sent to the Legal Division of the Immigration Administration), this unacceptable practice continues. On May 6, 2003 P.I., a Nigerian national, was arrested and on the Hotline's advice informed Immigration Administration personnel that she possessed money with which to post bail and acquire a ticket. P.I. applied to be allowed to remain in Israel for two weeks in order to put her affairs in order before returning to her own country. On May 14, 2003 the Custody Review Tribunal accepted Advocate Elad Azar's decision to release P.I. on cash bail. The next day P.I. called the Hotline for Migrant Workers from Ben-Gurion Airport, and in tears told them that she had been forcibly taken to the airport despite the decision to release her on bail. When the matter was checked with the legal adviser of the Immigration Administration it emerged that P.I.'s ticket had been bought and paid for by the taxpayer even before the occasion where Advocate Azar decided to release her on bail, thereby rendering his ruling invalid. Thus P.I. was expelled from the country without the possessions that she had acquired during the period of a number of years that she lived in Israel, and without any breathing space in which she could sell them or take them with her.

This is far from the only example of people losing their property and being expelled with absolutely nothing. A considerable number of people who have been arrested are coerced by the police into signing a "renunciation of equipment" form (which has been translated into different languages only as a result of innumerable letters sent by the Hotline for Migrant

Workers). A detainee who has been made to sign such a form, among dozens of other documents that he has been made to sign on being arrested, cannot pick up his things and is expelled to his country with nothing but the clothes on his back.

"CLOSED SKIES" PROCEDURE

On October 3, 2002 the Prime Minister, Ariel Sharon, announced the "closed skies" procedure. This meant that rather than bringing in workers from overseas, quotas for the employment of migrant workers were to be filled by means of those who are already in Israel. In the wake of this decision, the Interior Ministry's Legal Division issued a "closed skies procedure" (dated January 7, 2003) which lays down the criteria for workers who are considered suitable for what is known euphemistically as "mobilization") and for their transfer to employers who hold valid permits. According to the procedure, workers whose visas have expired for reasons outside their control can be detained for up to three days, during which time the Interior Ministry is supposed to find them an alternative employer.

The only workers who are entitled to be included in this procedure are those who have been in Israel since January 1, 2001 and have not left their employers. A worker who has left his employer – even if the latter gave him no work and ordered him to leave (as happened to many Chinese workers) – is considered a "runaway" and will be expelled. An "illegal worker through no fault of his own" whose passport has been confiscated and not found, is also not entitled to benefit from the procedure. In this way he is punished over and over again: he will spend an extended period in jail waiting for traveling documents, and even after they have been received the authorities will not allow him to move to a new employer.

The commander of the Immigration Administration, Major-General Ya'acov Ganot, stated before the Foreign Workers Committee at the Knesset (October 29, 2002) that the Administration would give special consideration to workers who had paid thousands of dollars in order to come to Israel and found themselves without any regular employment. In practice, the picture is the complete opposite. It is above all particular workers from China, who have been in Israel for just a few months and run into difficulties with employers who break the law, who are arrested and expelled in large numbers, because their employers have declared them to be "runaways". An analysis of the circumstances in which 397 detainees who appeared before the Tribunal at Ma'asiyahu Prison from January to March 2003, left their employers shows that just 13% of them left their legal employer after the validity of their visas had lapsed. A full 24% left for valid reasons, such as because their employer failed to provide them with work, failed to pay them at all, or paid them less than what had been promised, and so on. The workers in this group were not entitled to be included in the "open skies procedure", since they were considered "runaways". The others (63%) claimed that they had in no way left their place of employment, or that they had been sold to another company, thereby losing their legal status. Of these, only those workers who were confirmed by an Interior Ministry check as not having been declared as "runaways" by their employers, and to have been in Israel for less than two years, were candidates for transfer to a different employer. Altogether the Tribunal recommended to the Interior Ministry to apply the procedure to just 196 cases out of 397 brought before it.

In practice, the "closed skies" procedure operates as a mechanism that supplements the "binding" arrangement. From the very beginning it was intended to address the plight of employers, not that of workers who had been cheated by their employers: "The purpose of the

procedure is not to come up with an employment solution for migrant workers who are interested in continuing to work in Israel".(11) Despite the provision about detaining the workers for just three days, most of them are locked up in prison for extended periods until an employer is found for them, if ever.

The "lucky" ones who are included in the procedure are transferred to construction companies, generally without any checks being run on whether the new employer has a history of violating workers' rights, and without checking out the conditions offered them. It therefore comes as no surprise that these employers also include quite a few who have confiscated passports and do not pay wages as stipulated by the law. This, for example, is the case of a company called "Bonei Ha-Tichon" Ltd., which received Chinese and Bulgarian workers who had been exploited and cheated by their previous employers. And this is also the case of the "Peretz Bonei HaNegev" company, which received 30 Chinese construction workers who had spent nearly a year in jail before a replacement employer was found for them.

The Interior Ministry's decision about regularizing the status of workers and finding them a legal employer does not guarantee them any protection against expulsion. The "closed skies" procedure stipulates as much in as many words (Section 23):

> It must be emphasized that the expulsion from Israel of workers unlawfully present in the country will in no way be delayed as part of the operation of this procedure… A situation in which flight arrangements are delayed because of the possibility that an employer might perhaps be found for him is unacceptable… If this [the status of the detained worker who qualifies for the "closed skies" procedure] has not been regularized [by the potential employer], the detainee will leave Israel on the flight that has been arranged for him and the possibility will be examined of offering the employer another detainee.

The "closed skies" procedure, which prohibits the issuing of new licenses for bringing workers into the country from overseas, is a first tangible step taken by the government on its path to restricting the numbers of foreign workers in the State of Israel. But even this policy is full of cracks. It applies to the construction sector only, and even there it is not applied in full. Farmers have been given 18,000 new licenses to bring in workers from Thailand. The caregiving sector, in which Israeli women (particular new immigrants) are interested in working, is also entitled to receive new licenses without restriction. We have recently learned that workers are entering Israel legally, irrespective of quotas, without the knowledge of those bodies which are responsible for allocating permits (such as the Employment Service). On March 12, 2003 – more than five months after the "closed skies" – the *Wall Street Journal* published a report by Kirby Leggett about construction workers from China who had arrived in Israel that weekend. Ruth Sinai, a journalist with the *Ha'aretz* newspaper, on April 14, 2003 exposed the bringing in of 800 construction workers from Turkey as part of a deal for the upgrading of Turkish tanks by Israel Military Industries. As yet, there seems to be a complete mismatch between the stated goal of "encouraging Israelis to return to the labor market" and the situation on the ground.

IMMIGRATION ADMINISTRATION INCITEMENT AGAINST MIGRANT WORKERS

"The Immigration Administration's anti-migrant worker propaganda is developing into a cultural, human, political norm. Anti-foreigner TV broadcasts are becoming more and more

vicious. The migrant workers are being presented as an ‘enemy of the people’. Their humanity is becoming transparent, non-existent. The fact that they were imported by Israelis, who are exploiting them, is completely ignored, not to say denied. The propaganda foments the jobless against foreign labor. The propaganda presents anyone who employs a migrant worker as a traitor. If you replace the word ‘migrant worker’ with the word ‘Jew’, you get antisemitism.” (Adam Baruch, Friday Supplement, *Ma’ariv*, November 22, 2002)

In a situation in which civil servants, public figures, parliamentarians and Cabinet members from all parties give their full backing to the Immigration Administration and the expulsion campaign, Adam Baruch’s voice is like a voice in the wilderness. It is by far outweighed by the Immigration Administration’s official publications (including the Israel Police Internet site), which present the “illegal” workers as being to blame for all of the country’s woes: rising unemployment, “undermining the Jewish nature of the State as a result of mixed marriages”, involvement in criminal activities and prostitution, and even links with terrorist circles. According to Inspector Leon Hirsch, an Immigration Administration intelligence officer in Tel Aviv, “In the absence of any national affinity on the part of foreign nationals, their very presence in the country can provide a platform for collaboration with subversive elements.”(12).

The results of this heightened incitement, which is designed to justify the mass expulsions, are clearly visible both among employers and the general public. Working and pay conditions for labor have sunk to an unprecedented low. Migrant workers are increasingly the victims of acts of violence on Israel’s streets, and there are more and more cases of robbery and assault, some of them taking place in broad daylight in full view of passers-by.(13)

At the same time as the image of foreign workers is being tarnished, a parallel process is taking place in which the activities directed against them – or at least the words that describe these activities – are cleansed and purified through the use of euphemisms. The cruel expulsions which condemn workers who have borrowed heavily in order to come to Israel to lose any possibility of paying off their debts, are defined by the authorities as “distancing”, “removal” or “returning to the country of origin”. The expression “expulsion” points to a policy which is short on tact as well as in breach of international conventions. Terms such as “distancing” or “removal”, on the other hand, are cleaner, more sterile terms, while “returning to the country of origin” is something to be welcomed: “And your children shall return to their own border”, as the biblical quotation puts it.

Similarly attractive creativity is reflected in such expressions as “Immigration Administration” and “migration patrolmen”. We will start with the “migration patrolmen”, an expression which links the Immigration Administration to police officers, who break into houses and carry out street pursuits. This sounds so much more attractive than a term like "manhunters", for example. And what about the Immigration Administration, whose role is solely to administer expulsions? Immigration to Israel is a possibility open only to Jews or to their first-degree relatives. “Migrant workers” in Israel are assigned the status of a “tourist with a work permit” – the lowest status available under the law. Unlike standard practice in other countries, these workers have absolutely no possibility of one day acquiring Israeli citizenship, even if they remain in the country for decades, have established families and become part of society. Their children, who have grown up as Israelis, have no standing as citizens, and when they reach the age of 18 they are in danger of being expelled as “illegal aliens”. Immigration? Of whom? To where?

Another term which has been "cleansed" is that of "custody" or "detention" – or in another variation, guardianship (*mishmoret*). The workers who are expelled are not imprisoned like criminals who must be kept away from the decent citizens who make up "the public". They are simply subject to "custody" or "detention" – or, like the children of divorced parents, "guardianship", as befits a civilized country. Nor are these workers defined as "prisoners": rather, they are "held" – a term used to elegantly ignore the fact that they are "held" under lock and key, behind bars. Visitors to the makeshift prison facility which was set up in the basement of the Renaissance Hotel in Nazareth to house new detainees, will be greeted by a clearly visible sign announcing: "Foreigners Reception Center".

In his book "The Fall", Albert Camus writes: "None the less, style, like sheer silk, too often hides eczema.**"** Every single rookie politician is familiar with the method, which in Israel goes back a long way in all matters involving Palestinians. For any truth which needs to be covered over, for any injustice which needs to be justified, some spanking new expression is immediately coined, and then everything's hunky-dory. The "Immigration" Administration removes from our midst "foreign" workers – whose foreignness threatens "us" – "just" making sure that the law is applied to "illegals" and "runaways". In this way language serves the process of delegitimating the workers, whose only sin is the poverty which forces them to work in terrible conditions, far away from their homelands and families. Expulsion becomes a step which covers up the real sin – the one committed by the lawbreaking employers.

RECOMMENDATIONS

Doing away with the "binding" of workers to employers: We recommend giving a work permit to the workers themselves, and enabling them to choose their employer freely. Workers can be directed to specific sectors by limiting their permits to particular areas (construction, agriculture, caregiving).

Enforcing the law in respect of employers: Labor Ministry inspectors must once again be assigned to their original role of ensuring that the law which is designed to prevent exploitation of workers is complied with – especially the Minimum Wage Law and the Foreign Workers Law. The same applies to the prohibition on confiscating passports and charging workers commission in return for supplying work. Enforcing the law in this way would prevent trafficking in human beings, and would make employing migrant workers over Israeli labor a less economically attractive proposition for employers.

Putting a stop to imports of new migrant workers and integrating those in Israel in the labor market: We recommend registering those workers who are in Israel with the Employment Service, and allowing them to be hired for work in sectors where there is a shortage of Israeli labor. Consideration could be given to the possibility of lodging monetary deposits to guarantee that they will leave the country at the end of a reasonable period.

Revoking the decision about mass expulsions and halting the manhunts of migrant workers: The instrument of expulsions should be used with caution, as a last-ditch measure after exhausting other possibilities of reducing the numbers of those who are unlawfully in the country. Whenever individuals are liable to be deported, they must be allowed to make full use of legal processes, with regard to the expulsion procedure as well as getting what their former employers owe them. A worker who brings proceedings against his employer must be given a defense lawyer as well as other assistance (e.g. a temporary visa) until the case has been heard.

Kav La'Oved is a non-profit organization dedicated to protecting the rights of migrant workers, low-paid Israelis and Palestinian workers. The organization helps workers exercise the rights due to them under the law from their employers. On an individual level, hundreds of claims are filed each year on their behalf with the Labor Courts, and legal advice is given over a hotline which is run by volunteers. In the public sphere Kav La'Oved exposes and publicizes instances of exploitation which point to flaws in the system, in an attempt to narrow the gaps present in Israeli society. The organization runs empowerment activities among weak workers and promotes/initiates proposals for legislative change.

To volunteer and make donations, phone, fax or email as follows: 03-6883766, fax: 03-6883537, email: email@kavlaoved.org.il, site: www.kavlaoved.org.il

The Hotline for Migrant Workers is a non-profit organization whose goal is to protect the rights of migrant workers and victims of trafficking in women in Israel. The Hotline's volunteers – over 100 strong – regularly visit migrant workers and victims of trafficking who sit in jail until their expulsion from the country. The Hotline undertakes action to change government policy and wipe out the modern slavery which exists in Israel. It provides lawyers and humanitarian assistance for people facing deportation and the victims of trafficking, as

well as submitting petitions about matters of principle and undertaking public activities on these subjects.

To volunteer and make donations, phone, fax or email as follows: 03-5602530, fax: 03-5605175, email: info@hotline.org.il. Donations can be sent by check made out to "Hotline for Migrant Workers", 33 Rehov HeHashmal, 65117 Tel Aviv, or deposited in the organization's bank account: Bank Leumi, Branch: 857, account number: 015939/95.

Notes

1 *Ha'aretz*, Baruch Kara, July 24, 2003.

2 Record, Custody Review Tribunal for Illegal Aliens, December 16, 2002, in re M.P., "Iron" number 6058.

3 *Ha'aretz*, Ruth Sinai, "Each of us lines up waiting for his turn to be beaten", February 10, 2002.

4 *Ha'Ir*, Rami Maiblum, "Working really shot us in the foot", October 24, 2002.

5 Administration Appeal 502/3.

6 *Ha'aretz*, Baruch Kara, "Immigration police seized thousands of migrant workers' passports at manpower company offices", October 10, 2002.

7 Notification by Attorney-General at the National Labor Court, in a petition brought by Kav La'Oved, Dan Botsiman vs. Best Projects and Construction Ltd., Appeal 1359/02.

8 The tribunal is known as the Custody Review Tribunal for Illegal Aliens, and comprises just three judges for the entire country.

9 An example is the arrest the day after he was interviewed on the television news (February 20, 2003) of Arnold Evangelista, one of the leaders of the Philippine community in Israel.

10 The undertaking was made in the framework of a sitting held on February 23, 2003 to examine the petition by the Hotline for Migrant Workers and Others versus the Israel Police and Others (High Court 9402/02).

11 Paragraph 2 of the "Closed Skies Procedure", issued on January 7, 2003 by the Legal Bureau of the Population Administration at the Interior Ministry.

12 *Ma'ariv*, Dana Soberg, "The spy who slapped them", January 16, 2003.

13. For example, see the article by Joseph Algazy in *Ha'aretz*, "Ali Baba and The Chinese", December 27, 2002.