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The Implementation of the Endorn Report: Concern about Human Trafficking in the State of Israel

In August 2004, an interdisciplinary team of government offices (Industry Trade & Labor, Justice and Finance) released a report entitled *The Mode of Employing Migrant Workers in Israel and Conditions for Issuing Licenses (The Endorn report)*. The report suggested changing the way migrant workers are employed in Israel. Its recommendations were subsequently adopted by the government and they are scheduled to go into effect in May of 2005.

What are the problems that the report attempt to solve? What are its recommendations? Do the recommendations solve the problems? Human rights organizations, who have accumulated significant experience on the subject, believe that while the report did a good job in identifying some problems in the current system of employing migrant workers, they failed in their attempt to solve the problems. The Endorn report recommendations not only introduce the same problems under a different guise, but they effectively legitimize human trafficking in Israel, and potentially increase its scope. It is necessary to replace the method proposed in the report by one that will give a genuine and serious response to existing problems. This paper reviews the report and points to risks involved in realizing its recommendations.

The Problems: The authors of the report point to defects in the current system of employing migrant workers, the most important of which are the “binding” of workers to their employers and the lack of proper supervision of their employment conditions. This system encourages, according to the report, illegitimate behavior by employers, who prefer to have a bound, cheap, and disadvantaged work force. As a result, many Israeli workers have lost their legal status and the working conditions of all workers in the lower income levels, both Israeli and migrant, deteriorated.

The Objectives:

- To raise the cost of employing migrant workers
- To guarantee fair conditions for them
- To enable mobility between employers
- To attempt to reduce the number of migrants and to replace them by Israeli workers

In the words of the report: “To aspire for a labor market that is based on Israeli labor and which guarantees fair working conditions for every worker”².

The Suggested Solution. The system for bringing in and employing migrant workers was dictated in advance by the Treasury. At the beginning of the Endorn report, the

¹ We thank attorney Eitan Lavi for his helpful remarks

² Endorn report, page 3

authors admit that the role of the team was restricted to planning the implementation of this system. This paper shows that restricting the authority of the interdisciplinary team to consider only the prescribed system does not solve existing problems, and introduces new ones. The main deficiencies in report recommendations are to be found in unrealistic goals and inherent contradictions. The implementation of the proposed system turns the state into a party with a financial interest in perpetuating an exploitative labor market. Above all, the implementation of the recommendations institutionalizes human trafficking for labor in Israel.³

The Endorn Report's Recommendations and Critical Analysis⁴

2. A Quota for Employing Migrant Workers

The government will continue to set a quota for employing migrant workers in each sector, where such employment is permitted.

Given the government's concept of a free market, there is lack of consistency in this government report's recommendations. It determines that the current system in which officials issue permits for employing migrant workers inhibit "market forces from operating."⁵ It is difficult to reconcile this finding with the intention to continue to set quotas. Without direct contact with employers, it is not clear how such quotas are to be set. Apart from the contradiction between the concept of the free market forces and continued deep government involvement, it is also necessary to take into account the gap between the government's policies and implementation. In 2003, 31,000 migrant workers entered Israel with valid work permits despite the government's policy of "Closed Skies."⁶ This indicates that setting a quota is not a guarantee for its implementation.

3. Working Permits will be Issued to Licensed Employment Agencies Rather Than to Employers

Permits for employing migrant workers will not be issued to employers in the various sectors where employment of migrant workers is permitted. Licensed employment agencies will employ migrant workers with valid sector-specific work visas. The number of these agencies will be limited. Each agency will employ between 500 and 2,000 workers.

The main change suggested in the report appears here: permits will be issued to a limited number of licensed employment agencies. Employers interested in employing migrant workers will turn to these agencies, instead of applying to the government to obtain

³ As defined in the UN "Protocol to prevent, suppress and punish trafficking in persons", and in US legislation.

⁴ Original report recommendations are quoted in italics. Our remarks follow.

⁵ Endorn report, page 2

⁶ Israel's Central Bureau for Statistics, press release from July 28th, 2004, http://www.cbs.gov.il/hodaot2004/17_04_198.htm

permits to hire migrants. Many aspects of the centralization of licenses in the hands of agencies are problematic. First, the report's authors themselves sharply criticize employers, who acted to maximize their profits at the expense of their workers. The report authors refer to employer behavior as "illegitimate,"⁷ but it is not clear how issuing licenses to agencies, whose sole purpose is to profit through migrant worker employment, will prevent the same abusive behavior. Under the proposed regime, both employers and agencies will profit, making it reasonable to assume that illegal exploitation will only get worse.

Secondly, the idea of concessions, or giving a limited number of licenses, is monopolistic, and in contradiction to the concept of free market competition encouraged by the report's authors. Agencies in general, and particularly those with government licensed monopolies, hold immense power which reduces rather than increases competition. Giving exclusivity to a small number of agencies raises concern that they will coordinate wage and working conditions of their employees. The centralization of power, and the possibility of forming a cartel, will hurt employers, but mostly workers. The suggested system undermines the stated goal of free mobility of workers between agencies.⁸ We have already witnessed coordination of workers salaries among employment agencies employing migrant workers in agriculture and domestic care. Nothing is being done to counteract this phenomenon. The report recommends setting a quota of 2,000 workers per employment agency, while establishing a small number of agencies (about 15). The aim here is that these agencies can then be supervised more efficiently.⁹ But if the number of agencies will be set according to the number of work permits, determined to be over 47,000 for 2005 (not including domestic workers),¹⁰ the effective enforcement motive will be sabotaged. Further, the state has already admitted, in its reply to the Supreme Court, that at least 30 Agencies are to operate at the initial phase of implementation.

Third, the report does not detail what is required from agencies, does not address the potential for bribery involved in the issuing of licenses, and does not prevent large employers (contractors or farmers) and employment agencies, who already have a proven record of exploitation and abuse, from procuring licenses to rule over thousands of migrant workers. The report does not offer clear criteria for the conduct of agencies, their financial backup, and means of supervision and enforcement designed to guarantee compliance with government terms, especially in relation to workers rights.¹¹ At the end of the report, the authors do concede that they have not fully considered all aspects of their recommendations, including essential topics forming the heart of the proposed regime.¹² They only issue a recommendation to investigate the implementation of the system and its consequences, in a style of "learning as they go," effectively proposing to experiment with human lives.

⁷ Endorn report, page 2

⁸ See item 8

⁹ Endorn report. Pages 38, 48-49

¹⁰ Industry, Trade and Labor Ministry newsletter no. 39

¹¹ See item 12

¹² Endorn report, page 51

The report's authors avoid abolishing the binding of workers to employers, opting to bind them to employment agencies instead. The agencies are presented as nothing less than a means of protecting "the migrant worker, as an unorganized worker, acting in foreign territory, who won't be able to negotiate wages."¹³ The tens of thousands of workers, who over the last ten years have opted to quit "legal" for "illegal" employers, in order to improve their wages and work terms, easily refute this statement. If workers are properly informed of their rights and enforcement of them with employers, they will be able to stand up for their rights. Further, the decision to require migrant workers to work only through agencies discriminates against them vis-a-vis Israeli workers. It may set a dangerous precedent for Israeli workers as well, who in certain fields can only work through employment agencies and subcontractors. In today's Israel, sub-contracting is a proven means of weakening and exploiting workers. This should be a prime concern for everyone interested in protecting Israeli workers.

4. License Costs

Issuing licenses to employment agencies will be subject to payment of a license fee to the treasury. The per-worker licensing fee will, in the very least, reflect the gap between the cost of migrant and Israeli workers. The licensing fee will be computed as the product of that gap and the number of workers employed by the agency during the license period, factoring in the number of hours a migrant worker works per month.

A licensing fee of 26,000NIS (\$5,900) will be paid by the employment agency to the state, per year, per worker, an unprecedented sum that is out of sync with standard fees for business licenses. This sum represents the gap between the costs of employing Israeli versus migrant workers, and is the result of the low wages migrants receive and lax enforcement of labor laws.¹⁴ While the report's authors declare that their intention is to raise the cost of migrant worker employment, and that the state does not seek additional revenues from migrant labor, in practice the state stands to make huge sums of money (9 digit figures) through this arrangement. This fact raises a few thorny issues.

By virtue of charging a fee, the state of Israel becomes a prime beneficiary of the exploitation gap, rather than preventing it. In the past, the government has tried to raise the cost of migrant labor by a 4,000 Shekel (\$900) tax on employers. Experience shows that this tax ends up being taken from the workers. Not only did these fees not serve as a negative incentive for employing migrants, they effectively increased exploitation. The proposed license system continues in the same vein. Taking into account the size of payment and the addition of employment agencies to the list of profiteers, the result will be increased exploitation, in terms of numbers and people. The large sums to be paid also encourage the government to increase the quotas and to import more workers, in opposition to the interests of the local labor market.¹⁵

¹³ Endorn report, page 36

¹⁴ D. Gottlieb, Implementation and Enforcement of the Minimum Wages Law in Israel, Bank of Israel, 2002

¹⁵ Endorn report, page 3. Such collection also stands in opposition to item 6.1.c of ILO Convention no. 97.

This proposal stands in direct contradiction to the authors' declared need to protect the rights of workers, including migrant workers. It will only intensify deterioration of income and working conditions, because this is the easiest way turn a profit. The suggested method creates a sharp contrast between **raising the cost of employing migrant workers** so as to equate it with the cost of Israeli labor, and **raising the wages of the migrant worker** and improving their working conditions.¹⁶ The system boldly decides in favor of raising the cost of employment, and wrongly assumes that it will necessarily cause a rise in the workers' wage, while in fact, it will perpetuate and strengthen exploitation and abuse.

The high licensing costs also guarantee that wages paid by various agencies to migrants will be similar, and migrant workers will therefore not have any incentive to move between employment agencies. In practice, the binding of migrants to employers will remain unchanged, and with it, exploitation and the incentive to seek illegal employment. The only track for improvement open to migrant workers will be, in the proposed system as with the current system, illegal employment. This is because illegal employment will be preferable not only from the point of view of the exploited legally employed workers, but also from the point of view of employers who will be able to offer workers higher wages, while still paying less than if hiring them through an employment agency. Some workers will prefer to keep their legal status despite low wage and poor working conditions. However, this certainly stands in contradiction with the main purpose of the report: to guarantee fair employment and to enable more Israelis to participate in the labor market.

In blatant contradiction to its declared need to raise the cost of migrant labor and to protect migrants from exploitation, the report discriminates against migrants. Its determination that the minimum wage of migrant workers will be computed based on 236 hours of work per month, awards employers with a gift of 50 hours of labor per month (a full time job for an Israeli worker consists of only 186 hours per month).¹⁷ The legal basis for this discrimination is bizarre, and it contradicts item 6.1.A in Convention #97 of the International Labor Organization, ratified by Israel. If this is a "compensation" for the state permit charges, this stands in contradiction to the attempt to equate the conditions of migrant and Israeli workers, in an attempt to enable more Israelis to enter the labor market. In this paragraph the double message reveals itself, and exposes double standards. If the rights of migrant workers are inferior in the eyes of the authorities, what would prevent agencies and employers from using a creative interpretation of the Minimum Wage Law and other laws to further increase their profits?

5. The Responsibility for Salary Payment and Worker Rights

As employers of migrant workers, employment agencies will be required to pay migrant workers' wages and all the benefits guaranteed by law to workers by their employers.

¹⁶ Endorn report, page 33

¹⁷ Endorn report, page 43

The agencies will also be responsible for paying all taxes imposed for employing migrant workers.

Actual employers of migrant workers will be required to make sure the workers they employ receive proper working conditions, and will be liable if such conditions are not met.

These paragraphs point to the possibility of workers “falling between the cracks” as it relates to their rights and employer obligations. The responsibility for safeguarding workers rights falls primarily on agencies, and if the agency fails to provide these safeguards, then the responsibility lies with the employers. Such responsibility needs to be required by both agencies and employers and not by each separately, as indicated in related court precedents.¹⁸ Since the proposed license system has a complex set of rules, it is not entirely clear, for example, what will become of the worker’s wages, if the employer fails to pay the employment agency that holds the worker’s permit. One can assume that the worker will fall prey to conflicts between employers and agencies before he gets his wages, if at all.

The report does require the employment agency to give the migrant worker “information on his rights in a language that he can understand”¹⁹ but does not require the agency to inform him of organizations he can turn to if these rights are not met. In particular, the report fails to elaborate on the fact that the responsibility of the agency to inform the worker is in contradiction with its own interests, a clear case of “letting the cat watch over the milk.” In addition to the unclear relationship between workers, agencies and employers, at least from the point of view of the workers, the Endorn report also ignores the state’s responsibility to the workers. The employer is required to obey the law, and provide, among other things, proper housing.²⁰ But the report does not contain even one word on enforcing provisions, and for a good reason. Just like the current binding of worker to employer, the proposed license regime relieves the state of any liability to workers, and paves the way for ongoing exploitation and abuse.

6. Establishing a Fund for Migrant Workers

Every licensed employment agency will be required to set aside a specific sum of money for each migrant worker it employs, and the worker will be eligible to collect whatever is accumulated for him when leaving Israel at the end of his work term.

The report refers to clause 11 of the 1991 Migrant Workers Law, outlining instructions on a fund for migrant workers in which the employer is to deposit a set amount of money, up to a third of which can be deducted from the worker’s wages. The law says that the accumulated money will be given to the worker after leaving Israel. The instructions in this clause have not yet been implemented. The authors recommend implementing them

¹⁸ see Xue Bin vs. U. Dori, Labor Court case no. 1218/02

¹⁹ Endorn report, page 39

²⁰ Endorn report, page 47

and conditioning the payment of money accumulated for the worker on the worker's leaving Israel at the end of his legal work term. This clause raises many problems.

First, money deducted from the worker's wages constitutes illegally withheld payment, and clearly discriminates against migrant workers as opposed to Israeli workers. Would it be conceivable to think of deducting a portion of an Israeli citizen's wages and put it in a special fund, which the worker would receive only if he comes to work on time? Since most working migrants earn a minimum salary, and often less, not giving them their full wages means illegally withholding their salary. Such a deduction would be legal and appropriate if the money was deposited as savings or pension, and would have been paid to the worker unconditionally. But a migrant worker is not automatically entitled to the fund money. He will be able to collect it only if he maintains his legal status in the present conditions of prevalent exploitation. Therefore, it is possible to regard the fund as an exploitative "escape tax" levied by the government, a replacement to the "insurance against escape" that is common today.

Second, the report determines that a worker will receive the fund's money only if he leaves Israel at the end of his legal working period. A worker, who may have worked illegally for a certain period, will not receive the fund's money and it will be collected by the state. However, because of bureaucratic and language barriers, confiscation of passports, and withheld payment, many migrant workers don't have the means to maintain their legal status. The worker's difficulty in telling the difference between "legal" and "illegal" employment will only intensify, since the proposed license regime allows for frequent change of employers. The coveted fund money serves as an incentive for the government to revoke workers' legal status.

Third, a migrant worker who stayed in Israel knowingly beyond the legal limit of his permit, and understands that he has lost the fund money, will have no incentive to leave. Given the discrimination in legal work, many workers, particularly those who paid large sums of money to work in Israel (such as Chinese workers), will prefer to risk losing the fund money, and work illegally in order to accumulate larger sums of money until their return or deportation to their country of origin. Finally, the establishment of the fund, the supervision of the accumulated money, and the maintenance of investments require a lot more than a mere statement of intentions, good as they may be. The report's authors disregard the logistics required to establish such a fund and administering it. They don't determine who will be responsible for transfers of money to the fund (the employer or the employment agency), they don't clearly define the conditions for foreclosing on the money, and they don't set mechanisms and procedures that will guarantee proper conduct.

7. Employers Will Apply to Agencies to Hire Migrant Workers

Those requiring employment of migrant workers, in sector where such employment is allowed, will approach licensed employment agencies to hire the agency's migrant workers. No limit will be set on the number workers that an employer can actually hire (subject to global sector quotas). Employers won't need any permit, as long as they act

within a sector where migrant labor is allowed. Since it is anticipated that there is going to be high demand, competition among those requesting to hire migrant workers will develop, and this competition will lead to the increased cost of migrant labor.

This recommendation creates a complex set of relationships between the relatively strong parties, the agency and the employer, and the weak party, the migrant worker. The employer will negotiate with the agency on an employment period that suits his needs, and will demand the agency's commitment. The agency will want to guarantee its control over workers (so they won't move to another agency or opt to work illegally), and achieve employment continuity. It is possible that a complex contract system will develop, in which each side wants to protect itself from liability for the deeds and/or misdeeds that may develop. One can assume that while the employer and the agency will manage to protect their interests, the workers' rights will be the first to suffer. It is reasonable to assume that the various costs imposed on the agencies and the employers will be covered by the worker. The Endorn report recommendations exempt agencies from continuous payment to workers- workers are to be paid only when they are actually employed.²¹

Agency profits come from employing workers, so they have an incentive to assign them work placements. There is no doubt that this incentive would increase if the employment agency were required to pay its workers even for days in which work was not available. Because this is not the case, agencies may pocket additional profits through the false reporting on employment periods, as specifically notes by the report's authors.²² This regulation is a significant blow to workers rights and contradicts paragraph 1.6.b Of ILO convention no. 97 (equating unemployment benefits of local and migrant workers). The report as a whole is silent on human concerns, and refers to workers as instruments. It does not refer to the agency's responsibility to workers who get sick while they work, suffer work injuries, or are between jobs. This silence is further testimony to the low status ascribed to workers.

8. Migrant Workers will be able to Change Employers and Employment Agencies, Provided they Work in the Sector Specified in their Permits.

Migrant workers will have the right of mobility between employers and employment agencies, as long as they work in their permitted sector, so the binding of worker to employer is terminated. The termination of this binding and the mobility between employers in the work sector will lead to an increase in the cost of migrant labor, and to an improvement in their wages and working conditions.

The conditions for obtaining licenses requires employment agencies to allow workers mobility between agencies and employers in a particular sector. However, as indicated in paragraph 3, it is not certain that competition between agencies will develop and in fact it may lead to a cartel reducing worker wages. Even if the competition envisioned by the report does develop, and there are employers who agree to pay higher wages, it is

²¹ Endorn report, pages 43-44

²² Endorn report, page 43

reasonable to assume that the agency will be the sole beneficiary of the difference. The report does not require the employment agency to share those extra profits with the worker. It is also likely that agencies will effectively prevent mobility, or at least inhibit it, both in order to save the hassle involved in the process and to guarantee their profits. It may also be possible to reduce worker mobility between agencies by concealing information, threatening loss of legal status, neglecting to renew work permits, confiscating passports, or using homes in countries of origin as collateral (where Israeli authorities can't supervise) – as is commonly practiced today.

Another risk inherent in this system is that workers who stand up for their rights will be deported and replaced by new workers. This “revolving door” is especially attractive, since agencies will profit to the tune of thousands of dollars charged to new workers. It is important to emphasize that all of the risks to workers mentioned above are currently common practice by employers. The new license-granting system enables employers to continue their abuses on a larger scale. The report says nothing about the minimal period of time an employment agency must employ a worker, a significant factor for workers who offer their property as collateral, and take out loans to pay for the promised job in Israel.

The report also does not address the effect of its policies, well-intended as they are, in binding of workers to employers. Mobility procedures between employers and agencies, at least as defined by the report, seem complicated. It is not clear how workers will find out about this option and whether they will be able to realize it.²³ The report fails to clarify what would guarantee such transfers. For example, what is a reasonable period of time to find work with a new agency, and how will it be done in practice? Are all employment agencies required to have Chinese-speaking personnel to guarantee mobility of Chinese workers? It is also unclear whether workers can refuse to work for a particular employer.

Past experience with the binding of workers to employers shows that procedural details will determine if mobility will indeed be a genuine possibility. De-jure mobility, unaccompanied by clear and applicable guidelines, without informing migrant workers, will be no more of a solution than the current procedure for changing employers, and, to an extent, the Closed Skies procedure. Those regulations were presented by the state in response to the problem of the binding workers to employers,²⁴ but they did not achieve their goal. Most workers are not aware of their existence, and the employers and Ministry of Interior pile various bureaucratic and legal obstacles in workers' paths to new employers.

The Endorn report does not specify whose name will appear on the worker's visa: the agency, the employer or the work sector. It requires that a lawyer or accountant verify the worker's signature on the job contract and confirm that the worker understands the contract. The report's intentions are good, but such an expensive service will probably be charged to the workers, just as medical tests are today. Such expenses, together with

²³ Endorn report, page 48

²⁴ Supreme Court case no. 4542/02, Kav LaOved et al. vs. The state of Israel et al. (still in court)

various charges and fees for the promise of work in Israel, put workers at risk of debt bondage.

9. Continuing the “Closed Skies” Policy

Current government policy forbidding import of additional migrant workers to Israel (the policy known as “Closed Skies”) is to remain unaltered.

The efficiency of the proposed license system depends on continuation of the “Closed Skies” policy. This policy is designed to increase the market power of migrant workers by preventing new migrant workers from entering Israel. Items 8 and 9 indicate that the market power of the migrant worker will remain negligible. Even today the skies are intermittently “opened” in response to pressure by employer lobbies in agriculture and construction. As mentioned, Central Bureau of Statistics data shows that 31,000 migrants workers entered Israel with valid work permits during 2003, so the skies are not all that “closed.” It was recently revealed that the Ministry of Industry, Trade and Labor froze the number of permits for the year 2005, in contradiction to its declared goal of reducing the allowable quota yearly. If the Endorn report recommendations are implemented, employment agencies, in addition to powerful lobbies, will also pressure the government to bring in new migrant workers. Considering the immense profits the Treasury anticipates receiving, there is real risk for further “opening of the skies,” putting migrant workers at greater disadvantage due to the high supply of migrant labor.

10. The Ombudsman for Migrant Workers

An ombudsman position will be established at the Ministry of Industry, Trade and Labor to guarantee migrant worker rights. Migrant workers will be able to turn to the ombudsman in any situation in which they think that their rights are violated, and the ombudsman will be authorized to check all complaints and procure information from licensed employment agencies.

The assumption of the Endorn report is that migrant workers are a cheap and obedient work force that generally does not stand up for its rights. The authors are certain that “termination” of the binding of workers to employers, assumed to take place when employment agencies receive licenses, will bring about miraculous changes. There is no doubt migrants’ weakness as a group and vulnerability to exploitation, comes from their foreign status, inability to speak Hebrew, and lack of knowledge of the law and their rights. At the same time, a paternalistic approach regarding all migrant workers as weak workers, who cannot defend their rights, is not always correct, as can be learned from the famous sit-in of Chinese workers outside the Ministry of Labor.²⁵ But, the main problem ignored by the report, is the contribution of the policy to further weakening the status of the workers. For example, the readily available option of employers declaring their workers to be illegal “escapees” constitutes a threat if they demand their rights. The

²⁵ Kav LaOved, Januar 2003 activity report,
http://www.kavlaoved.org.il/katava_main_heb.asp?news_id=422&sivug_id=5

proposed system also perpetuates workers' weakness, and does not constitute an improvement in the condition of migrant workers, possibly even the opposite.

The idea of nominating an Ombudsman as a means to protect migrant workers is a mockery. Without serious and consistent enforcement of laws that are supposed to protect the rights of migrant workers from the moment they enter the country, an ombudsman is nothing but an empty gesture. Today the Ministry of Labor employs a number of labor inspectors, but they rarely fulfill their duty of protecting workers against exploitation. Rather, they only show up in prison as workers are awaiting deportation. The idea of creating such a clearly ineffective monitoring mechanism is not surprising. Under the proposed system, the government, a chief beneficiary, has no interest in creating proper enforcement mechanisms to protect workers. This suggestion is a direct continuation of current government policy which does not enforce the labor law, a policy that significantly contributed to the creation of human trafficking for labor.

The Endorn report also fails to specify the ombudsman's responsibilities, his budget, how workers will be informed about him, and his approachability (time, location, cost to reach him, language) etc. This is another significant omission concerning government responsibility towards workers- a collection of abstract ideas not translated into a workable and realistic system. If current criticism by the State Comptroller regarding the low level of responsiveness by the Ministry of Industry, Trade and Labor's labor inspectors to complaints on worker rights abuse is any indication, the effectiveness of the ombudsman is also likely to be very low.²⁶

Experience demonstrates various ways in which migrants react to exploitation. Few dare to complain about violations of their rights as workers and as human beings. Reasons include a lack of trust in Israeli institutions and lack of trust in the institutions of their home countries. Many immigrant workers vote with their feet, and attempt to find work outside the legal framework. New research conducted by the Ministry of Industry, Trade and Labor shows that the main reason for losing legal status is not overstaying visa periods or leaving employers in order to get a higher salary, but abuse of rights and working conditions that are illegal and inhumane.²⁷ This and other research shows that legally employed migrant workers improve their income and their work terms when they work illegally.²⁸ Since the proposed license system does not improve the conditions of these workers, one can assume that the phenomenon of workers losing their legal status will continue and intensify, contrary to the expectations of the report's authors. The policy of mass deportations will continue at a high financial and human toll.

²⁶ State Comptroller report 54B, 2004, pages 820-846

²⁷ Y. Ida, "Factors leading migrant workers to illegal employment" (Hebrew), Planning Research and Economy Administration in the Commerce Industry and Labour Ministry, November 2004, <http://www.moital.gov.il/NR/rdonlyres/8C9F809F-85AB-4ABF-BF36-F58EB8FB33BE/0/X6038.pdf>

²⁸ R. Bar-Tsuri, "Migrant workers without visas in Israel", Ministry of Labor, 1999; State Comptroller report 49, 1998

11. Supervision and Enforcement

The report's authors are aware of the problem of lack of sufficient enforcement, but rationalize that there are too many employers to supervise. They are certain that the small number of proposed agencies will lead to improved enforcement, and thus the exploitation of worker will decrease. However, what the report's authors suggest on this subject is far from a real change, as indicated by the suggestion to nominate an ombudsman. They also suggest enforcement through a requirement to connect the accounts of the employment agency to "the government supervision system."²⁹ It is worth noting that the computing systems of the agencies and the government are only in the idea stage, and that the report authors have not completed their deliberations on the nature and mode of operation of these networks³⁰. Computing systems can provide some control, but not enforcement, and will not guarantee the level of supervision needed by workers.

How will the promised enforcement be achieved, if, as the report's authors claim, "there is no reliable data on actual working hours" of migrant workers, and "employers wanting to save costs, will not be deterred from issuing false reports on workers not working during a particular period, while maintaining some illegal arrangement with workers to give workers a salary that won't be reported"³¹ The report also requires employers to comply with the Migrant Workers Law concerning lodging. This proves that supervising the agencies from a distance cannot be an alternative to enforcing worker rights. Even the distant supervision envisaged by the report is likely to be hard to implement. For example, "where it has been determined that a migrant worker is not employed for a prolonged period of time, the suspicion should arise that the worker is employed in a job that is not being reported, as otherwise the worker himself would have asked to be transferred."³² This raises the question of how supervisors find out whether the worker had requested transfer. Enforcement may lead to conflicts between agencies and supervisors, particularly given the likelihood of a rise in illegal employment of migrant workers.³³

12. Conclusion

The licensing system proposed by the Endorn team maintains the current policy of binding workers to their employers, backed by lack of enforcement and massive deportations, via slightly different means. It is likely to perpetuate and even worsen exploitation and abuse of migrant workers. It preserves huge gaps between powerful employment agencies and employers, ruling over thousands of people and benefiting from maximum flexibility and profits, and migrant workers who are disadvantaged and disempowered. These circumstances make mobility between employers a non-starter.

²⁹ Endorn report, page 39

³⁰ Endorn report, page 51

³¹ Endorn report, page 43

³² Endorn report, page 44

³³ See item 4

Workers and employers will continue to opt for illegal employment, an unwelcome result for all parties.

The priorities established by the Endorn report, the importance assigned to state profit, the marginal deliberation of migrant workers' rights, and the baseless assumptions of anticipated improvement in worker conditions, all demonstrate that the aim of the method is to obtain maximum profits for the state and for agencies at the expense of a safe and fair labor market conditions. Significant continuity between existing and proposed systems for employment of migrant workers is apparent in the state's refusal to take direct responsibility for the workers it has already agreed to bring over. The suggested system establishes the state as a leading beneficiary from worker exploitation, making it reasonable to assume that government will continue to turn a blind eye to violations of the law and will refrain, even more than it has in the past, from effective enforcement. In short, the suggested system gives legal and official authorization for the state of Israel to maintain conditions of near-slavery, matching international definitions of human trafficking.

The suggested licensing system, as clearly reflected in the language of the report, completely ignores the humanity of the migrant workers. They are mentioned in context of supply, quotas, cost of employment, profitability and so on, and the few isolated statements concerning their rights look like empty declarations. The reference to them is mostly as an instrument, as a working tool or as merchandise that can be easily moved from hand to hand. From this lack of regard, the road is short to the continuation of conditions of exploitation, and immunity of abusers. The Endorn report identifies the workers as the problem, as opposed to government policy, as migrant workers are seen as a burden on the economy. A whole chapter, and almost a third of the Endorn report, is dedicated to this topic. The main message is that Israel and Israelis are the victims of migrant workers thereby providing a justification for further exploitation.

The recommended system of awarding licenses, like the current one, mistakenly sees a contradiction between economic efficiency and human dignity, and continues to sacrifice the rights of migrant workers for the sake of profit. However, the most efficient economic solution is also the humane one: to issue work permits to the workers, limiting them to particular sectors and periods of time, and seriously enforcing the laws protecting workers. In this way the exploitation of migrants would be prevented and their conditions would be equal to those of Israeli workers. Mediation between employees and employers should be done by a governmental authority and not by for-profit agencies. In addition, it would be beneficial to conduct serious research on ways in which other countries deal with migrant workers. It is better to learn from other countries' experience than risk irresponsible experiments, when it is clear in advance that potential damage greatly surpasses the benefit gained by a few parties with vested interests.