

**Deported and Dispossessed:  
Human Trafficking and the State of Israel:  
Between Economic Struggle and Systemic  
Dispossession**

**Hotline for Migrant Workers**



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'**The Hotline for Migrant Workers**' is a non-partisan, not for profit , association, dedicated to protecting the rights of migrant workers and refugees and eliminating human trafficking in Israel. We aim to build a just, equitable and democratic society, where the human rights of all those residing within its borders are paramount civic and political values. Our activities include providing information, offering consultation services and legal representation, heightening public awareness, and promoting public policy that eliminates modern slavery in Israel.

The HMW is able to carry out its activities thanks to the work of volunteers and to the generous support of private individuals and foundations, including the New Israel Fund.

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Q: What made you come to Israel?

A: I needed the money. I couldn't leave my child penniless. I had to earn money to feed him; I couldn't let him starve. ... When I was offered the work ... I was told I would earn at least one thousand dollars a month. ... That's a lot of money in Moldova.

Q: What can you do with one thousand dollars?

A: What do you think, when most people are earning not more than forty dollars a month?

(From the evidence in court of a victim of trafficking, December 2001)

## **Introduction**

Towards the end of the twentieth century it became clear that human trafficking is not a thing of the past but is rather on the increase. Various historical processes, such as the collapse of the Soviet Union, globalization, and the expansion of international crime rings, combined to create a flourishing industry in human trafficking for various purposes, including trafficking in women for the purpose of prostitution. Israel has joined this global trend, recognizing the severity of the crime of human trafficking, and incorporating it in Israeli penal law. In 2000, trafficking in women for purposes of prostitution was prohibited by law, and last year the definition of human trafficking was extended to include, inter alia, trade in human organs and forced labor.<sup>1</sup> In the past six years there has been a substantial advance in the authorities' struggle against sex trafficking: alongside enforcement of the law against those who engage in trafficking, pimps, and other links in the chain of this trade, the authorities have also extended the range of assistance available to the victims. Such assistance includes a shelter adapted to their needs, legal and medical assistance and, in some cases, visas and work permits for limited periods of residence in Israel.

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<sup>1</sup> Prohibition of Trafficking in Persons (Legislative Amendments) Law, 5766 – 2006

The economic fight against human trafficking is an important component of the campaign against this ugly phenomenon. Israel today applies various economic measures in this struggle, such as imposition of fines and the confiscation of funds and property. These are anchored in the law and, given that the struggle is just and moral, they have acquired full legitimacy. However, that is only one side of the picture: the other side is less moral, as the state of Israel profits both from the human trafficking itself and from the fight against it. Consequently, the funds generated through the crime of human trafficking end up either in the pockets of the traffickers, or in the coffers of the State. There are no precise statistics on the scale of profits netted by the State Treasury from this trade, but it is certainly in the range of hundreds of thousands of NIS annually. Yet the victims of this crime, primarily the trafficked women, see nothing of the profits made from their exploitation, and most are deported from Israel penniless. Thus, a yawning gap exists between law and justice, adding insult to the injury already suffered by the victims. In this policy paper we set out to examine how, and to what extent the State of Israel is involved in human trafficking in general, and in particular the darker side of the so-called economic struggle against trafficking, in the framework of which the funds generated at the expense of the victims are seized by the State.

In Chapter I, we discuss the economic motivation of all the elements involved in human trafficking: the victims, the traffickers

and the respective countries. In Chapter II we examine how Israel derives considerable profits from human trafficking, both directly and indirectly. In Chapter III we show how Israel's state coffers profit from the struggle against human trafficking – principally through the confiscation of property and fines. Chapter IV examines the various means available to the victims to obtain compensation for the harm caused them in general, and for reimbursement of the monies taken from them in particular, and this includes compensation through criminal procedure, civil claims against the traffickers and a special fund that is to be established to finance the struggle against human trafficking and the rehabilitation of its victims. Chapter V discusses international law pertaining to compensation for victims of human trafficking, and describes compensation schemes that operate in various countries. In conclusion we discuss ways to use the funds of the economic struggle against human trafficking, with particular emphasis on the rights and needs of the victims.

## **Chapter I: Human trafficking as an economic industry**

"The business of trafficking in women and management of brothels is highly profitable, yielding huge amounts of black money. This money is not used secretly to build 'mikvot'. While legitimate money drives the wheels of the economy, this black money drives the hammers of social destruction."<sup>2</sup>

The 2006 Trafficking in Persons Report of the US State Department estimated earnings from human trafficking worldwide at \$ 9.5 billion per annum.<sup>3</sup> The bulk of the profits out of these enormous sums falls into the hands of the traffickers and finances other criminal activities such as drug trafficking, but some of these funds find their way into state coffers. Only small crumbs, if any, reach the victims. Trafficking in human beings may be attributed to various causes but the principal motive that keeps this industry going is economic gain, and it is this which influences not only the victims of the trade and the traffickers, but also the state.

### **The victims**

Globalization, one of the main characteristics of the transition from the twentieth to the twenty-first century has, inter alia, brought about an increase in the scale of unemployment,

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<sup>2</sup> Miscellaneous Applications (Krayot) 2207/02 **The State v. Abarbanel** (Decision of 31.7.2002)

<sup>3</sup> <http://www.state.gov/g/tip/rls/tiprpt/2006/65983.htm>.

poverty and crime, while at the same time causing a reduction in social services. One of the results has been an increase in the scale of migration to developed countries. Women have been more severely affected than men by globalization, due to their place in the labor market. They are pushed to the social and economic sidelines of society, and lack opportunities for employment at a reasonable wage. In many countries the law-enforcement authorities turn a blind eye to the sexual exploitation of women in the framework of work.<sup>4</sup> Under these circumstances, many women are forced to resort to all kinds of means of survival – including migration to find jobs. The economic motive is the predominant one in the decision to accept offers of work in another country, both in prostitution and also in the case of women that had been trafficked in the past.<sup>5</sup>

The desire to attain a better life and to give their children a future better than their own is often what causes them to decide to leave their own country at any cost. This is what one victim of trafficking said about her decision to emigrate:

"[At the beginning] we had everything... My brother and I should have looked forward to a good future. But then the government collapsed and the value of money

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<sup>4</sup> Nomi Levenkron & Yossi Dahan, '**Women as Commodities**' 2003. pp. 10-12

<sup>5</sup> There are also causes other than the economic factor that influence a woman in deciding to emigrate. Where women emigrating in order to work as prostitutes are concerned, there is usually also a psychological element (a past of sexual abuse, incest or habitual physical or verbal violence from individuals close to them).

plummeted a thousand-fold. ...We lost everything. My mother, who had worked at a glass factory for 22 years, was laid off. My grandmother was working as a cleaner and gave us a small apartment there and we shared the bathroom and kitchen. My grandmother continued to work for one more year and then she too was laid off: she was too old... I had only nine years of schooling and had no money to carry on... We made do with very little food ... We ran up a big debt and they cut off our electricity and the gas. It was like living in a cave."<sup>6</sup>

And then came the offer of work overseas.

### **The traffickers**

The traffickers engage in human trafficking out of clear economic motives – maximum exploitation of their victims for the highest possible gains. The profits to be made in human trafficking are not merely exceptionally high but are also regular and steady, and not in one-time sweeps as in drug trafficking or the arms trade. The expenditures involved in human trafficking are relatively low since the traffickers do not have to invest huge amounts of capital in their human merchandise. A trafficker who procures just one woman at the cost of \$ 6,000 would have to invest another few hundred dollars in his 'business' – on clothing, living expenses and rent for the brothel, nothing more. The following example illustrates the profits that are made by these traffickers: a woman in a brothel is expected to service some ten clients per day; each of

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<sup>6</sup> From a letter dated 8.2.2005 from Y.Y., a victim of trafficking from Moldova.

them pays at least NIS 150, and sometimes the fee is a great deal higher. The pimp will thus make at least NIS 1,500 on each woman per day<sup>7</sup> or NIS 45,000 per month<sup>8</sup> – and that brings us to NIS 540,000 per annum. During the course of such a year, she will have been exploited by 3,600 clients on average. However, at the end of the day, she is told that the money that she earned made does not belong to her. The wealth generated at her expense remains in the hands of the trafficker – or it goes into the coffers of the State.

### **The State**

Countries where human trafficking takes place also have a vested economic interest in it. The country of origin, country of transition and country of destination each derive considerable profits from trafficking, though it is reasonable to assume that they will be reluctant to attribute this revenue to its true source – i.e. human trafficking – or to reveal its precise scale.<sup>9</sup> The benefit to the country of origin from human trafficking (and worker migration) lies in the reduction in its unemployment figures and in the money that flows into the country, since even the low wages

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<sup>7</sup> In certain places the sum paid is much higher: the more severe the harm caused the victims, the higher the amount collected by the trafficker.

<sup>8</sup> Most of the women are allowed at the most one day off per month.

<sup>9</sup> **Countries of origin** are the countries from which the victims are sent. Generally these are poor or war-torn countries, or states embroiled in some profound social, economic or political crisis. **Countries of transit** are the states through which the women transit, characterized generally by lax immigration laws and some by rampant corruption which can be most helpful for the crossing of borders; **countries of destination** are those into whose sex industry the women are sold.

earned by workers and sometimes also by the victims of trafficking, may be regarded as substantial in their countries of origin.<sup>10</sup>

The profits derived by the countries of transition arise from the purchase of tourist services (flights, hotels etc.) by the traffickers for the transit of their victims, while the profits derived from countries of destination such as Israel can be divided into indirect revenue and direct gains and these will be discussed at length in the next chapter.<sup>11</sup>

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<sup>10</sup> V. Samarasinghe: 'Controlling Globalization in Anti-Trafficking Strategies in Asia'. **The Brown Journal of World Affairs**, 10 (2003), p.91.

<sup>11</sup> L. Cao. 'Illegal Traffic in Women: A Civil RICO Proposal', **The Yale Law Journal**, 96, (1987), 1297-1332.

## **Chapter II: How the state of Israel profits from human trafficking**

### **Indirect revenues from sex trafficking**

The State's indirect earnings from human trafficking do not go directly into the state coffers. They go by way of various individuals in the country – providers of the services that are necessary for trafficking. It is through these providers, and in other round-about ways, that revenue reaches the State Treasury, making it difficult to ascertain its exact scale. It is derived, for example, from taxi drivers who drive the victims to clients; from landlords who rent out premises for use as brothels; from lawyers who represent pimps and traffickers; from newspapers who publish sex advertisements; and from manufacturers and retailers of women's clothing, sex accessories and so on. For all these activities, a certain amount – out of what is earned by the victims– finds its way, through the traffickers, to people who own what are legitimate businesses. Some of them pay income tax - and that is how money from this dubious source reaches the country's Treasury. Another source of indirect earnings derived from human trafficking goes not to the Treasury but to the pockets of officials in the form of bribes. Again, the source of such funds is from the payments charged for the exploitation of the victims of human trafficking. The exact scale of this phenomenon is unknown, but according to a number of

published court judgments, police officers and other officials have been paid off with sexual favors or bribes from the human trafficking industry<sup>12</sup>

### **Direct profits from sex trafficking**

Apart from the indirect earnings, the State derives direct revenues from the human trafficking. These revenues are the monies that the traffickers pay directly to the state coffers, primarily in the form of taxes: income tax and municipal rates.

#### **Income tax**

Income tax has been levied on income from prostitution from the very first days of the State.<sup>13</sup> The Income Tax Ordinance in its present form allows for imposition of taxes on illegal activities, including human trafficking. No precise statistics are available on the amounts collected by the tax authorities from the trade in women in Israel, and they have so far avoided providing information on revenues arising out of the sex trade.<sup>14</sup> However, there is no doubt that tax officials have realized the potential revenues that could be derived from the huge profits in the sex trade, and made sure the State Treasury got a fair share of those

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<sup>12</sup> See for example: Criminal Appeal (Haifa) 2216/02 **State of Israel v. Buzaglo** (Judgment handed down on 21.9.2005).

<sup>13</sup> Income Tax Appeal 923/62 **State of Israel v. Wasserman** District Court Proceedings (38) 377

<sup>14</sup> No response has been received by the time of going to press to a letter written on 28.12.2006 to the Income Tax Authorities, under the Freedom of Information Law.

earnings. The tax authorities have told the Parliamentary Inquiry Committee on Trafficking in Women about growing cooperation between the Israel Police and the tax authorities in the fight against economic crime, including human trafficking.<sup>15</sup> In 2004, the Income Tax Authority undertook to deal with this phenomenon systematically, and in the course of that year its inspectors took action against one hundred and fifty brothels.<sup>16</sup> Joint teams of police officials and Finance Ministry investigators went out to inspect brothels.<sup>17</sup> In some cases only the tax officials came back with a big catch, while the police officers reduced them selves to a mere escort instead of fulfilling their duties, including in regards of possessions and funds found in the place.<sup>18</sup>

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<sup>15</sup> The degree of cooperation between the police and tax authorities is inadequate: in the State Comptroller's Report 55B for 2004, pp. 344-354, it is stated that the tax authorities are afraid to act as required for fear of physical harm to their officials, due to inadequate protection from the police and from the anti-money laundering authority.

<sup>16</sup> Minutes of the meeting of the Parliamentary Committee of Inquiry of 18.1.2005.

<sup>17</sup> A Police representative told the Parliamentary Commission of Inquiry on 17.2.2004 that "Jointly with the Customs, we drew up a map of escort agencies and together we conduct raids on escort agencies so that the Customs can collect the VAT and taxes owing to them on the spot." See also the report by Eitan Rob, Director of the Tax Authority, at a meeting of the above Committee of Inquiry on 18.1.2005, on action by joint teams of the police and income tax authorities.

<sup>18</sup> Thus for example at the 'Tropicana' brothel, one of the largest operating at the time in central Israel, crimes of human trafficking and infringement of tax laws were perpetrated for many years. The income tax authorities filed a charge against Tropicana but the Israeli Police refrained from doing so despite the evidence which piled up, including a wide-ranging TV interview given by the owner, Jacki Yazdi, to ABC News, giving details of his crimes, and various press reports in similar vein. See: Oriah Shavit: "An end to the brothel", **Haaretz** Weekend Supplement, 2.11.2001.

Apart from seizing monies which justly should have gone to the victims of the trade, the activities of the Income-Tax authority had additional negative implications: they created a false impression that prostitution and human trafficking have some legitimacy; De facto, it is likely that the traffickers eventually retrieved their tax expenses/loses from the women themselves, thus prolonging the period of their debt-bonded prostitution. The fact that the police visit brothels only as an escort to the tax collectors, almost give the impression that they collaborate with the traffickers. One can only assume that such visits intensify the women's feeling of entrapment and of having nowhere to go for help, as it was clear that the police were aware of their state and whereabouts but do nothing to stop their abuse and suffering. The tax authorities claim they are not taking any money from the women, or at least trying not to do so: "The women's Money and the brothel owner's money have the same color and are hard to differentiate. We try to be fair and not to touch their money - We try not to harm the unfortunate woman who has reached this state, although according to the law we could tax her as well."<sup>19</sup> This claim however undermines the fact that all of the money collected from the traffickers and pimps has been earned by those women and through the abuse of their bodies. Therefore even if the tax representatives "try not to harm that unfortunate woman", it is actually her money that they seize.

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<sup>19</sup> Zohar Yom-tov, before the Parliamentary Committee of Inquiry on 18.1.2005.

## Municipal taxes

Correspondence we held with the Council-Tax departments at the municipalities of Tel Aviv,<sup>20</sup> Be'er-sheba,<sup>21</sup> Eilat<sup>22</sup> and Haifa,<sup>23</sup> indicate that there is no common policy regarding the level of municipal tax demanded of brothels. However in most municipalities the policy appears to be that the level of taxation is based on a statement by the owner of the property himself, declaring the property's use, unless contradicting information is received from other sources (such as neighbors). In any case, the taxation on a premises reported to be used as a brothel (even when located within a residential location) is one of a business, which is higher than taxation of a residential premises. The municipalities appear not to mind if the business is a legal one as long as the council-tax fees are paid. And in the words of a council-tax official at the Haifa municipality: "What concerns us is the municipal tax. Whether what's going on in the place is legal or not - well, that's up to the police. We prefer not to snoop around."

Tel Aviv municipality was reluctant to supply information as stipulated under the Freedom of Information Ac. Never the less, from the different replies it did give, it emerges that the council-tax collected over the past seven years for an apartment used as a

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<sup>20</sup> Phone conversations on 18.10.2006, 31.10.2006, 1.11.2006.

<sup>21</sup> Phone conversation on 31.10.2006.

<sup>22</sup> Phone conversation on 1.11.2006

<sup>23</sup> Phone conversation on 1.11.2006.

brothel, in which victims of trafficking were imprisoned and raped, amounted to more than fifty thousand NIS.<sup>24</sup> This specific apartment, located at 5A Erlinger Street, is mentioned in several court decisions as a brothel where victims were trafficked and forcibly held.<sup>25</sup> We believe Municipalities should have a uniform policy according to which information concerning a premises used as a brothel would be passed to the police and council tax would not be collected. Regarding taxes collected in the past, we believe these should be transferred to the future fund set up under the Prohibition of Trafficking in persons Law, for the compensation of victims.

#### Profits derived from trafficking in workers

As a result of the outbreak of the Intifada, the Israeli labor market urgently needed cheap and efficient manpower to do the jobs that Israelis either did not want or were unable to perform – mainly in agriculture, construction and caring for dependent persons. This need was met by large numbers of migrant workers employed under the ‘binding arrangement’ in which the working

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<sup>24</sup> Letter dated 11.1.2007 from the Commissioner for Freedom of Information at Tel Aviv Municipality – Adir Steiner. The calculation was made as follows: annual Arnona (municipal rates) charge for 2000: NIS 6,702; for 2001 – NIS 6,894; for 2002- NIS 8,289; for 2003 – NIS 8,010; for 2004 – NIS 7,791; for 2005 – NIS7,794 and for 2006 – NIS 8,007.

<sup>25</sup> Criminal File (Tel Aviv) 40174/05 **State of Israel v. Eliham et al.** (Court decision of 21.12.2005); Serious Crimes File (Tel Aviv) 1955/05 **State of Israel v. Benjamin et al** (sentence handed down 29.3.2006) The accused trafficked in women from August 2000 to January 2003 and housed the women in brothels at No. 4,5 and 6 Erlinger St.

visa actually belongs to the employer, not the employee. Workers were bounded to one specific employer and might not work elsewhere, even when mal treated, exploited, paid unlawfully low wage or none at all, held in inhuman conditions and has his passport seized by the employer<sup>26</sup>. Thus a migrant worker was banned from leaving his employer, and if he did leave, would lose his work visa and face arrest and deportation. Many of the migrant workers who came to Israel had to pay large sums of money to manpower companies and other middlemen. These sums profited persons in Israel and in the countries of origin<sup>27</sup> and served as an incentive to bring in more and more workers, even without bothering to first obtain work permits for them. In the absence of adequate enforcement, the protective labor law provisions were not applied to these workers. Lack of knowledge of the local language and of the law, alongside their lack of resources, prevented most of the workers whose rights were violated from bringing their cases before a court.<sup>28</sup> Some of those who did appeal were deported before their case was heard. Others were deported specifically because they had dared to file a claim against their employer.

This 'binding arrangement' created a framework for the creation of slavery conditions, fitting to the definition of human

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<sup>26</sup> **State Comptroller's Annual Report No. 49** 1999, pp. 278-279. According to this report, most of them earn less than the minimum wage.

<sup>27</sup> **State Comptroller – Annual report 53B**, 2003, pp. 655-656

<sup>28</sup> Labor Court Appeal 1064/00: **Ciniagio v. Ulizki Quarries**, Labor Court Judgment 35, 625,638.

trafficking as it appears in the Protocol. A Similar definition appears in the "Protection Act – Victims of Trafficking and Violence", enacted in the United States in 2000. The act defines human trafficking as the use of coercion, deception and duress in order to mobilize a person to engage in forced labor, where he is made to work against his will due to threats and restrictions. In Israel, at the beginning of the 21<sup>st</sup> century, migrant workers from China, for example, pay thousands of dollars to obtain the right to come and work, and often discover upon their arrival that there is no job awaiting them, that the conditions of their work are highly restrictive, that they are required to work extremely long hours, that the wages paid are lower than the minimum rate and they have their passports taken from them and withheld. If such a worker decides to leave Israel, he cannot do so because the employer has taken away his passport, and he is aware that if he did dare to leave his employer, he would face the risk of arrest and deportation. For such a worker, to be sent back to his country of origin before he has accumulated enough money to pay off the loans he took out to finance his arrival to Israel, could have grave consequences.

Since this law was enacted, the United States has conducted an annual evaluation of the situation of human trafficking worldwide. States are divided into groups according to the measures they have implemented to deal with such trafficking, rather than the scale of the phenomenon. The first group consists of countries that fight human trafficking and take measures to

rehabilitate its victims; the second group is composed of countries that are making partial and inadequate efforts in this direction, while the third group consists of countries which do not meet the minimal criteria of combating trafficking and often suffer from corruption of officials and even collaboration with traffickers. In its first few years of publication, the US report regarding the situation in Israel mainly focused on the trade in women for purposes of prostitution; however in recent years the report began to examine also human trafficking for other purposes. In the first report, published in 2001, Israel was classified in Group Three, later moving up to Group Two. The most recent Report – published in June 2006 – contains some severe criticism of Israel as , despite the progress that has been made in regard to trafficking in women for prostitution, it fails to take any action to uproot human trafficking for other purposes, and fails to reach an adequate level of enforcement, prevention and protection of victims of trafficking.

Economic considerations carried some of the weight in Israel's decision to change its policy towards human trafficking in its territory. The decision came after the United States declared it would resort to economic sanctions against any countries that did not comply with the minimal criteria of combating trafficking in human and rehabilitation of its victims.<sup>29</sup> This turned out to be an

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<sup>29</sup> Victims of Trafficking and Violence Protection Act 2000, section 110 (Public Law 106-368-Oct. 28, 2000 114 Stat, p. 1482):  
<http://www.state.gov/documents/organization/10492.pdf>

effective economic incentive for many countries - including Israel - which had, until then, refrained from taking serious action on the issue. In 2000, Israel began to take slow, hesitant and partial measures towards dealing with human trafficking. That year, Amnesty International published a report on trafficking in women for the purpose of prostitution in Israel, and the Knesset hastily enacted a law banning trafficking for that purpose alone. The main activity in this field began in 2001, after the first report was issued by the US State Department in which Israel was classified as being one of the states that fail to meet the minimal criteria. In its first six years, the Israeli government's campaign (2000 – 2006) focused mainly on combating exploitation of women for prostitution while almost completely ignoring human trafficking for other purposes.

The wheels of the Israeli legal system turned slowly in respect to human trafficking, both in regards to legislation and to enforcement. This slow pace may be attributed to the fact that for many years, the State of Israel has actually created conditions conducive to human trafficking by serving the traffickers in its unresponsive and ponderous bureaucracy, by displaying apathy and turning a blind eye. Even though the penal law includes articles that

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The risks to the victims' countries of origin should be taken into consideration since a financial blow to an economy that is already shaky will rapidly cause harm to women and children, making them even more vulnerable and more liable to become victims of traffickers. However, in respect of countries of destination such as Israel, which are generally wealthier than the countries of origin, this sanction would appear to be most effective.

make it possible to deal with the different crimes that constitute human trafficking, ranging from extortion, the ban on seizing another person's passport and coerced incarceration through to slavery - very little was done to enforce these laws. In most cases action was taken against the victims of the trafficking rather than its perpetrators. Victims were sent to detention facilities and then deported, while the traffickers – the contractors, manpower companies and employers – went unscathed along their way, continuing to ship over more and more workers who would also, in their turn, become victims of exploitation and subject to conditions of slavery. The 'binding arrangement' created a convenient infrastructure for the crime of human trafficking. Under the umbrella of this policy, a variety of criminal offences such as extortion and illegal seizure of another's passport flourished, heightening the risk of creating conditions of modern slavery and human trafficking, a risk that has materialized in many cases. Complaints by victims of trafficking against their employers or against the manpower companies that exploited them, rarely received attention. The recently established Immigration Administration channeled the bulk of its resources into the deportation of migrant workers, rather than into aiding the victims of human trafficking and of related crimes. In 2004, less than a third of one per cent of the Authority's budget was allocated to fighting crimes against migrant workers.<sup>30</sup> The crimes of

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<sup>30</sup> From a reply received from the Migration Administration dated 21.4.2005, the

abduction<sup>31</sup>, rape<sup>32</sup> and violence<sup>33</sup> committed against migrant workers have become routine practice in Israel, and only rarely reached the courts. In most cases the victims of such offences are

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Administration's budget earmarked for fighting crime was NIS 400,000 in 2004, while the budget earmarked for wages, operations, deployment, rent, custody of detainees, acquisitions, technology etc. was NIS 146 million.

<sup>31</sup> Criminal Appeal 2480/04 **Simsa v. State of Israel** (Judgment of 21.4.2005). The appellants were convicted of kidnapping and attempted abduction from the country, unjustified incarceration, assault and other crimes against migrant workers employed by the Naot Golan Agricultural Services Ltd. manpower company.

<sup>32</sup> Criminal File (Tel Aviv) 1031/01 **State of Israel v. Azoulai** (Judgment of 22.5.2003). The accused, owner of a manpower company that brought foreign workers to Israel for work as care-givers was convicted of rape, threats, forced incarceration and coerced testimony of women brought to Israel through this company. In the sentence the court set out the following facts about the women: "The accused invited them to his office on various pretexts, took their passports upon their arrival in Israel and repeatedly threatened to send them back to Morocco if they did not give in to him. ...The accused was regarded by the women as a 'man of authority' who symbolized for them their future in Israel and their ability to break away from their homes. He fully exploited his socio-economic status and sought to gain sexual favors so long as they were connected to his office. I stressed in the judgment that he deceived them into believing they had to fill in various forms for state authorities, and on pretexts of this nature would lure them to his office. ... and take advantage of them. **From the moral and human standpoint, these crimes are no different from trafficking in women. Both (types of crime) are based on unscrupulous exploitation of women who came to this country to get away from severe and bitter conditions of life so as to improve their economic situation. However, within a short time they found themselves embroiled in a personal trap from which they were unable to extricate themselves.** Both traffickers of persons and criminals such as the accused take advantage of the severe hardship of individuals in order to derive unacceptable benefits from the helpless victims." (The emphasis is mine –NL). The accused was sentenced to 12 years imprisonment, but neither compensation nor a fine was imposed

<sup>33</sup> Criminal file (Rehovot) 2116/03 **State of Israel v. Hanana** (Sentence passed 22.9.2005) The accused in this file, representatives of the Y. Zarfati Building Services Co. Ltd., an Israeli company that brought foreign workers from Bulgaria to work in Israel, harmed the workers in various ways – both physical and verbal (threats), assault in aggravated circumstances, inflicting injury and withholding passports. The accused were sentenced to 9-13 months of imprisonment, with no compensation payment or fine imposed.

deported or their complaint files closed 'for lack of public interest' or for insufficient evidence. In 2006, two significant events took place that may bring about a genuine change in the future; the first is a verdict handed down by the Supreme Court relating to the 'binding arrangement' that had been followed until that time. The Supreme Court ordered the State, to draft new proceedings, within six months, which would not include binding a worker to his employer. The Court ruled:

"One cannot escape the painful and shameful conclusion that the foreign worker has been turned into the serf of his employer; that the procedure of enchainment with all its implications has encircled the foreign worker from all sides; and that the enchainment provisions have created a modern version of a kind of slavery. Under the policy of enchainment which the State itself determined and enforced, it has fettered the foreign workers to the 'Mezuza' on the doorpost of their employer's house, handcuffing them and chaining their feet to the employer who 'imported' them into the country. No less than that."<sup>34</sup>

While the case against the policy of binding was being heard, an alternative arrangement was formulated: "the corporations arrangement," the main thrust of which was employing migrant workers through manpower corporations. Such corporations were required to pay high license fees for every worker employed through their services. These corporations have

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<sup>34</sup> High Court of Justice **4542/02 Kav Laoved v. The Government of Israel**. (Sentence handed down on 30.3.2006).

many shortcomings; they are likely to generate a new version of binding, even worse than its predecessor; the regulations entrust manpower companies with far too much power over the workers; there is the danger that a cartel of such corporations could emerge which will eliminate competition and thus undermine the possibility of workers to better their conditions through the new possibility to change employers periodically. Furthermore, past experience has shown that payments which employers are required to make are often passed on to the shoulders of the employees. Consequently, the main beneficiary from the corporations arrangement appears to be the State of Israel. From 2005-2006, the State Treasury cashed the huge amount of NIS 191,771,032 from this new arrangement<sup>35</sup> while it is doubtful whether any foreign workers has benefit from it whatsoever.

The second significant development was the passing of the new law on prohibition of trafficking in persons, entered into force in October 2006. The law specifies a long list of new offences, including holding an individual in conditions of slavery, forced labor, trading in human organs etc. Up until then the State of Israel had ignored the possibility that trafficking for purposes other than prostitution might exist in its borders, and actually openly denied any such claim, contending that, at worst, these are cases of

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<sup>35</sup> Data are from a letter dated 25.9.2006 from Efraim Cohen, chairman of the Migrant Workers Administration, to Knesset Member Zahava Golan.

extortion and exploitation of migrant workers.<sup>36</sup> Claims relating to human trafficking for these new purposes have not yet been heard before the courts, and no precedent have been laid. In several cases that came to light in the recent months, the circumstances of which indicate the distinct possibility for human trafficking, will undoubtedly become test cases of the extent the Israeli judiciary is prepared to wage a real war against the phenomenon of human trafficking in the new broad sense of the term.<sup>37</sup>

Human trafficking has expanded in Israel under the auspices of the policy of binding. The experience of human rights organizations which provide assistance to victims of trafficking has shown beyond a doubt that there are more people who are victims of trafficking within their legal employment in Israel than there are victims employed illegally, for it is actually these so-called 'legal' arrangements, the policy of bonding and the 'corporations system', which create fertile ground for such exploitation. Israeli law is still in its early stages of dealing with human trafficking, but one cannot doubt two facts: first, Israeli protective laws are not observed, to say the least, in respect of migrant workers. Many of the workers

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<sup>36</sup> See for example: meeting of the Knesset Committee for Promotion of the Status of Women, the 17<sup>th</sup> Knesset held on 5.7.2006.

<sup>37</sup> Ruth Sinai: "For twenty hours they force-fed geese and at night slept next to their dead bodies", **Haaretz** 10.12.2006. According to depositions given by the workers to Kav Laoved, they were forced to work non-stop, sometimes 22-23 hours without a break, seven days a week. They lived in filthy conditions and were required to force-feed the geese every four hours and then to keep a watch over them so that any that died could be sold without delay.

fall victim to extortion and extreme exploitation, and some of these become victims of human trafficking. The second fact is that the state of Israel actually **benefits** from the distress of the migrant workers – through the taxes paid by manpower corporations and the fines imposed in (the few) legal proceedings taken against those who have exploit workers.<sup>38</sup> The law banning human trafficking did not explicitly set any specific provisions regarding the conditions to be applied to victims of the crime while they await the court case against their traffickers or during the period of rehabilitation, as is the accepted practice in regard to victims of trafficking for purpose of prostitution. The huge sums which the State derives of the manpower corporations and through fines should not go into the state coffers, as is the case today. These funds, together with money confiscated under the anti Trafficking law, should be transferred to a fund and dedicated to compensating the victims.

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<sup>38</sup> See for example Moshe Sela who was convicted of unlawful employment (of persons), exploitation and payment of wages lower than the minimum rate. The sentence: the company and the owner were each ordered to pay compensation in the amount of NIS 35,000. (Application for criminal appeal 248/04 **Moshe Sela Ltd. et al v. State of Israel: Ministry of Labor and Social Welfare**. Decision handed down on 15.1.2004). Gersham Roitman was sentenced to 18 months imprisonment and a fine of NIS 175,000 or one year's imprisonment in lieu thereof, after he had brought to Israel dozens of migrant workers without permits to work in Israel, for payments of thousands of dollars that he charged each of them: he made NIS 100,000 on the deal. He was convicted of aiding and abetting in fraudulent enrichment, fraud in aggravated circumstances, abetting fraudulent impersonation, aiding illegal residents, conspiring for fraudulent enrichment, exploitation etc, Criminal file (Tel Aviv) 2568/06 **State of Israel v. Roitman** (Sentence passed 30.5.2006).

## **Chapter III: Profits of the State of Israel** **from economic measures against human** **trafficking**

The State of Israel reaps a profit not only from the human trafficking within its territory but also, ironically, from the struggle against it. In recent years, in the wake of the international criticism leveled against Israel, the economic measures taken to combat various forms of organized crime were intensified, though not to an adequate degree. In this context, the law enforcement authorities began to realize the importance of the economic motive behind human trafficking and of waging an economic war against it. The following was stated by the Supreme Court in the Kabanov case:

"Those who choose to deal in this area do so out of greed and in the expectation of easy profits. It thus appears that the profits are not only easily made but also substantial, for if that were not the case, it would be difficult to understand what motivates so many people to revert over and over to such shady dealings, despite the increasing severity of penalties imposed in recent years."<sup>39</sup>

The guidelines issued by the State Attorney to the law enforcement authorities instruct them to apply every possible means in the economic fight against human trafficking, including

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<sup>39</sup> Criminal Appeal 282/05 **Kabanov v. State of Israel** (Judgment handed down 18.5.2006).

the law banning money laundering (2000), and the law on combating organized crime (2003), in order to investigate the scale of the trade and the routes used to transfer cash originating in the trade in humans. The guidelines also determine that if, in searches conducted at the scene of the crime, possessions or cash are discovered, which can be linked to the offense, confiscation should be considered<sup>40</sup> and if there is any suspicion of tax evasion, the income tax authorities must be informed. The authorities have dubbed this economic enforcement "Day of Judgment Weapon" and have given several reasons for its importance: it was contended that one of the effects of the economic struggle will be a raise in the costs of human trafficking, thus making it less profitable; and preventing a situation where criminals are rewarded for their actions; An "Al Capone" style concept has also been raised, suggesting to use economic incrimination against criminals who otherwise manage to avoid incrimination under the penal law; that, when charges relating to income tax evasion and money laundering are added to the indictments of persons charged with human trafficking, they are subject to far more severe penalties, and that this helps to sever the organized crime chain, which otherwise

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<sup>40</sup> Directive 2.2 of the State Attorney's Office: "The enforcement policy for crimes related to engagement in prosecution." Clause 6 of Directive of 9.1.2006.

might continue to function around the sex-‘businesses’ which often continue functioning.<sup>41</sup>

In this chapter we shall examine the different measures taken by the law authorities in the economic struggle against human trafficking, and above all – confiscation and fines. We will go on to show that only a minute proportion of the sums involved reach the victims. Most of the money remains with the traffickers and the other part goes to the state treasury. This situation shows that, behind the economic struggle against human trafficking, there is another interest - that of the State to take a share of these sums passing by. During a hearing of the Parliamentary Inquiry Committee regarding the Trade in Women, held on February 17<sup>th</sup> 2004, Ilan Franco, head of Intelligence at the Ministry of Defense had stated:

"At the bottom line, we are causing damage to organized crime and each of the economic authorities takes its cut... the money will go to the state treasury

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<sup>41</sup> See following Minutes of Parliamentary Commission of Inquiry into the struggle against trafficking in women: Minutes No. 27 of 20.5.2003 on "The economic struggle against trafficking in women" (hereinafter: Minutes of 20.5.2002); Minutes No. 9 of 26.11.2003 on "The financial aspects of the struggle to uproot the phenomenon of trafficking in women – examining the collaboration between the Israel Police and the Anti-Money-Laundering Authority" (hereinafter: Minutes of 26.11.2003); Minutes No. 12 of 17.2.2004 on "The struggle of the law enforcement authorities against organized crime in general and trafficking in women in particular" (hereinafter: Minutes of 17.2.2004); Minutes No. 2 of 18.1.2005 on "The economic struggle against traffickers in women: should taxes be levied from traffickers in women? Does the collection of taxes from such traffickers accord legitimacy to their criminal actions?".

and each such authority aspires to bring a larger cut of money to the state treasury because the tax authorities have targets to achieve.”<sup>42</sup>

## **Confiscation**

Confiscation is a legal apparatus that enables the State to seize property and funds originating, directly or indirectly, in a crime or that were used for the perpetration of, or facilitated the perpetration of a crime. In 2001, Israel signed the United Nations Convention against Transnational Organized Crime, under which confiscation is one of the prime measures applied in the fight against this type of criminal activity.<sup>43</sup>

The purposes of confiscation are punishment,<sup>44</sup> increased deterrence, seizure of property from an offender into whose possession it came unlawfully,<sup>45</sup> and seizure from an offender of the wherewithal to commit an offence. The main laws through

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<sup>42</sup> Minutes of 17.2.2004, p. 11.

<sup>43</sup> United Nations Convention against Transnational Organized Crime, Article 12.

<sup>44</sup> Criminal Appeal 1982/93. **Bank Leumi Le Israel Ltd. v. the State of Israel. 48(3) 238**; Criminal Appeal 4148/92 **Moad v. State of Israel**. Supreme Court Proceedings. Vol. 36, 412; and Miscellaneous Criminal Files 2757/03 **Salman v. State of Israel**, Supreme Court Proceedings Vol. 30, 64, 311. It should be noted that Clause 21(a) of the Anti-Money Laundering Law states that forfeiture should be 'in addition to any other penalty'

<sup>45</sup> Miscellaneous Applications (Haifa) 2797/03 **State of Israel v. Ta'anach et al.** (Decision handed down on 30.9.2003); Originating motion (Tel Aviv) 1478/02 **State of Israel v. Shem-tov et al.** (Decision of 8.9.2003); Criminal Appeal 7475/95; **State of Israel v. Ben Shitrit** Judgments 52 (2), 385, 410 "Forfeiture is not a penalty in the pure sense of the term and its purpose is not penal, but rather to extricate the prey from the jaws of the predator".

which the Israeli authorities apply confiscation against traffickers dealing in women are:

Confiscation under the Criminal Procedures Ordinance: The criminal procedures ordinance is the first Israeli law to incorporate confiscation.<sup>46</sup> The ordinance allows for the confiscation of property seized by the Police, which was used for, or in connection with, an offense or that was given in payment for the commitment of a crime or as a means to commit it, when the person convicted for that crime is the owner of the property. An order of confiscation can be issued by decision of a court or in response to an application from a plaintiff. Such confiscation is limited to specific property and is only applicable within the context of a criminal process. Property that has been seized under the ordinance will be held by the police unless the court decides otherwise. The provisions of this ordinance are still valid today, and so far it has been only rarely applied in cases of human trafficking. The confiscation arrangements that exist in the context of the struggle against severe crime are more extensive.

Confiscation under the Law for the Prevention of Money Laundering: In June 2000, Israel's name was included in the US State Department's black list of countries within whose territory money laundering was conducted without adequate combating

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<sup>46</sup> Clauses 32-39 of the Criminal Procedures Ordinance (Arrest and Search) {New Version} 1969 (hereinafter: the Criminal Procedures Ordinance).

against the phenomena, a situation that could have resulted in economic sanctions against the state. Here again, as was the case in relation to trafficking in women, only when placed under such threat did Israel begin to take action.<sup>47</sup> In 2000<sup>48</sup> money laundering was banned in Israel. An Anti Money-Laundering Authority was set up in 2002<sup>49</sup> and that same year Israel's name was removed from the black list.<sup>50</sup> A confiscation arrangement is one of the tools included in the law prohibiting money laundering. This arrangement is unique in that it is a mandatory one within the framework of criminal procedures - unless the court deems there are special reasons to avoid such confiscation of a convict's property.<sup>51</sup> Under this law, it is also possible to confiscate property within a civil procedure.<sup>52</sup> The law, and juridical precedents have

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<sup>47</sup> Only after Israel was included in the US State Department's list of countries which fail to comply with international criteria for suppression and prevention of human trafficking and rehabilitation of its victims and only after Israel became liable to economic sanctions did it take up the struggle.

<sup>48</sup> Anti-Money Laundering Law – 2000 (hereinafter: The anti-money laundering law).

<sup>49</sup> The anti-money laundering authority checks movements of capital indicative of criminal activity. It is expected to supply the police with 'quality intelligence information' to enable it to keep tabs on funds originating in grave crimes and to help to fight money-laundering. The list of crimes which could be a possible basis for money-laundering specified in the Anti-money laundering law – 2000 includes all the crimes relating to prostitution.

<sup>50</sup> <http://www.fatf-gafi.org/dataoecd/4/32/33922320.pdf>

<sup>51</sup> Clause 21 of the Anti-money laundering law.

<sup>52</sup> The courts are **authorized** to do so, but there is no mandatory regulation as in criminal procedure. A claim for forfeiture in a civil proceeding may be submitted only by the district attorney and the respondent to such an application is the claimant to the property (Clause 22b of the Anti-money laundering law). The onus of proof in a civil forfeiture procedure is according to the balance of probability, as is the accepted practice in civil procedures, and not according to

come up with many arguments for the protection of a criminal's rights during confiscation proceedings, particularly of his right to proprietary, which is a constitutional one.<sup>53</sup> It was determined that preference should be given to measures that least harm the rights of the accused,<sup>54</sup> and that the owner of the property, or a claimant to that property, should be given the opportunity to duly argue his claims during the legal proceedings.<sup>55</sup> In addition, it has been ruled that actual seizure of the property should only be a last resort, and that confiscation should be avoided where it would deprive the accused or his family of livelihood and shelter<sup>56</sup>

Unlike the accused, the victims of their crimes are rarely heard in the framework of such legal proceedings. Victims of human trafficking are given no information on the nature of the confiscation procedure, nor are they told of the possibility of

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the criminal procedure requirement of being 'beyond all reasonable doubt' (Shem-tov).

<sup>53</sup> Miscellaneous Applications (Jerusalem) 1496/02 **State of Israel v. Elad Ltd. et al**, District Court Proceedings, Vol. 33(8), 580. p. 13; Miscellaneous Applications 7715/97 **Hajaj v. State of Israel**, Judgments 52(1) 14, p.17; Miscellaneous Applications (Jerusalem) 3620/02 **Elad Ltd. et al. v. State of Israel**. (Decision of 13.6.2006. Not published). Miscellaneous Applications 91455/02: **Tel Aviv District Attorney's Office – Taxation and Economy v. Zin** District Court Proceedings Vol. 33(4) 847; Originating motion (Tel Aviv) 1478/02 **State of Israel v. Shem-tov et al**. (Decision handed down 8.9.2003).

<sup>54</sup> Miscellaneous Applications (Haifa) 2797/03 **State of Israel v. Taanach et al**. Decision handed down 30.9.2003.

<sup>55</sup> Clause 21(d) of Anti-money laundering law

<sup>56</sup> Application for Criminal Appeal 1792/99 **Gali v. State of Israel** 53(3) 312; Miscellaneous Criminal Files 7715/97 **Hajaj v. State of Israel** Judgments 52 (1) 14; Miscellaneous Criminal Files 3159/00 **Rabin v. State of Israel** Supreme Court Precedent 2000 (2), 1118; Criminal Appeal 4142/99 **Elkadaim v. State of Israel**. Supreme Court Proceedings Vol. 57, 139,p. 8

presenting their arguments during such proceedings. The Hotline for Migrant Workers has asked the State Attorney's Office to inform it of any such proceedings so that it represent the trafficking victim and argue his right to such property.<sup>57</sup>

In its reply, the State Attorney's Office stated as follows:

"The subject referred to in your letter raises a long list of legal issues and constitutes only one aspect of the wide-ranging question of what interpretation should be given to the term 'lays claim to proprietary rights' in the Anti-money laundering law, and in the law to combat crime organizations. The State Attorney's Office is currently formulating its legal position and policy on this matter and on other related issues. In this context, the State Attorney's Office will consider the issue of the status of the victims of the crime in confiscation proceedings. Until that policy has been formulated, we are not in a position to respond to the essence of the legal question that you raised in your application."<sup>58</sup>

The Anti-money laundering law has been beneficial to the State of Israel: it has enabled it to comply with international standards, has prevented money and property from remaining in the possession of criminals and being used for future crimes, and channeled substantial sums of money into the state coffers. The amounts collected through the application of this law are transferred to a Confiscation Fund which was set up under the Dangerous-Drugs Ordinance (1977). Today, almost six years after

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<sup>57</sup> Letter dated 23.8.2006 from the legal department of the Hotline for Migrant Workers to Advocate Eran Shendar, the State Attorney

<sup>58</sup> Reply from the State Attorney's Office dated 29.6.2006.

the law was enacted, the amount in that Fund totals 42 million NIS.<sup>59</sup> Article 36H of the Dangerous Drugs Ordinance states that the money in this Fund is to be used to finance activities of the authorities to implement the provisions of the Ordinance, and the activity of the National Anti-Drug Authority. Funds seized from traffickers in women was also transferred to this Fund, but their total amount is not known - not even to the police.<sup>60</sup>

Thus for example, in the case of *Libshitz*, NIS 91,388, US\$2,611 and €710 found in the defendant's flat were confiscated, and so was his car.<sup>61</sup> The trafficking victim was granted compensation of NIS 30,000 only. This amount might be relatively impressive compared to compensations awarded in other cases of trafficking, but constitutes only 20% of the total sum seized. The State took possession of the remaining 80%.

Confiscation under the Law against Organized Crime: The law to Combat Organized Crime was enacted in 2003 to provide an adequate response to the unique characteristics of organized crime.

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<sup>59</sup> **Report of Authority for Prohibition of Money-Laundering and of financing of terrorism:** Review of activities for 2002-2005 from the Minister of Justice (2006). According to the report at the end of 2005 the amount in the Fund was NIS 42 million of which NIS 975,000 originated in fines, NIS 3,451,000 in economic sanctions and the balance from forfeitures in the context of court procedures. The data do not indicate what proportion of the money originated in human trafficking and how much in other crimes.

<sup>60</sup> See remarks of Spt. Yehuda Traveski, head of the anti-money laundering division at the Ministry of Internal security, to the Parliamentary Law, Constitution and Justice Committee of the 17<sup>th</sup> Knesset on 16.8.2006, Minutes No. 47 p. 6.

<sup>61</sup> Serious Crimes (Haifa) 1031/04 **State of Israel v. Libshitz et al.** (not published, Sentence passed 16.7.2004 only against Accused No.1.

The Law laid down a severe confiscation arrangement similar to that featured in the Anti-Money Laundering law. Here too, confiscation is a mandatory penalty within charges, demanding special reasoning of the judges where they seek not to confiscate.<sup>62</sup> So far this law has been used in a small number of cases, but in each of these cases a substantial sum has been confiscated. For example in the case of *Boslovitz*, the court ordered, within a plea bargain, that one of the defendants pay a NIS 50,000 fine to the State coffers, pay a further NIS 200,000 to the Confiscation Fund, and pay each of the victims compensation ranging between 7,500 and NIS 15,000. It was further ruled that two other defendants would each pay a fine of NIS 20,000 and no compensation for the victims.<sup>63</sup>

#### Confiscation under the Prohibition of Human Trafficking

Law: This law applies the same principles of confiscation determined in the Law against Organized Crime, to trafficking in humans. The law states that where it is possible to confiscate property under the Anti-Money Laundering law, the Prohibition of Organized Crime law or the Prohibition of Trafficking in persons law, the latter should apply.<sup>64</sup> The money seized under this law will

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<sup>62</sup> The Law to Combat Crime Organizations, 2003

<sup>63</sup> Serious Crimes (Jerusalem) 774/04 **State of Israel v. Boslovitz et al.** (not published, Sentence passed 20.3.2005).

<sup>64</sup> Clause 377d (3) of Prohibition of Trafficking in Persons Law, which authorizes the courts to forfeit property under the Anti-money-laundering law or the law to fight organized crime even if the crime of trafficking has been committed, if special causes pertain

go into a fund for rehabilitation and compensation of victims of trafficking, for prevention of trafficking, and for enforcement of the law against it.<sup>65</sup> This law came into force in October 2006, but so far no charges have been filed under it and, to the best of our knowledge, no property has ever been confiscated under it.

Applications for confiscation of bail money: When suspects or defendants are released to house arrest or under other conditions, it is often done under personal or third-party bond, which in many cases is deposited in cash with the Court treasury. In case of infringement of the detention conditions, the State is entitled to confiscate these sums. For example in the case of *Sergei Matatov*, the amount of NIS 90,000 was confiscated after the accused escaped the country.<sup>66</sup> There is no way to ascertain the precise amounts confiscated in this manner since not all court decisions are published, but here too we believe that in most cases, the money involved was earned by the exploitation of victims of trafficking, and should be returned to them by the authorities.

## **Fines**

The Penal Code (articles 61-71) enables the imposition of fines on a convicted. The fine can be imposed on request of the state prosecutor, or by decision of the court. The maximum fine allowed is four times the value of the gains that the offender

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<sup>65</sup> Clause 377

<sup>66</sup> Miscellaneous Applications (Tel Aviv) 93270/03 **State of Israel v. Matatov** (Decision of 13.1.2006)

derived from his crime.<sup>67</sup> The fine goes into the state coffers. Where the offender fails to pay the fine imposed, he is subject to a term of imprisonment not exceeding three years.<sup>68</sup> In 2004, the total amount of the fines imposed on offenders convicted of human trafficking for purpose of exploitation in prostitution was NIS 216,500<sup>69</sup> and in 2005 – NIS 260,000.<sup>70</sup> Fines have also been imposed in cases involving other offences related to human trafficking, but it has not been possible to ascertain the scale of those fines. One outstanding example of this is a NIS 375,000 fine imposed in the *Schocken* case, which dealt with the advertising of sex-ads in newspapers.<sup>71</sup> During the period to which the charge relates (1999-2001), many of the advertised women, used in

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<sup>67</sup> Clause 63 of the Penal Code

<sup>68</sup> Provided the term of imprisonment does not exceed the penalty fixed for the crime for which the original fine was imposed – clause 71 of the Penal Code

<sup>69</sup> **Penalties adjudicated in 2005 in cases of trafficking in women and accompanying crimes**, Hotline for Migrant Workers, and Clinic for combating trafficking in women at the Hebrew University, 2006. see: [http://www.hotline.org.il/hebrew/pdf/tif\\_verdicts\\_report.pdf](http://www.hotline.org.il/hebrew/pdf/tif_verdicts_report.pdf) According to data presented by the Vice-President of the Courts, Judge Ilan Gillon, before the Parliamentary committee of inquiry into trafficking in women in May 2005, 28 cases were concluded in 2002 where the average sentence passed was 26 months imprisonment and the average fine was NIS 15,000; the equivalent figures for 2003 were 32 cases concluded, average sentence was 49 months imprisonment and average fine of NIS 15,000; for 2004 – 51 cases concluded, average sentence - 48 months imprisonment and average fine NIS 21,000. By mid-2005, 20 cases had been concluded in which the average sentence passed was 52 months of imprisonment and the average fine had decreased to NIS 11,000.

<sup>70</sup> Ibid. According to a report from the Knesset Center for Research and Information, prepared at the request of Knesset Member Zahava Galon, in 2005, the average fine imposed in 32 convictions of human trafficking (i.e. 44% of all those accused of this crime) was NIS 12,640 – while the fines ranged from NIS 2,000 to NIS 65,000

<sup>71</sup> Criminal file (Tel Aviv) 3635/01 **State of Israel v. Schocken**. (Sentence passed 17.3.2005)

Israel's sex industry, were victims of trafficking. The profits made by their exploitation paid for these advertisements. The fine collected from the newspapers for the illegal publications went in whole into the state coffers. The victims did not receive any share of the fine, even though there is little doubt that the fines originated in money paid for their services.<sup>72</sup>

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<sup>72</sup> Furthermore, during the pleading on sentencing, the attorney for the prosecution asked the court for leave to quote remarks by one of the accused before the Parliamentary committee of inquiry into trafficking in women, but the court rejected the request on the grounds that "there is no connection between the case in suit and the issue of trafficking in women" (Decision of Magistrates Court, 17.3.2005).

## **Chapter IV: Sources of compensation for victims of human trafficking**

One can hardly over estimate the importance of compensation payments for the victims of trafficking returning to their home countries. Without going into statistical detail, it can be said that generally, women who were deported back to their home countries after receiving compensation and after undergoing a process of genuine rehabilitation, were able to take up studies, set up small businesses, purchase an apartment or at least to escape from the circle of poverty and acquire the means to avoid being sucked back into it,<sup>73</sup> whereas women who returned penniless and without a minimal period of rehabilitation were far more vulnerable to being drawn back to the same cycle and fall victim to trafficking all over again.

### **Compensation within the criminal procedure**

There are several advantages to direct compensation of a victim of trafficking within the framework of criminal proceedings. First of all, the woman has the proprietary right to the money; it was generated at her expense and therefore should rightfully be

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<sup>73</sup> Women who were deported to their countries of origin in coordination with local organizations that deal with victims of trafficking were more successful than others in integrating in normative life. Organizations, especially the IOM (International Organization for Migration) help suitable women who are interested in starting small business by providing training and a sum of money to start up

returned to her. Secondly, it is important to break the trafficking cycle: if without adequate compensation, the parties involved would find themselves in the same state they were in prior to the criminal proceedings: the trafficker would have enough money to go ahead and trade in more victims while the victims would once again be at the same starting point of poverty and hardship, and therefore vulnerable to re-trafficking. The 2006 report of the 'Ma'agan' shelter for victims of trafficking in women shows that 32% of the women trafficked to Israel were re-trafficked.<sup>74</sup> Compensation can help avert such a situation or substantially reduce the risk of its occurrence. Furthermore, compensation paid in the framework of criminal proceedings will reach the victim more quickly than under civil proceedings, which are usually lengthier. Indeed, criminal proceedings that result in payment of adequate compensation mean that the victim will be spared the ordeal of a civil proceeding where she is likely to be subjected to what is often a very humiliating interrogation by the lawyers acting for the trafficker. Compensation within the criminal procedure also saves the state the costs of legal aid and court expenses which a separate civil procedure would entail.

The State of Israel tends to ignore the great importance of direct compensation and to confine itself to two, partial and unsatisfactory, remedies for compensating victims of trafficking - a

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<sup>74</sup> Rinat Davidovitz: **Transparent Women** – Report of 'Ma'agen' Shelter for 2006

minimal compensation under criminal procedures combined with a civil tort suit against the trafficker. We will view the avenues currently available to victims seeking compensation from their traffickers and go on to examine the new channel offered by the Fund to Combat and Prevent Human Trafficking, Prevention and Victim Rehabilitation. Article 77 of the Penal Code relates to the question of compensation, stating that when a person has been convicted, the court is authorized to order him to compensate his victim for damage and suffering, a maximum of NIS 228,000 for each offense. Any sum that is paid, or collected towards a fine which accompanies such compensation, will first be attributed towards covering the compensation payment. In other words the victim's right to compensation takes precedence over the right of the State to cash a fine imposed. Nevertheless, far too often the courts seem to forget the right to compensation,<sup>75</sup> even in relation to crimes where the motivation is clearly of an economic nature.<sup>76</sup>

Compensation for victims of trafficking within the criminal proceedings: During the nineties, there have been cases of victims

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<sup>75</sup> In Israeli judiciary precedent, there is no uniform policy regarding compensation. See Osnat Eliram "Compensation for the victim of crime: proposal for a new model", **Law Studies** 18 p. 205. Eliram maintains that the judges give due consideration to evidence submitted to them regarding damages, but tend to adjudicate a global sum which they believe reflects the harm inflicted on the victim, without however giving an explanation as to how they arrived at the amount of the compensation.

<sup>76</sup> Even though, on occasion, the courts have found it proper in their judgments to mention the connection between an economically-motivated crime and a ruling for compensation. See for example Criminal Appeal (Beer Sheva) **Yarchi V. The State of Israel**

of trafficking for prostitution testifying against their traffickers in preliminary testimonies and then being deported. In most of these cases, the State Attorney's Office did not take the trouble to inform the victims of the outcome of the criminal proceeding nor requested compensation for them. However, this situation has been amended to some extent in directives issued by the State Attorney in 2002 which stated: "Taking into consideration the circumstances of the case, application should be made to the court under Article 77 of the Penal Law (1977), to order a defendant who has been convicted, to pay compensation to the victim of the crime."<sup>77</sup> However, several exceptions are included in the directive<sup>78</sup> and in practice the State Attorney's Office is reluctant to seek payment of such compensation, as in their perception it would come at the expense of the length of imprisonment that the court will be willing to impose.<sup>79</sup> As for migrant workers, the courts have display ambivalent approach to the matter of compensation: in the case of *Kushnir* the court, showing consideration for the fact that the victim, a foreign citizen, might not be able to file a civil suite,

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<sup>77</sup> Clause 8d of the State Attorney's Office Directives, **The enforcement policy on crimes associated with prostitution 2006.**

<sup>78</sup> According to the Directive, plaintiffs should be warned that the possibility exists of an appeal being launched that might be heard before the court after they have been deported, in which case their entitlement to compensation could be realized only once the sentence has become peremptory – i.e. has become final (45 days after it is handed down). After that, no further appeal may be lodged. For the interim, the Directives suggest that a Fund be established in which the money is deposited. So far, no such Fund has come into being

<sup>79</sup> Minutes No. 26 of the Commission of Inquiry of 4/3/2002 "On the agenda: the policy of the Ministry of the Interior for dealing with the phenomenon of trafficking in women."

ordered the defendant to compensate him with NIS 10,000 in lieu of a fine.<sup>80</sup> However, in the case of *Webabershvili*, the court awarded compensation and ordered the State Attorney to ascertain, as quickly as possible, the whereabouts of the plaintiffs who had already been deported, stating that "the obligation of paying compensation will become invalid if it is not possible to find the recipient in Israel, or there is no known address to which to forward the compensation."<sup>81</sup> In several trafficking cases where court proceedings have been completed, the compensation money remains unclaimed in the court treasury because the authorities were unable, assuming they made an effort at all, to trace the women to whom they were paid.

The courts, in their attitude toward victims of trafficking for purposes of prostitution, have not yet shaken off the perception that regards them as criminals, or at least as women of dubious morality whose testimony is not to be trusted. As shown, often courts do not award substantial compensation, but small amounts which are totally disproportionate to the trafficker's profits and sometimes far

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<sup>80</sup> Criminal file (Tel Aviv) 1857/04 **State of Israel v. Kushnir** (Sentence handed down 28.6.2004).

<sup>81</sup> Criminal file (Tel Aviv) 40091/04 **State of Israel v. Webabarshvili** (sentence passed 16.3.2005). However the court said that the fact that the victims were migrant workers was cause for inflicting severe punishment on the accused: "The defendant chose as the target for robbery, violence and theft, foreign workers who are a weak and vulnerable population. The unbearable ease with which foreigners can be harmed and their money stolen obliges (the court) to adopt a severe penal approach, lest a negative message is relayed to the public that it is possible to rob the foreigner of his money and property, and that the justice system will stand idly by and apply measures other than punishment."

lower than the amounts fined in favor of the state treasury in the same cases. A research by the Knesset Centre for Research and Information, in regards to juridical decisions in cases of human trafficking during the year 2005, found that specifically in cases concluded by a plea bargain the tendency was to impose fines on the convicts and to avoid ruling compensation but for in a marginal number of cases, whereas in cases concluded without a plea bargain arrangement the reverse tendency prevailed – i.e. greater use was made of the compensation instrument than of fines.<sup>82</sup> This indicates that in cases where the State has meaningful influence on the outcome through plea bargain negotiations, it has a preference for fines which go into its pocket, rather than compensation, which would go to the victim.

The judges do not appear to share a uniform policy on these issues, and in fact the amount of compensation awarded appears to depend on the identity of the judge on the bench. This often creates an absurd situation where victims of trafficking for prostitution who were arrested at the border upon their smuggling into Israel were later awarded some compensation while women who had to go through months of abuse and suffering at the hands of their traffickers were not awarded any compensation. The award of any significant amount in compensation appears to be very rare and to the best of our knowledge the maximum amount stipulated in the

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<sup>82</sup> Jonathan Ehrlich, the Knesset Center for Information and Research: **Adjudication in Trafficking Cases – 2005 –quantitative analysis**, 14 August 2006.

law has never been awarded to victims in any case of human trafficking. In 2004, compensation was awarded in only eight out of 31 cases, and the total sum awarded in compensation in all these cases was NIS 238,500.<sup>83</sup> In 2005, the total amount of compensation awarded was NIS 346,000<sup>84</sup> - a miserable amount, not far from the maximum amount stipulated in the law for a single victim in a single case of trafficking.

In one of the earliest judgments dealing with compensation for victims of trafficking, the court imposed a NIS 40,000 fine to the benefit of the State Treasury, but refused to award compensation to the victims as no special damage had been proven **in addition** to the crime of trafficking per se, and in order to avert what the judge deemed to be a further problematic outcome: "I have thought carefully about whether in the circumstances of the case it would not be proper also to award compensation to the plaintiffs. I have concluded that in this case, it would not be appropriate to award compensation lest such a ruling be interpreted as giving encouragement and according legitimacy to these women who entered Israel unlawfully with the purpose of engaging in prostitution. I do not believe that, in these circumstances, it would be right for the court to act as collector of the prostitute's fees"<sup>85</sup>

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<sup>83</sup> Penalties in cases of trafficking in women and associated crimes in 2004, Hotline for migrant workers and the Hebrew University, 2005.

<sup>84</sup> Report on Adjudication in 2005, above

<sup>85</sup> Criminal Case (Haifa)133/01 **State of Israel v. Saban** Law Reports (not published) 750(3) 01

A similar opinion was voiced by Judge Bracha Ofir Tom in the debate on the law against human trafficking: "We have an opinion here which I cannot dismiss: if the State were on a regular basis to award compensation of at least NIS 50,000 – and I stress that this is 'at least', because it is possible to award a far higher amount, an element comes in at this point that perhaps the State would be financing prostitute's fees. Because what is the money awarded for? This money is really supposed to be awarded them for the harm caused to them and the suffering they have endured."<sup>86</sup>

In the context of deliberations in the Knesset on the law against human trafficking, the human rights organizations argued that the law should stipulate a minimum amount of compensation for victims of trafficking, given that the courts tend to refrain from awarding compensation or, if any is awarded, it tends to be very low in relation to the severity of the crime and the gravity of the suffering caused the victims, and in relation to the profits gained by the traffickers.<sup>87</sup> However, the Justice Ministry objected to

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<sup>86</sup> Minutes of meeting of the Knesset Law, Constitution and Justice Committee, 17<sup>th</sup> Knesset, 1.8.2006. Minutes No. 41 p. 5. In same Minutes, the judge expressed her keen support for economic measures: "As to compensation, there is no doubt that these people, who live on slaves and on the work of slaves – be they women or men – should not only be deprived of their freedom, which is very important – I would not like to say of prime importance – but also be dealt a severe blow at their pockets, because their pockets are of the greatest importance to them; in fact all these crimes are committed for money. They should be made to think twice whether it is worth their while to bring over more women, whether it is profitable to keep brothels and to continue with this work."

<sup>87</sup> See Working Paper submitted to the Knesset law, constitution and justice committee by the Hotline for Migrant Workers and 'Kav LaOved' on 30.7.2006 and the committee's deliberations on 1.8.2006

establishing a minimum level of compensation in the law and insisted that this question should be left to the discretion of the judges, maintaining that the threshold of compensation awarded in trafficking cases was continually on the rise and that to lay down a minimum level would be discriminatory against victims of other crimes.<sup>88</sup> Ultimately a compromise was reached under which the law states that it will be upon a judge to choose not to award compensation to a victim of trafficking provided the judge gave reason for that decision.<sup>89</sup> There is no doubt that this is an important breakthrough in Israeli law, but it remains to be seen whether this amendment in itself is sufficient to improve the existing situation, since it does nothing to raise the threshold of compensation above the levels prevalent today.

The difficulty of collecting compensation: Even when compensation is awarded, there are difficulties in collecting it. Admittedly collecting the money from criminals is no simple matter<sup>90</sup> but the State Attorney's Office is not fulfilling its obligations towards the victims of human trafficking. Given that the majority of cases of trafficking conclude in plea bargaining settlements, all that the State Attorney's Office has to do in order to

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<sup>88</sup> See address of Advocate Anat Assif to Knesset Law, Constitution and Justice Committee, 1.8.2006 p. 5

<sup>89</sup> Clause 377c of Prohibition of Trafficking in Persons Law

<sup>90</sup> On the existing difficulties in collecting fines in Israel even in cases other than trafficking offences, see Tomer Einat, "Enforcement of criminal fines in Israel: policy, problems and proposals for improvement". **Law Studies** 19 (2002) p. 167.

ensure that the compensation reaches the women is to demand that the traffickers deposit the compensation money before the plea bargain settlement is submitted to the court. Yet in spite of many appeals, the prosecutors refrain from doing so.<sup>91</sup>

The following response was given to one such application: "In your letter you describe the general problem of convicted traffickers in women failing to abide by the compensation payment conditions... I cannot relate to this problem as a general phenomenon, but I will instruct the (criminal) prosecutors of the Tel Aviv District to ensure that, under plea bargain settlements that include the obligation to pay compensation, the rule will be that the agreed amount of compensation be deposited prior to the claims for punishment, and that this be a fundamental condition of the agreement, infringement of which would result in its annulment"<sup>92</sup> We could not ascertain whether this guideline was ever circulated, but in one case decided two months after this letter, the compensation awarded was very low and the State Attorneys agreed to a plea bargain settlement under which the payments were to be made within 90 to 180 days after the judgment.<sup>93</sup>

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<sup>91</sup> Letters from 'Hotline for Migrant Workers' to Edna Arbel, then State Attorney, 28.5.2003; to Eran Shendar, State Attorney, 1.12.2005; to Ruth David, Tel Aviv District Attorney, 16.3.2006

<sup>92</sup> Letter from Ruth David, Tel Aviv District Attorney, 9.5.2006

<sup>93</sup> Serious Crimes (Tel Aviv) 1055/05 **State of Israel v. Igor Catz et al.** (Sentence handed down 17.7.06). In this file charges were filed against 11 defendants. The defendant Victor Sholkin was sentenced to pay the plaintiff NIS 7,500 in compensation in three equal installments, the first of which was to be deposited with the Court within 30 days from the day the sentence was passed.

## Civil claims against traffickers

As of 2004, victims of trafficking for exploitation in prostitution are entitled to pro bono legal aid,<sup>94</sup> which is intended to help them file civil claims and obtain compensation from their traffickers. Although in 2006 thirty-five women applied for legal aid,<sup>95</sup> most of these victims either did not ask for compensation or did not succeed in obtaining it in this way. Furthermore there are several cases pending before different courts: six claims are pending before the Labor Court, five before the magistrates' courts, and one civil tort suit before the district court. one should bare in mind that the majority of victims of trafficking in women, and particularly of those who have testified, never get as far as civil proceedings, either because they are anxious to return to their home

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The defendant Igor Catz was ordered to pay NIS 2,500 to each of the plaintiffs in the case within 90 days of the day sentence was passed; and the defendant Elizabar Rafaelov was ordered to pay one of the plaintiffs the total sum of NIS 5,000 in three installments, the first to be deposited with the court secretariat within thirty days. The defendant Simona Gluda was ordered to pay a fine of NIS 5,000 to one of the plaintiffs, to be deposited with the court secretariat within 90 days.

<sup>94</sup> At first the aid was granted only to witnesses for the prosecution who were staying in the shelter, but later it was to be extended to all victims of trafficking in Israel

<sup>95</sup> Twenty women asked for assistance in obtaining visas for residence in Israel for an extra year for purposes of rehabilitation; eleven asked for assistance in civil claims against the individuals who had trafficked in them and six of them received assistance, and the applications of five other women are currently being examined. Five women were given help in matters of personal status and one woman was aided in a case of execution of court order. Three women left the shelter and the assistance was stopped. The data is from the Report of the 'Ma'agen' Shelter for victims of trafficking for 2006: Rinat Davidovitz, **Transparent Women, 2006.**

countries, or because they do not think there is any point to it as they do not believe their traffickers will ever actually pay them whatever compensation might be awarded them by the court. Indeed the traffickers in women are in no hurry to pay compensation – whether imposed on them in criminal or civil proceedings. In some cases they flee the country, and then the women have no recourse for filing any claims against them. As we have stated, in many cases the victims of trafficking are deported even before the court hearings against those who exploited them are concluded. The State of Israel pockets some of the money awarded by the courts as compensation to victims of trafficking - money that has been paid by the traffickers - because the authorities cannot trace the victims after they have been deported.<sup>96</sup>

### **The fund for combating human trafficking and rehabilitation of its victims**

There are various funds in other countries to provide compensation for the victims of crime. No such funds have yet been established in Israel, either for victims of crime or for victims of trafficking in persons. In deliberations held in July-August 2006 by the parliamentary Law, Constitution and Justice Committee on the text of the law banning trafficking in persons, prior to its second and third readings, the nature of such a future fund was

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<sup>96</sup> See remarks of Judge Bracha Ofir Tom to Knesset Law, Constitution and Justice Committee on 1.8.2006

discussed. The authorities argued that any money that comes into such a fund should be used to combat human trafficking, primarily for enforcement of the criminal law and rehabilitation of its victims. The human rights organizations argued that it was the responsibility of the State to finance law enforcement, prevention of crime and rehabilitation of the victims, and that the money in such a Fund should go directly to the victims, since it was generated at their expense. The response of the State to this argument was as follows:

"We do not believe it is appropriate, as a policy, to adopt the approach expressed in the working paper of the non-governmental organizations – i.e. to allot the bulk of the money in the fund to compensating the victims. ... Compensating victims of crime is a complex issue on which a general policy arrangement should be formulated that relates to victims of crime in general. ... The concept at the basis of confiscation is to restore the prior situation by returning the fruits of crime to the public in general, not to individual victims of crime. Furthermore it is not clear what proportion of such a Fund is intended for compensating victims of crime who did not file any complaint and did not sue any traffickers. However the structure of the fund in the government motion complies with the purposes of confiscation – i.e. to restore the profits of crime to the public. ... It also complies with the international conception regarding trafficking in persons, which advocates combating this evil through the combined instruments of enforcement, prevention and victim

protection, and views each of these objectives as being of importance in itself."<sup>97</sup>

Finally, the draft bill stated that money forfeited from traffickers in women and fines imposed on them in criminal proceedings would go into the Fund. This money would compensate victims who had obtained a verdict of confiscation (i.e. the final judgment, after which there could be no further appeals) but received no financial compensation because the trafficker did not wish to or was unable to pay. At least half of the money in the Fund would be allocated to rehabilitation of victims and the rest to purposes of enforcement and prevention.<sup>98</sup> Ostensibly, this would appear to be a significant move towards recognizing the right of the victims to receive money that was generated at their expense. In fact, the situation is very different. There are two major defects in the definition of this fund: firstly - the money in the Fund is unlikely to ever reach the victims themselves. This situation creates blatant discrimination between victims of trafficking and victims of other crimes. Are the victims of other crimes expected to pay the costs of prevention of the type of crime committed against them, or of police enforcement against those who harmed them? Do victims of rape pay the police to catch their assailants? Nor is it enough that half the money in the fund is to be devoted to rehabilitation: are

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<sup>97</sup> Working paper of Ministry of Justice presenting the position of the State in respect of the forfeiture regulation in the Draft Law on Prohibition of Trafficking in Persons (amendments) – 2006. Written by Advocate Sheila Inbar, senior deputy Northern District Attorney and commissioner for criminal affairs; Submitted to the Knesset Law, Constitution and Justice committee on 13.8.2006.

<sup>98</sup> Clause 377e, Prohibition of Trafficking in Persons Law (amendments) – 2006

battered women expected to pay for the shelters that house them? In our view there is no essential difference between the victims of different categories of crime, and the money generated by victims of trafficking should rightly be returned to them **directly**, not by **indirect** means of prevention, rehabilitation and enforcement, which it is **in any case** incumbent upon the State to provide and to finance. The authorities must not be allowed to act out of pure greed for in this sense their behavior is no different from that of the traffickers – i.e. once again to dispossess the victims of trafficking but, unlike the traffickers, to do it for ostensibly justified ends. The purpose may be justified but the means are not.

Secondly, under the draft law, only money drawn from forfeited property or fines imposed by the courts will go into the Fund. Money derived from income tax and from the struggle against money-laundering and organized crime will remain in the possession of the State. The Minister of Justice is due soon to lay down regulations for the conduct of the Fund, for the use to be made of its assets and for the way they are to be allocated. In formulating these regulations, it is important to bear in mind the source of the money, to remember that it is the duty of the State of Israel to combat human trafficking at its own expense, as is the case in respect of other criminal offences, not to exploit the funds generated by the traffickers through their victims.

## **Chapter V: International law – comparative justice**

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted in 1985, called on member states to create a legal and administrative infrastructure that would facilitate increased participation of the victims in the legal process, provide them with legal aid and protection on any issue that might arise, insure that their costs are covered by those guilty of perpetrating the crime against them and that they and their families are duly compensated.<sup>99</sup> This perception is also encapsulated in the Convention drawn up by the Council of the European Union in 2005.<sup>100</sup> Each of the signatory countries to the Convention undertook to adopt the requisite legislation and measures for ensuring that victims receive compensation through the establishment of a special fund that would be financed from forfeited assets that were acquired through the crime and were used for perpetration of the crime. The UN Protocol to prevent, suppress and punish human trafficking determined that the States ratifying the Protocol would undertake to

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<sup>99</sup> Declaration of Basic principles of Justice for Victims of Crime and Abuse of Power – 1985 – articles 8-17

<sup>100</sup> Council of Europe Convention on Action against Trafficking in Human Beings

incorporate measures in their legal systems to ensure that victims of trafficking are compensated for the suffering they endured.<sup>101</sup>

The problems highlighted by the current research – the difficulty in locating the property of traffickers and the fact that states do not hasten to compensate the victims and prefer to take the property, once located, into their own treasuries rather than allocate it to the victims of the crime – exist in other countries as well. However there are countries where attempts are being made to change state policy in the spirit of the UN Protocol. In the United States for example, the law states that the court should determine the compensation to be paid to the victim on the basis of the income derived by the trafficker, or the minimum wage, whichever is the higher of the two.<sup>102</sup>

The Canadian Ministry of Justice set up a fund intended for victims of crime, to which human rights organization may apply to finance services provided for victims of trafficking. The Canadian government transferred \$ 5 million to this fund.<sup>103</sup> In Belgium, the civil prosecution may pursue joint procedures with the criminal prosecution in cases of claims for compensation. While there have been problems with collecting compensation payments adjudicated, the courts have recently ruled in several cases that the victims be

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<sup>101</sup> Protocol to prevent, suppress and punish trafficking in persons, especially women and children, Article 6.6. The State of Israel has signed the Protocol but has not yet ratified it

<sup>102</sup> Victims of trafficking and violence protection act 2000, #1593. Mandatory Restitution.

<sup>103</sup> <http://www.state.gov/g/tip/rls/tiprpt/2006/65988.htm>

compensated from property forfeited.<sup>104</sup> In Nigeria, a breakthrough law has been enacted under which a fund is set up into which forfeited assets are transferred; it is to be used specifically to finance the re-integration into society of the victims of trafficking.

The Nigerian law states:

"A trafficked person, irrespective of his immigration status, is entitled to compensation, restitution and recovery for economic, physical and psychological damages, to be met from the assets, if any, of the convicted trafficker, which have been forfeited and paid into the Victims of Trafficking Trust Fund. This fund is established by section 54(3) of the Act".<sup>105</sup>

The UN's 'Toolkit to Combat Trafficking in Persons' issued in 2006, states that traffickers in women often conceal their assets or transfer them to other countries, thus depriving their victims of the possibility of obtaining compensation from them.<sup>106</sup> The United Nations called on member states to seize all property and money belonging to traffickers and use it to compensate their victims, and called for international cooperation in locating such property. One of the possibilities proposed in the Report is that victims be compensated from a fund, to be set up by the state into which would be transferred the taxes and fines collected from traffickers and assets seized from them, contributions from private donors and

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<sup>104</sup> **Human traffic, human rights: Redefining victim protection**, Anti-slavery International 2002.

<sup>105</sup> Trafficking in persons (Prohibition) law enforcement and administration

<sup>106</sup> 'Toolkit to combat trafficking in persons', 2006, <http://www.unodc.org/pdf/Trafficking/toolkitOcto6.pdf> , p.163.

institutions, and funds from other state financial sources.<sup>107</sup> It is time for Israel to put an end to the systematic dispossession of victims of trafficking and set up to a fund that will pay them compensation, in accordance with the principles laid down by the United Nations.

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<sup>107</sup> Ibid. p. 165

## **Chapter VI: Recommendations: the principles for the proper use of money derived from economic measures taken against human trafficking**

The law banning human trafficking broadened the meaning of 'Trafficking' and several amendments were passed concerning compensation for victims, including confiscation of assets (here it is stated that a judge who does not rule that the victim must be paid compensation will have to give a reasoned argument for that decision), and the establishment of a fund for the specific purpose of compensation. Though these are important amendments, they leave a lot to be desired. We welcome the use of economic means to combat human trafficking alongside other means of enforcement, prevention and rehabilitation. However, if the State of Israel wishes to avert a situation in which the state behaves like the traffickers, by pocketing the money that rightly should go to the victims of trafficking, it must take several steps, which we specify below, to give the victims direct access to such funds.

### **Compensation under criminal procedure**

Under the law banning trafficking in persons, the courts may impose compensation to the ludicrous amount of NIS 2,000-3,000 in a criminal proceeding and this frees them from imposing

mandatory redress. In addition to the imposition of a minimum sentence of imprisonment for the crime of human trafficking, the penal law should also determine that the minimal rate of compensation be no less than 50 per cent of the maximum amount under the existing law –i.e. NIS 114,000. It is only through such compensation, anchored in the law, that victims of trafficking can be protected against arbitrary judgments by the various instances of the courts.

- The penal code should state that, as is the case with fines, failure to pay compensation is cause for imprisonment. That would be helpful not only to victims of trafficking but also to victims of other crimes.
- The courts should give more consideration to the condition of the victims and less to the situation of the offender. The economic situation of the accused should not impact the criteria for awarding compensation to the victim.<sup>108</sup>
- The State Attorney's Office should insist, in the context of plea bargain settlements, that compensation be awarded to the victims and that the funds for compensation be deposited with the court before judgment is handed down, so as to ensure that it is duly paid.

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<sup>108</sup> In this matter see recent Judgment of Supreme Court - Criminal Appeal 5761 **Mejadelawi v. State of Israel** 24.7.2006

- In cases where there is no plea bargain settlement, or where the plea bargain leaves it to the discretion of the court to determine the penalty, the State Attorney's Office should seek a report on the victim<sup>109</sup> so that the court can rule on the amount of compensation (s)he should be awarded.
- The State Advocacy should determine a regular procedure for the transfer of compensation to the victims after they have been deported. Such transfers today are implemented by various organizations, and when the women cannot be found, the money, which is rightly theirs stays in the state coffers.
- The traffickers should be obliged not only to pay compensation but also to bear the high costs of the overseas transfer of such compensation to victims already deported. An amendment to this effect should be included in the legislation since in the existing situation; the courts are not authorized to do so.<sup>110</sup>

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<sup>109</sup> Clause 187(b) of the Criminal Procedures Law (combined Version) – 1982 states that, when the court indicts a defendant of a sex crime, it is authorized to order that a report be presented on the condition of the victim of the crime and the damage he suffered as a result of the crime. According to clause 18 of the Rights of Victims of Crime Law – 2001, the victim of a crime may submit a written declaration to the examining body or to the attorney, specifying all the harm and injury caused him by the crime, covering physical and mental injury and loss of property; and the attorney must submit such a declaration to the court in the pleading on sentencing of the defendant

<sup>110</sup> The 'Woman to Woman' association on 15.10.2006 approached the State Attorney on this matter. The State Attorney's Office replied that the court is not competent to order that the defendants bear the costs of the transfer of compensation payments, but notice to this effect has been sent to the District

## **Civil claims against traffickers**

- Witness testimony in court, where the defendant is in default should be allowed not only in civil claims, as is the case today, but also in criminal proceedings.
- Victims of trafficking should be granted visas to stay in Israel as long as civil proceedings against their traffickers are going on.
- The Ministry of Interior should enable victims of trafficking who were deported from Israel while their claims were being heard to return in order to testify, or for other proceedings necessary for the conduct of their case. This should be done without imposing difficult conditions, such as requiring them to deposit a high sum as bail.
- The State Attorney's Office should inform victims of trafficking of the seizure of assets of their traffickers, in order to enable them to demand compensation from those assets.

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Attorneys who will inform the judges of the courts on the issue (letter from Yehoshua Lembrg, Deputy State Attorney on criminal matters, dated 30.10.2006).

## **The fund to combat and prevent human trafficking and for rehabilitation of its victims**

The law banning human trafficking states that money originating in fines and forfeited assets generated by the crime of trafficking in persons should go into this Fund, which is to be used for the following three purposes: to compensate victims whose traffickers failed to pay them the compensation awarded them by the courts; to rehabilitate victims of trafficking (at least half the money in the Fund is to be allocated to this purpose) and to help prevent trafficking and aid in the enforcement of the law against it. We believe that the actual establishment of the Fund per se shows that there has been considerable progress, but that its proposed form should be amended in the following ways:

- The rehabilitation of victims of trafficking and enforcement of the law banning trafficking should be carried out at the expense of the State of Israel. Just as it would not occur to anyone that a rape victim in Israel be required to pay for the police handling of her complaint, victims of trafficking should not be required to finance the efforts of enforcement and rehabilitation. This is particularly so, as those efforts began only years after the crime of human trafficking began in the State of Israel, years in which the State turned a blind eye to it and benefited from the monies that it brought.

- In order to extend the sources of the Fund and to prevent a situation in which the State unjustly dispossesses the victims of money to which they are entitled, those sources should include monies taken from traffickers in women, such as income tax and municipal rates. It is not the normative basis of the origin of the money that is relevant here in terms of its being included among the sources for financing the Fund, but the actual connection of that money to the offences which generated the profits - at the expense of the victim. In every case in which it is proven that the money was derived from trafficking in persons, it is right that this money be used to finance the Fund (as in the case of the *Schocken* Verdict).<sup>111</sup>
- All the property found in the possession of a trafficker should be seized at the time of his arrest, so as to thwart any efforts he might make to conceal it.
- Seizure of profits should be determined in the law, on the basis of the assumption that the trafficker made a profit from the trade in human beings, and he should be required to pay compensation. A trafficker who seeks to negate this assumption will have to prove that there was no profit.
- An 'Index of Damages' should be determined according to which the victim of trafficking will be compensated. Such an

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<sup>111</sup> Criminal file (Tel Aviv) 3635/10 **State of Israel v Shocken Ltd.**, (sentence given 17.3.2005).

'Index of Damages' would facilitate the payment by the Fund of compensation to a victim of trafficking when, for various reasons, it is not possible to charge the traffickers (e.g. if they have fled the country, have already been sentenced to imprisonment by the testimonies of other victims, or where the victim does not wish to testify).

- When a person who is a suspect or has been accused of a human trafficking charge has infringed the terms of bail and fled, the bail money should be forfeited and transferred to the Fund.
- Entitlement to payments from the Fund should be made retroactive, so that victims of trafficking who were awarded compensation in the period from 2000 to the time the Fund was established, but have not been paid, receive due compensation from the Fund.
- The committee managing the Fund should be composed of representatives from various disciplines, primarily social welfare and mental health, and of human rights organizations.
- There are various governmental and legal agencies which tend to perceive the State of Israel as the real victim of trafficking, while regarding the victims themselves as 'aiding and abetting' a crime that prejudices state security and requires the investments of huge resources. This perception, which justifies the transfer of confiscated assets to the state

Treasury rather than to the victims, is unacceptable and should be uprooted. The only way to do that is to focus on explaining the true nature of human trafficking and the suffering inflicted upon its victims.

## **Conclusion**

Seizing the assets of human traffickers and transferring them to the State in the context of the economic struggle against trafficking is perceived in Israel to be a legal and vital means to uproot such trafficking. In so doing, the State of Israel in fact adds insult to injury for the victims of one of the most severe crimes that are perpetrated at this time in its territory, while overlooking the manner in which those assets were acquired by the traffickers. The arbitrary seizure of money that rightfully should belong to one of the weakest groups in the population – if not the weakest – is unacceptable, to put it mildly, even when such measures are taken for the worthy cause of preventing trafficking and the rehabilitation of its victims. Just as the victims of other crimes are not required to bear the costs of police action pertaining to the crimes that were perpetrated against them, victims of trafficking should not be required to finance the struggle against the crime committed against them; and just as battered women are not required to pay for the shelter in which they are housed, the Ministry of Social Welfare has no acceptable justification for using the money of these women to finance shelters for victims of trafficking.

There is no doubt that the economic struggle against human trafficking is a just one since there is no reason for the criminal to be rewarded, but the money should be earmarked for the appropriate purposes. It is certainly not appropriate to regard the

money made from the crime of trafficking as just one more source of state revenue, even though such revenue can be used by the State to combat trafficking. Confiscation of the assets of traffickers, or their being requisitioning by the State by some other means, is effectively at the expense of the victims' right to receive payment from the money made by their traffickers from exploiting their bodies, and in that sense it amounts to unjustified dispossession of the victims. The State of Israel should make use of its resources in the struggle against human trafficking and in the rehabilitation of the victims, and not be dazzled by the huge amounts of money that are produced in this category of crime. Even after such money has been seized from the criminals, it does not absolve the State from its basic obligation of reimbursing the victims, for that money was generated through their unscrupulous exploitation.

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