

**Human Trafficking in Israel, 2008-2009:  
Legislation, Enforcement, and Case Law**

**Hotline for Migrant Workers**

The title of this policy document is taken from the statement of defense submitted by a trafficker in women in a suit filed against him by the relatives of a trafficking victim who committed suicide (CC 55775/06 **Anonymous v Anonymous** (pending)).

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The Hotline for Migrant Workers (HMW) is a non partisan not-for-profit organization that seeks to protect and promote the rights of migrants and refugees and to uproot human trafficking in Israel. We are committed to ending the exploitation of migrants; ensuring that they are treated fairly and respectfully; and developing governmental policy to ensure this. We seek to speak for those whose voice remains unheard in public discourse and to build a just, egalitarian, and democratic society in Israel. HMW's activities include providing information about rights; legal advice and representation; raising public awareness; and policy advocacy in order to prevent modern-day slavery in Israel.

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## Introduction

This is the fifth report published by Hotline for Migrant Workers (HMW) over the past decade detailing the response of the Israeli authorities to the phenomenon of human trafficking. A comparison between this report and its predecessors indicates that there has been slow but steady progress in terms of human trafficking for the purpose of prostitution. The situation facing the victims of trafficking has improved considerably, although they continue to encounter various problems. By contrast, there has been no comparable improvement in the situation of victims of trafficking for other purposes, and in some cases no improvement at all can be discerned.

Our annual report for 2007 examined the developments during the period immediately after the definition of the offense of trafficking in Israeli legislation was broadened following the enactment of the Prohibition of Human Trafficking (Legislative Amendments), 5767-2007. The report noted the first signs of change in terms of the broadening of enforcement, protection, and prevention relating to human trafficking from trafficking for prostitution to trafficking for other purposes, such as slavery or forced labor.<sup>1</sup> The report suggested that the limited scope of changes seen to date was the result of difficulties on the part of the law enforcement systems in internalizing the new law, and expressed the hope that over time an improvement would be seen in order to reflect more accurately both the legislative changes and the need to broaden the practical struggle against human trafficking.

The hope we expressed in the previous report has still not been realized. As the current report shows, the law enforcement authorities continue to undertake defective investigations into complaints of human trafficking and have still not made effective use of the criminal legislation addressing trafficking for purposes other than prostitution in order to prosecute traffickers. These problems are compounded by the persistent defects in the treatment of human trafficking victims by the Ministry of the Interior, particularly in terms of securing their rights by granting status in Israel.

This report examines the situation of human trafficking victims in Israel and the changes that have occurred in the attitude of the various authorities – legislative, executive, and judiciary – toward the offense of human trafficking through 2008 and during the first half of 2009. The report addresses the legislative changes and proposed bills submitted during the period; the response of the law enforcement authorities to complaints filed against persons suspected of trafficking offenses, slavery, and forced labor; and the attitude of the Ministry of Interior toward trafficking victims. Lastly, the report examines the rulings of district courts and the Supreme Court and presents cases of trafficking victims represented by HMW and Kav LaOved.

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<sup>1</sup> Hotline for Migrant Workers, *No Harm Was Caused to the Deceased: The Response of the Legal System to Human Trafficking in 2007*.

## **Legislative Amendments**

Further legislative amendments and regulations have been enacted over the past year. Before describing these, it is worth recalling that while legislation is undoubtedly important, its main test comes in its practical impact; if it has none, the law is a dead letter. Regrettably, a vast gulf was once again seen this year between legislation, on the one hand, and enforcement and case law, on the other.

### ***1. Legal Representation Funded by the State***

This year saw a continuation of the positive trend to extend the circle of trafficking victims eligible for state-funded legal representation. The provisions concerning the representation of trafficking victims for purposes other than prostitution were converted from transitory to permanent instruments. The 2003 amendment to the Legal Aid Law, 5732-1972 ensured the eligibility of victims of trafficking for the purpose of prostitution to enjoy legal representation by the Legal Aid Bureau in civil proceedings accruing from their status as trafficking victims and in proceedings in accordance with the Entry to Israel Law, 5712-1952.<sup>2</sup> In 2006, the definition of the offense of human trafficking was extended to include trafficking for the purpose of organ removal, the birth and abduction of a child, slavery, forced labor, the display of indecency and the committing of a sex offense. At the same time, eligibility for state-funded legal representation was temporarily extended to include the victims of all types of trafficking and victims of the offense of holding in conditions of slavery.<sup>3</sup> However, the provision regarding legal representation for all victims of human trafficking was initially only introduced by way of a transitory instrument due to expire on 15 September 2008. After this date, the Legal Aid Law as amended in 2006 was due once again to apply solely to the victims of trafficking for the purpose of prostitution. In November 2008, in accordance with a

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<sup>2</sup> Prevention of Human Trafficking Law (Legislative Amendments), 5763-2003, SB 1900 535, 536-7, 6 August 2003, Article 4.

<sup>3</sup> Prohibition of Human Trafficking Law (Legislative Amendments), 5767-2006, SB 2067 1, 5, 29 October 2006, Articles 3-4.

government law proposal,<sup>4</sup> the temporary nature of the eligibility for representation of all trafficking victims was abolished and was transformed into a permanent provision.<sup>5</sup> However, a remaining flaw in the scope of application of the duty to provide legal aid is that the Legal aid Law does not apply to the victims of the offense of forced labor – an offense that was also introduced at the time the definition of trafficking was expanded in 2006.

## ***2. Fund for Trafficking Victims***

When the definition of human trafficking was extended in 2006 it was also established in legislation that a fund would be established to receive fines imposed on those convicted of human trafficking offenses, as well as money and property confiscated from traffickers. According to the law, the purpose of the fund is to provide financial compensation for victims when it is impossible to realize compensation orders granted by the courts. The fund is also intended to cover the costs of rehabilitation, protection, and care for trafficking victims; action to prevent human trafficking offenses; and law enforcement relating to these offenses.<sup>6</sup> The use of the fund is conditioned on the enactment of regulations; these were approved this year by the Knesset Constitution, Law, and Justice Committee and came into force.<sup>7</sup> According to the new regulations, the funds are to be allocated in accordance with the recommendations of a committee headed by a legal expert eligible for service as a District Court judge and comprising five representatives of various government ministries and three public representatives with a background and with academic, professional, or practical experience in the field of human trafficking. Two of the committee members are to be appointed from a list of

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<sup>4</sup> Proposed Law: Legal Aid (Amendment No. 9) (Legal Aid for the Victims of Offenses of Human Trafficking and Holding in Conditions of Slavery), 5768-2008, Govt. Proposed Law 404 701, 702, 28 July 2008.

<sup>5</sup> Legal Aid Law (Amendment No. 9), 5769-2008, SB 2191 93, 95, 16 November 2008.

<sup>6</sup> Article 377E of the Penal Code, 5737-1977. For a critique of the goals established in the law for the use of the fund, see: Hotline for Migrant Workers, No Harm Was Caused to the Deceased, note 1 above, p. 13.

<sup>7</sup> Penal Regulations (Means of Management of the Fund for Processing Confiscated Property and Fines Imposed in Cases of Human Trafficking and Holding in Conditions of Slavery), 5769-2009, Regulations File 6759 557, 26 February 2009. For the minutes of the discussion at which the regulations were approved, see: Knesset Constitution, Law, and Justice Committee, Minutes No. 692, 26 January 2009, available on the Knesset website (in Hebrew) at:

<http://www.knesset.gov.il/protocols/data/html/huka/2009-01-26.html> .

recommended candidates submitted by the main human rights organizations active in the field.<sup>8</sup> The regulations establish procedural rules for the committee's work and specify the considerations that should guide its decisions. However, although the regulations state that the committee must meet at least twice a year,<sup>9</sup> no representatives have as yet been appointed and the committee has never convened.

### ***3. Exceptions Extending the Protection Afforded to Human Trafficking Victims***

**Exception to powers of interrogation in accordance with the Execution Law:** At the end of 2008 far-reaching new powers were granted to the head of the Executor's Office to ascertain the address of a debtor who is evading execution proceedings. In accordance with an amendment to the Execution Law, 5627-1967, the head of the Executor's Office is empowered to order various bodies to inform him of the location of a debtor.<sup>10</sup> The law establishes two exceptions in which the head of the Executor's Office is not permitted to order the release of a debtor's address – when the address is a shelter for battered women, or when the address is a shelter for the victims of human trafficking.<sup>11</sup>

**Exception to the principle of public hearings in the Disciplinary Tribunal of the Israeli Bar:** As part of various changes to the Israeli Bar Law, 5721-1962, the principle was established that a hearing in proceedings in the Disciplinary Tribunal of the Israeli Bar is to be held in public. Several exceptions were established to this principle, including a provision stating that the tribunal may hold hearings in camera in order to protect the interests of a complainant or damaged party in a human trafficking offense.<sup>12</sup>

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<sup>8</sup> Regulation 3(B).

<sup>9</sup> Regulation 5(B).

<sup>10</sup> Article 7B of the Execution Law, 5727-1967, added as part of: Execution Law (Amendment No. 29), 5769-2008, SB 2188 42, 45, 16 November 2008.

<sup>11</sup> Execution Law, 5727-1967, Fourth Addendum.

<sup>12</sup> Article 65A of the Israel Bar Law, 5721-1961, added as part of: Israel Bar Law (Amendment No. 32), 5768-2008, SB 2160 580, 599, 3 July 2008.

#### ***4. Proposed Bills Including the Extension of the Protection Afforded to Human Trafficking Victims***

**The powers of the ombudsperson for foreign workers rights:** In May 2009 the government proposed a bill providing for the transfer to the Ministry of Interior of some of the authorities currently exercised by the Ministry of Trade, Industry, and Employment and empowering the Ministry of Interior to appoint an “ombudsperson for foreign workers rights.”<sup>13</sup> The functions of this position include: Raising public awareness; intervention in legal proceedings; and attending to complaints by migrant workers against employers and manpower agents. If the bill is passed, the ombudsperson will also be authorized to file civil suits against employers at the labor tribunal. Regrettably, the bill states that individuals employing caregivers will not be subject to the ombudsperson’s jurisdiction. The proposed bill confines the ombudsperson’s jurisdiction over the employers of caregivers to cases raising suspicion of human trafficking, holding in conditions of slavery, forced labor, or sexual harassment.

**Wiretapping:** The Secret Monitoring Law, 5739-1979 prohibits the wiretapping of conversations with attorneys, physicians, psychologists, social workers, or clergy in cases in which the content of these conversations is subject to privilege.<sup>14</sup> According to the law, the court is entitled in certain circumstances to order the wiretapping of a conversation subject to privilege in cases when the professional to whom the privilege applies is suspected of an offense endangering state security or of one of the serious offenses detailed in the law.<sup>15</sup> In July 2007 the government proposed a bill amending of the law in order to permit wiretapping of conversations covered by privilege to cases in which the professional is suspected of involvement in human trafficking.<sup>16</sup> The bill also included the amendment of the Immunity, Rights, and Obligations of Knesset Members Law, 5711-1951 through the addition of human trafficking to the list of offenses on account of which Members of Knesset may be subject to wiretapping.<sup>17</sup>

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<sup>13</sup> Proposed Law: Foreign Workers (Amendment No. 13), 5769-2009, Government Proposed Laws 426 290.

<sup>14</sup> Article 9 of the Secret Monitoring Law, 5739-1979.

<sup>15</sup> Article 9A(A) of the law.

<sup>16</sup> Proposed Law: Secret Monitoring (Amendment No. 5), 5768-2008, Government Proposed Laws 397 652, 655.

<sup>17</sup> *Ibid.*, p. 656.

## **Action by the Authorities**

In the report by Hotline for Migrant Workers detailing action by the authorities relating to the offense of human trafficking in 2007, we noted that the enforcement authorities seem incapable of identifying the hallmarks of human trafficking even when these appear in their most extreme and serious form.<sup>18</sup> Unfortunately, no change has been seen in this respect in 2008 or during the first half of 2009. As in 2007, the Migration Police continued to be responsible for investigating cases of human trafficking. The fact that the processing of such cases rests with a body whose main preoccupation is the arrest and deportation of persons unlawfully present in Israel is in itself highly problematic. In July 2009 the Migration Police was dismantled and replaced by a unit of inspectors from the Ministry of Interior known as the Oz Unit. The responsibility for processing cases of human trafficking was transferred to the Israel Police.

To the best of our knowledge, and with the exception of one case in September 2008 when an indictment was served on account of an offense of forced labor, there were no cases during the period covered by this report in which it was decided to prosecute an individual on account of trafficking for a purpose other than prostitution, holding in conditions of slavery, or forced labor. The Migration Police opened virtually no investigative files on its own initiative during this period; the small number of cases opened followed a complaint from human rights organizations. Accordingly, we believe that the information on which this report is based – composed of cases in which complaints were submitted by Hotline for Migrant Workers or by Kav La'Oved – covers most, if not all, of the cases in which complaints were submitted relating to human trafficking for purposes other than prostitution. In all the investigations opened following complaints concerning human trafficking for purposes other than prostitution, or concerning the offenses of holding in conditions of slavery or forced labor, no indictments were served on account of these offenses. Most of the files were closed without any indictment; in a handful of cases indictment was served on account of the offense of exploitation. The remaining files are still under investigation – a process that takes an unreasonably long period of time.

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<sup>18</sup> Hotline for Migrant Workers, No Harm Was Caused to the Deceased, Note 1 above.

Before examining the attitude of the authorities to the victims of human trafficking and related offenses, we shall briefly describe the situation of the victims themselves. The offenses of human trafficking, slavery, and forced labor relate to citizens, residents, and foreign nationals; neither the relevant Israeli legislation nor the relevant international law make any distinction between these groups.

The central element forming the basis for the offense of slavery in Israeli law is the exercising of substantial control over an individual's life or denying their liberty for the purpose of labor, the provision of services, or prostitution.<sup>19</sup> Forced labor, by contrast, is a situation in which an individual is forced to work by means of the use, or the threat, of force, other means of pressure, or by consent obtained through deception.<sup>20</sup> In order to prove the existence of the offense of trafficking for the purpose of slavery or for the purpose of forced labor, it must be shown that a transaction took place in which a human being formed the subject.<sup>21</sup> As noted above, the definition of the offenses does not require that the victim be a foreign citizen. In practice, however, most trafficking victims in Israel, as in other countries, are not local citizens or residents.

The fact that trafficking victims are usually the citizens of another country reflects the inherent weakness of foreign nationals, who enjoy a reduced "basket of rights" compared to those provided for citizens or residents of the state. In most cases foreign nationals cannot speak Hebrew, are unaware of their rights, and are unfamiliar with the legal and administrative mechanisms available to them. In some cases their status as foreigners in Israel and the lack of a strong social infrastructure makes them easy prey for those who seek to exploit them. Foreign nationals who are present in Israel without permit may feel particularly weak due to their fear of coming into contact with the authorities. Since the arrangements for the employment of migrant workers in Israel create an affinity between the identity of the employer and the fact of employment, and the permit to be present in Israel, even those foreign nationals who hold permits allowing them to be present in Israel and to work in the country may be concerned that

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<sup>19</sup> Article 375A of the Penal Code, 5737-1977.

<sup>20</sup> Article 376 of the Penal Code, 5737-1977.

<sup>21</sup> Article 377A of the Penal Code, 5737-1977.

they will lose their status and face deportation if they disobey their employer or contact the authorities.

As we shall see below, the victims of human trafficking, slavery, and forced labor include individuals who were trafficked from their country of origin and who were brought to Israel in the context of some type of transaction, or for the sole purpose of their exploitation for slavery or forced labor. Others, however, came to Israel for the purpose of employment in one of the fields in which migrant workers are employed by license, such as agriculture or caregiving, as do tens of thousands of other migrants. Only after arriving in Israel do these migrants find themselves in a state of slavery or forced labor – in many cases at the hands of the employers who received a permit from the State for their employment.

The victims of trafficking, slavery, and forced labor come to Israel from various countries. Of the thirty-six cases processed by HMW and Kav LaOved during the period covered by this report, fourteen of the victims are citizens of Thailand, eight of India, seven of Nepal, two each of the Philippines and Sri Lanka, and one each of China, Nigeria, and Brazil. Unlike the offense of human trafficking for the purpose of prostitution, which overwhelmingly involves women, the victims of trafficking for other purposes and of slavery and forced labor include both men and women. In the cases processed, the victims included twenty-one men and fifteen women.

We shall discuss below in depth the question of the granting of status to the victims of these offenses, as well as the management of police investigations and prosecutions, based on an analysis of sample cases processed by HMW and Kav LaOved. For the present we will merely note that of the thirty-six cases processed, not one of the police investigations has to date led to a prosecution for the offense of human trafficking, slavery, or forced labor. In the cases of eighteen victims, no one was prosecuted for any offense. In the remaining cases, indictments were served for less serious offenses, such as exploitation or fraud. We should emphasize that these figures do not imply that eighteen separate indictments were served. Of the eighteen victims involved in cases in which the investigation led to an indictment, seventeen were involved in a single case that is described below at length in the section on Police Failures. In other words, indictments were in fact served in two cases only.

We should also note that despite the small number of cases in which indictments were served, in twenty-five of the thirty-six cases the victims of the offenses were granted permits to be lawfully present in Israel. Of these twenty-five cases, however, twenty involved migrant workers who would have been entitled to regularize their status in accordance with the Interior Ministry procedures even if they had not been the victims of human trafficking or slavery; only in five cases were permits granted to an individual who would not have been entitled to receive the permit were it not for the offense of trafficking of slavery. In other words, and as described at length in the section on Work Permits, the process of securing an official permit was tortuous and often required litigation in order to realize the victim's rights.

### ***1. Police Failures***

One of the most serious cases involved L.R., a migrant worker from Nepal. Due to the failings of the Israel Police, L.R. is still being held in his employer's home at the time of writing. The police is aware of his whereabouts but has taken no action to put a stop to the grave offense committed against him.

A neighbor of L.R. contacted HMW by telephone in June 2008. She informed us that L.R. was being held prisoner in his employer's home. His employer holds his passport, pays him \$ 30 a month, and has forbidden him to talk to any person. A representative of HMW was forced to collect testimony through a barred window in the home of L.R.'s employer. HMW immediately submitted a complaint, but the police only arrived at the employer's home ten days later, and only after intervention by the Interministerial Coordinator for Human Trafficking. The police took L.R. to the police station, while his employer – the suspect in the offense – followed behind the police vehicle in his private car. It is not difficult to imagine what the victim must have thought during the course of this journey about the connection between the police and his employer. After interrogation both men were released to the employer's home. Leaving aside the warped logic inherent in "releasing" someone to the home of the person who is enslaving them, it must be assumed that this step also reinforced L.R.'s sense of a connection between his employer and the police. Despite repeated requests by HMW, four months passed before the police collected testimony from the HMW representative who met L.R. and

the interpreter who accompanied her. A few months later the police announced that it was closing the investigative file due to “lack of evidence.” To the best of our knowledge, L.R. is still being held in his employer’s home in conditions of slavery.

Another case which HMW handled in 2007 involves B.B., a Brazilian citizen. Since her childhood, B.B. worked as a servant in the home of a family in Brazil, and was brought to Israel in order to continue to serve the family here. Her employers secured an entry visa for her for the purpose of work in the caregiving sector, but in fact she was employed solely in household duties. Her initial salary was \$ 400 a month; this was later raised to \$ 600. She did not receive vacation leave, recuperation, or other social rights. In November 2007, after she was physically assaulted by her employers and her belongings were thrown out of the house, she complained to the police. To this date, almost two years after the complaint was submitted, the investigation in her case has not yet been completed.

Another case handled in 2007 illustrates the inadequate treatment by the police of complaints relating to human trafficking and holding in conditions of slavery. M.S., a Chinese citizen, fell victim to a systematic form of fraud that is made possible by the negligent approach of the Israeli authorities and the method used to grant entry visas. M.S. paid \$ 15,000 to intermediary agents in China, who promised that she would receive an entry visa to Israel and a permit to reside in Israel. However, a review of the documents in her possession revealed that the agents forged a letter from an Israeli company by the name of Commit Business Solutions Ltd., on the basis of which they received an entry visa for M.S. valid for a period of just one week. After arriving in Israel, M.S. was imprisoned in an apartment. Several Chinese citizens came to the apartment, one of whom raped her. She escaped and, with the help of members of the Chinese community, she found a cleaning job. M.S. was severely exploited in this job: she worked for fourteen hours a day, slept on a sofa in an attic, and was only paid for the first month of work. She was later arrested by the Migration Police and transferred to the shelter for victims of human trafficking. In January 2009, following a police investigation, a Chinese citizen was arrested as a suspect in the case. Despite evidence against him, however, it was decided not to prosecute him; instead, he was deported from Israel.

A further case typifying the inadequacy of the police investigations in cases of human trafficking was handled by Kav LaOved. Z.K., a migrant worker from India, arrived in Israel with a visa intended for care-giving work. She was employed in conditions of slavery in her employer's extended family. She worked every day from 7 a.m. through 11 p.m., both as a caregiver and performing housework, while receiving a salary that was substantially below the minimum wage established by law. She was also the victim of sexual assaults by two members of the family who held her in conditions of slavery. Z.K. filed a complaint to the Tiberias police in March 2007, but the suspects were only questioned approximately one year later. During her own questioning, Z.K. was mistreated by the police. Complainants in sex offenses are entitled to have an accompanier present during their questioning. Despite this, a volunteer from the rape crisis center who accompanied her was not permitted to be present during her questioning. The interrogator accused her of lying. After Kav LaOved complained that the investigation was taking an undue period of time, the Tiberias police stated that as far as they were concerned this was not a case of human trafficking.<sup>22</sup> The investigation file was later forwarded to the Migration Police and in September 2008 – approximately eighteen months after the complaint was submitted – Z.K. was again questioned. Eventually, two years after the complaint was submitted, the Migration Police decided to close the investigative file, once again on the grounds of “lack of evidence.”

Employment in agricultural work has also proved fertile ground for the holding of migrants in conditions of slavery. A complaint submitted by Kav LaOved in June 2009 revealed that seventeen migrant workers – fourteen from Thailand and three from Nepal – were employed on a moshav, working seven days a week and between seventeen to eighteen hours a day in unsafe conditions. Their employers told them that they could not terminate their contracts and that any of them who attempted to do so would be deported. According to the contracts they signed, moving to another employer would lead to sanctions against the workers and their families. After Kav LaOved submitted a complaint, the workers were freed. After a relatively swift investigation, an indictment was served against their employers for offenses of exploitation, fraudulent receiving, and threats. It is worth noting, however, that the investigation did not result in indictment on offenses of holding in conditions of slavery or forced labor.

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<sup>22</sup> Letters from Chief Superintendent Farid Kardush to Attorney Anat Kidron dated 9 February 2008 and 12 February 2008.

The above are just a few examples of the thirty-six cases in which HMW and Kav LaOved assisted trafficking victims in submitting complaints relating to human trafficking, holding in conditions of slavery, or forced labor during the period covered by this report. As mentioned, to the best of our knowledge not a single person has been prosecuted on account of these offenses since the enactment of the Prevention of Human Trafficking Law (Legislative Amendments) 5767-2006, with the exception of one case in which an indictment was served on account of an offense of forced labor. The report published by HMW in 2007 noted our concern that the law had become a dead letter before the ink had dried on its clauses and provisions.<sup>23</sup> In 2007 it was possible, perhaps, to attribute the tendency of the policy to close investigations relating to these offenses to the teething problems faced by the enforcement authorities in internalizing the nature and symptoms of the offense. We hoped that as the authorities coped with more cases progress would be apparent. Yet even now, some three years after the law came into effect, the situation continues to be discouraging. The criminal provisions established in the law remain a dead letter.

## ***2. Granting status to the victims of slavery and human trafficking for the purpose of slavery and forced labor***

In 2006 guidelines were published concerning the granting of status to the victims of human trafficking for the purpose of prostitution.<sup>24</sup> The guidelines established that victims who had completed giving testimony against their traffickers would be eligible for a B/1-type residency permit for one year for the purpose of rehabilitation. Victims who chose not to testify, or whose testimony was not required, were also found to be eligible for this status. In the past the Ministry of the Interior proved less able to implement the procedure in the case of trafficking victims who did not fall into the categories with which the ministry was familiar – for example, in the case of victims of trafficking for prostitution who were not citizens of the FSU states.<sup>25</sup> Moreover, until

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<sup>23</sup> Hotline for Migrant Workers, No Harm Was Caused to the Deceased, Note 1 above.

<sup>24</sup> Procedure for Processing the Granting of Status to Victims of Trafficking in Women on Humanitarian Grounds, Procedure No. 6.3.0007 dated 1 June 2006. Published on the website of the Ministry of the Interior:  
[http://www.moin.gov.il/Apps/PubWebSite/publications.nsf/All/A6791E9818D02DF8C22573C80038654C/\\$FILE/Publications.3.0007.pdf?OpenElement](http://www.moin.gov.il/Apps/PubWebSite/publications.nsf/All/A6791E9818D02DF8C22573C80038654C/$FILE/Publications.3.0007.pdf?OpenElement)

<sup>25</sup> Hotline for Migrant Workers, No Harm Was Caused to the Deceased, Note 1 above, p. 25.

July 2008 there was no procedure formalizing the rights of the victims of trafficking for purposes other than prostitution or the victims of the slavery offenses to receive a residency permit. In each case handled by human rights organizations it proved necessary to submit a petition in order to oblige the Ministry of the Interior to recognize the victim's right to such a permit.<sup>26</sup>

In July 2008, Ministry of the Interior guidelines introduced for the first time a procedure by which status is to be granted to the victims of human trafficking for purposes other than prostitution.<sup>27</sup> The procedure establishes that if there is preliminary evidence that a person is the victim of human trafficking or slavery, they are entitled to receive a B/1-type residency permit for a period of three months; if the person is a witness in criminal proceedings, the permit will be extended through the completion of these proceedings. In addition, the victims of trafficking or slavery are also eligible for a "rehabilitation year" during which they are also to receive a B/1-type permit. Victims of trafficking or slavery who are migrant workers who arrived in Israel with a work visa may choose between two options. The first is to request a B/1-type visa for one year enabling them to engage in any work; at the end of the year they will be permitted to complete a period of sixty-three months in the employment sector for which they came to Israel, not including the period of rehabilitation. The second option is to continue to complete the sixty-three month period without interrupting this period for the rehabilitation year.

The procedure marks an important step forward in formalizing the rights of trafficking victims, but numerous problems have been encountered in its implementation. The principal difficulty is that the Ministry of the Interior relies exclusively on the police and the criminal proceeding in determining whether an individual is a victim of trafficking. The Ministry of the Interior does not undertake any independent examination as to whether a person is a trafficking victim; instead, it requests the position of the police, and when the police is unable to provide such a position, the

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<sup>26</sup> For examples, see **ibid.**

<sup>27</sup> Special Procedure for Processing the Granting of Status to the Victims of Slavery and Human Trafficking for Slavery and Forced Labor, Procedure No. 6.3.0008 dated 1 July 2008. Published on the website of the Ministry of the Interior:  
[http://www.moin.gov.il/Apps/PubWebSite/publications.nsf/All/211645ACF6276B14C225747A002BD0C7/\\$FILE/Publications.3.0008.pdf?OpenElement](http://www.moin.gov.il/Apps/PubWebSite/publications.nsf/All/211645ACF6276B14C225747A002BD0C7/$FILE/Publications.3.0008.pdf?OpenElement)

Ministry of the Interior refuses to recognize the individual or to treat them in accordance with the procedure. This approach is problematic in two respects. Firstly, the burden of proof in a criminal proceeding – the focus of the police investigation – is completely different from the burden underlying the administrative proceeding in which it is determined whether an individual is eligible for status in Israel. In order to decide on prosecution, the police must have evidence ensuring a reasonable chance of conviction, and such a conviction requires proving the defendant's criminal actions beyond reasonable doubt. The burden in an administrative proceeding is much less stringent.

There may be disagreement about the precise level of the burden of proof required in an administrative proceeding relating to the victims of trafficking or slavery. It may be suggested that the individual must prove, on the balance of probability, that they are indeed a victim of these offenses; alternatively, a still lower threshold could be proposed, such as reasonable fear of the person being a victim. In any case, however, the burden of proof is certainly significantly less stringent than that required in a criminal proceeding. There may certainly be cases in which there is insufficient evidence for a prosecution, but adequate evidence to determine in an administrative proceeding that a complainant is a victim of trafficking or slavery.

Secondly, the criminal proceeding and the administrative proceeding for granting status to trafficking victims are based on completely different purposes. While the criminal investigation centers on the person suspected of committing an offense and examines their actions and the *mens rea* behind these actions, the administrative proceeding for granting status to trafficking victims is supposed to focus on the needs and rights of the victim. Accordingly, while weight should be given to the position of the police and the State Prosecutor's Office during the administrative process regarding the granting of status, this weight should not be exclusive. The Ministry of the Interior bears an obligation to reach an independent decision regarding the individual's eligibility for status in Israel due to the suspicion that they may be a victim of trafficking.

We shall present a number of cases in order to illustrate the defects in the processing by the Ministry of the Interior of applications from victims of trafficking and slavery.

An example of the need to distinguish between the treatment of suspected traffickers and the treatment of trafficking victims can be found in the application submitted by M.S., the Chinese citizen whose story was outlined above. M.S. came to Israel as part of a systematic fraud and was subsequently raped and held in conditions of slavery. A suspect was arrested during the course of the investigation, but as happens frequently when both the suspect and the victim of an offense are foreign nationals, the police decided to deport the suspect to China rather than prosecute him. Following this decision, the Ministry of the Interior rejected M.S.'s request to receive a residency permit for one year on the grounds that "there is no preliminary finding by the police that the above-mentioned is a victim of trafficking in women," and that since the investigation had been closed "there is no interest in her remaining in Israel."<sup>28</sup> This approach is particularly inexplicable since the purpose of the residency permit for a trafficking victim is to facilitate their rehabilitation and not to exhaust legal proceedings against the suspect in the offense. There is not supposed to be any link between the granting of a visa to a trafficking victim and the need on the part of the police for a suspect to remain in Israel and face prosecution.

The full gravity of the approach taken in this case by the Ministry of the Interior emerges when it is taken into account that the investigation did not produce a conclusion rejecting the presence of human trafficking, or even a conclusion finding a lack of evidence for the purpose of prosecution. The Ministry of the Interior made its decision after the police decided that the most convenient solution from its perspective was to deport the suspect rather than continue the investigation and consider possible prosecution. The absurd aspect of the Ministry of the Interior's conduct is that one arm of the Ministry found that the administrative evidence in its possession was sufficient to reach the administrative decision that the suspect was an offender and should be deported, despite the absence of a decision by the Israel Police to prosecute him, while another arm of the same Ministry refused to use the same evidence in order to grant status to the victim in the offense.

A further example of the defective behavior of the Ministry of the Interior was reflected in the case of Z.K., the Indian citizen whose story was described above. Z.K. was held

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<sup>28</sup> Letter from Michal Yosef, Border Control Officer in the Ministry of the Interior, dated 16 February 2008.

in conditions of slavery and sexually assaulted by two of her employers. In August 2008 she requested a permit for one year in accordance with the above-mentioned guidelines. Her application detailed her experiences at length and was accompanied by a personal letter she wrote, a copy of the complaint submitted against her employers, and a copy of the decision of the Ministry of Industry, Trade, and Employment to retract her employer's permit to employ workers following her complaint. A copy of the complaint she submitted to the police was also attached. Once again the Ministry of the Interior made no effort to examine her claims and summarily rejected the application. The letter of rejection stated that Yaacov Ganot, head of the Population Administration, had rejected the application "since the documents attached to the application do not state that the above-mentioned is a trafficking victim."<sup>29</sup> The Ministry of the Interior only agreed to grant Z.K. a permit after intervention by the Ministry of Justice's Interministerial Coordinator for the Struggle against Human Trafficking.

The persistent refusal by the Ministry of the Interior to exercise independent discretion when determining whether particular individuals are trafficking victims is also reflected in the cases of "classic" trafficking victims in the Israeli context – women from the FSU trafficked for the purpose of prostitution. This conduct was criticized in a ruling issued by the Jerusalem District Court in May 2008. The case involved a Moldavian citizen who was trafficked to Israel for the purpose of prostitution.<sup>30</sup> The woman was told that she would be working in the caregiving sector in Israel, but was arrested at the Egyptian border while the traffickers were attempting to smuggle her into the country. She was transferred to a shelter for victims of trafficking, but once again the police determined that there was insufficient evidence to substantiate an indictment on charges of human trafficking. As a result, the Ministry of the Interior rejected her application to grant the woman status in Israel in accordance with the guidelines, claiming that "we did not find in the police documents an unequivocal decision that there is preliminary evidence of [the applicant's being] a victim of trafficking in women for the purpose of prostitution." The court rejected the state's position. In his ruling, Judge David Heshin described the woman's testimony to the police concerning the manner in which she had been transferred from hand to hand like merchandise for the purpose of her employment in

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<sup>29</sup> Letter from Michal Yosef, Border Control Officer in the Ministry of the Interior, dated 26 October 2008.

<sup>30</sup> Admin. Appeal (Jer.) 8029/08 Alaro v Ministry of the Interior (ruling dated 11 May 2008).

prostitution. He noted that the fact the police did not ultimately manage to consolidate the evidential material into an indictment on account of trafficking offenses cannot lead to the conclusion that the investigative material does not contain preliminary evidence is that the woman is a trafficking victim.

This same approach is seen in many other cases. Indeed, HMW and Kav LaOved have not yet encountered a single case in which an application by a victim of trafficking or slavery to receive a B/1-type permit for one year (the “rehabilitation visa”) was accepted in cases in which the police did not recommend indictment – with the exception of cases in which a petition was submitted or sources in the Ministry of Justice intervened. As already noted, not a single indictment has to date been served on account of the offense of human trafficking for purposes other than prostitution. As a result, each case requires exhausting negotiations in order to secure a permit in accordance with the procedure. The shelter is virtually the only field in which the authorities have acted resolutely to tackle the grave problem of human trafficking.

### ***3. Establishment of a shelter for male victims of human trafficking, slavery, and forced labor***

In 2004 the Ma’agan shelter was opened to house and rehabilitate women victims of trafficking for the purpose of prostitution. The shelter was intended to replace the prevailing policy of detaining the victims of this offense. However, the authorities continued to detain victims of trafficking for other purposes (both women and men). In more than one case victims of trafficking, slavery, or forced labor who complained against their employers (or on whose behalf complaints were filed) were astonished to discover that the enforcement authorities freed them from their employers only to issue detention and deportation orders and to imprison them as persons unlawfully present in Israel. Over the past two years positive developments have been seen in this respect and women victims of trafficking for purposes other than prostitution have sometimes been transferred to the Ma’agan shelter. In July 2009 a further improvement came in the form of the opening of a shelter for male victims of trafficking, slavery, or forced labor. The Atlas shelter employs social workers and during its first month of operation absorbed seventeen slavery victims from the agricultural sector who were rescued following the complaint submitted by Kav LaOved (as described above).

## Case Law

### *1. Prison sentences on account of human trafficking and associated offenses: The district courts*

To the best of our knowledge, all the indictments heard by the district courts in 2008 and the first half of 2009 relating to human trafficking offenses concerned individuals who were trafficked for the purpose of prostitution. The maximum penalty for the offense of human trafficking is sixteen years' imprisonment.<sup>31</sup> If aggravating circumstances are present, the penalty rises to twenty years.<sup>32</sup> The criminal legislation relating to human trafficking also establishes that a person is convicted of this offense must serve a penalty of not less than four years, unless the court decides otherwise on special grounds.<sup>33</sup> The offense of assisting in human trafficking carries a maximum penalty of eight years' imprisonment and a minimum of two years.<sup>34</sup> We should note that the minimum penalty does not apply to offenses committed prior to the enactment of the Prohibition of Human Trafficking Law (Legislative Amendments), 5767-2007. The serious penalties – relative to most criminal offenses in the Israeli penal code – are supposed to reflect the gravity of the offense of trafficking; the injury caused to the inherent humanity of the victims; and societal disapproval of the acts that meet the definition of human trafficking. However, the promise embodied in the criminal provisions relating to human trafficking is far from being realized.

The number of rulings issued in 2008 and in the first half of 2009 relating to human trafficking is relatively small, but sufficient to reflect a tendency to impose significantly milder sentences than the maximum permitted by law. During this period five sentences were issued in the cases of defendants prosecuted for human trafficking or associated offenses. Only one of the defendants was actually convicted of human trafficking; in all the other cases, the defendants were convicted for more minor offenses, such as assisting in human trafficking. In four out of the five rulings issued during this period the conviction was secured as the result of a plea bargain. In the sole case in which there

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<sup>31</sup> Article 377A(A) of the Penal Code, 5737-1977.

<sup>32</sup> Article 377A(B) of the Penal Code, 5737-1977.

<sup>33</sup> Article 377B of the Penal Code, 5737-1977.

<sup>34</sup> Article 32 of the Penal Code, 5737-1977.

was no plea bargain, the original indictment did not include the charge of trafficking or assisting in trafficking.

The only sentence relating to defendants convicted of an offense of human trafficking for the purpose of prostitution was issued by the Tel Aviv – Jaffa District Court in March 2009.<sup>35</sup> The sentence reveals that one of the defendants was convicted of several offenses, including human trafficking and assisting in human trafficking, while the other was convicted of assisting in human trafficking. Both defendants were convicted on the basis of their confessions following a plea bargain. The ruling further reveals that the acts on account of which the defendants were convicted took place in 2003 and 2005 – prior to the consolidation in law of the minimum penalties of four years’ imprisonment for human trafficking and two years for assisting in trafficking. The defendant convicted of human trafficking was sentenced to just thirty-six months, with an additional suspended sentence of twelve months, while the defendant convicted of assisting human trafficking was sentenced to eighteen months’ imprisonment and a suspended sentence of nine months.

As noted, in the remaining rulings relating to human trafficking issued during this period none of the defendants were actually convicted of trafficking. The first case involves a ruling issued by the Beer-Sheva District Court in January 2008 in which the defendant was convicted of assisting in human trafficking.<sup>36</sup> The conviction in this case followed a plea bargain in which the defendant confessed, among other offenses, to assisting in human trafficking and to procurement for acts of prostitution. It is unclear from the sentence whether the original indictment included the offense of human trafficking, which was then omitted from the amended indictment in the framework of the plea bargain, or whether from the outset the defendant was charged “only” with assisting in human trafficking. The sentence reveals that the acts on account of which the defendant was convicted of assisting in human trafficking were all committed prior to October 2006, the date of introduction of the legal provision establishing minimum penalties for defendants convicted of trafficking or of assisting in trafficking. In the sentence the court mentioned the need to give harsher sentences to those who form part

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<sup>35</sup> CC (TA) 8127/08 State of Israel v Sahano (sentence dated 8 March 2009).

<sup>36</sup> GCC (BS) 1041/07 State of Israel v Zueib (sentence dated 16 January 2008).

of the “chain of trafficking” and imposed a sentence of three and a half years’ imprisonment with an additional one year suspended sentence.

A further sentence issued by the Tel Aviv – Jaffa District Court in June 2009 also involved defendants who formed part of the “chain of trafficking.”<sup>37</sup> In this case, too, the defendants were convicted on the basis of their confession in accordance with a plea bargain. The first defendant was convicted of a series of offenses including procurement for prostitution in aggravating circumstances. The second defendant was convicted of assisting in human trafficking and of rape, and the third defendant was convicted of rape. The sentence reveals that the original indictment served against the first two defendants included the charge of human trafficking, which was omitted in the framework of the plea bargain. The court noted in the sentence that in accordance with the plea bargain the prosecution and the second defendant asked that a sentence of eight and a half years’ imprisonment and a three year suspended sentence be imposed; in the case of the third defendant the requested penalty was five years’ imprisonment and a three-year suspended sentence. The judges emphasized the need to mete out severe penalties to those involved in human trafficking and expressed their opinion that the penalties agreed by the prosecution and the second and third defendants did not duly reflect the gravity of the offenses of which they were convicted and were inconsonant with the message that should be conveyed regarding human trafficking offenses. Despite this, the court accepted the penalty agreed in the plea bargain, and also adopted the lenient penalty in the case of the first defendant, regarding whom the plea bargain did not include agreement on the penalty, imposing a sentence of five years’ imprisonment and a suspended sentence of three years.

In July 2009 the Tel Aviv – Jaffa District Court issued a sentence in another case involving a defendant convicted of assisting in human trafficking.<sup>38</sup> Once again the conviction was secured through a plea bargain involving the amendment of the indictment. Before the sentence was issued, however, the conviction of assisting in trafficking was annulled and replaced by a conviction for the offense of procurement for prostitution. The court protocol shows that the prosecution announced that following

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<sup>37</sup> GCC (TA) 1056/08 State of Israel v Chivas (sentence dated 22 June 2009).

<sup>38</sup> CC (TA) 40155/08 State of Israel v Shangin (sentence dated 14 July 2009).

another plea bargain with the defendant's partners, who were prosecuted separately, it was now proper to annul the conviction for assisting in trafficking. The court accepted this request and amended the conviction accordingly.<sup>39</sup> The defendant was convicted of similar offenses to those of which he had already been convicted, and during the same period. He had already served his sentence and begun a process of rehabilitation. In view of these circumstances, the court imposed an exceptionally lenient penalty: six months' imprisonment and a suspended sentence of eighteen months.

In May 2009, the Beer-Sheva District Court issued a sentence in another case in which the defendants were not charged with human trafficking, and in which the court noted the connection between pimping and trafficking.<sup>40</sup> Unlike the other sentences discussed above, this sentence was not issued following a plea bargain. After the examination of evidence the defendant was convicted of a series of offenses, including procurement for prostitution, extortion with threats, and solicitation to acts of prostitution. The sentence details "territorial battles" between pimps during which the defendant threatened two women employed as prostitutes with a certain pimp in order to persuade them to work with him. After the women stopped appearing at the brothel under his management, he terrorized them and made them return to work. The court noted that the combination of offenses committed by the defendant – solicitation and extortion with threats – was similar in its essence to human trafficking, and imposed on the defendant a sentence of three years' imprisonment and a suspended sentence of one year.

This case illustrates the problematic definition of human trafficking established by the Israeli legislator and the gulf between this definition and the definition established in international law. This sentence describes a case in which the defendant exerted almost total control over his victims. The women were forced to work for the defendant and were forced to return to him against their will due to threats; the defendant determined their hours of work and refused to allow them to leave the brothel when they wished; and he even prohibited one of the complainants from studying. Despite this, and as the result of the demand in Israeli law for the presence of a "transaction" in a human

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<sup>39</sup> CC (TA) 40155/08, *ibid.*, protocol of hearing dated 28 June 2009.

<sup>40</sup> CC (BS) 8032/06 State of Israel v Alziadana (sentence dated 25 May 2009).

being,<sup>41</sup> it is difficult to include such cases in the category of human trafficking as defined in Israel. By contrast, international law does not require the presence of a transaction in order to define an action as human trafficking. Three components are defined: (1) The recruitment, transportation, transfer, harboring or receipt of persons; (2) by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; (3) for the purpose of exploitation, defined as the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>42</sup> This case, in which the defendant transported and harbored the victims while coercing and threatening them for the purpose of exploitation in prostitution, thus clearly meets the definition of human trafficking in international law.

## ***2. Sentences of imprisonment on account of human trafficking and associated offenses – the Supreme Court***

An additional and important source reflecting the level of penalties for human trafficking offenses is the rulings of the Supreme Court in appeals against rulings issued by the District Courts. Although the total number of such appeals during the period covered by this report is only seven, a review of the penalties imposed on traffickers reflects the trend in penalization in this field.

In four of the seven cases that reached the Supreme Court, the court rejected the appeals against the conviction and against the severity of the penalty imposed. In February 2008 the Supreme Court rejected the appeal of a defendant convicted, among other offenses, of human trafficking, attempted human trafficking, and kidnapping for the purpose of a sex offense, who was sentenced to eight and a half years' imprisonment and a three-year

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<sup>41</sup> Article 377(A) of the Penal Code, 5737-1977. It should be noted that in accordance with Articles 375A and 376 of the Penal Code it is possible to prosecute a person on account of acts such as those described in the sentence in CC (BS) 8032/06 as described above for the offenses of holding a person in conditions of slavery and forced labor. However, the sentence in this case relates to offenses committed in 2005, i.e. prior to the enactment of the Prohibition of Human Trafficking Law (Legislative Amendments), 5767-2006, as part of which these two offenses were added to the penal code.

<sup>42</sup> The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000), Article 3.

suspended sentence.<sup>43</sup> A ruling issued in April 2008 rejected the appeal of a person convicted of a series of offenses, including human trafficking and attempted human trafficking, who was sentenced to eleven years' imprisonment and a three-year suspended sentence.<sup>44</sup> In February 2008, the Supreme Court rejected an appeal by a person convicted of human trafficking, who was sentenced to five years' imprisonment and a suspended sentence of two years.<sup>45</sup> Lastly, in July 2009 the Supreme Court rejected an appeal against the severity of the sentence meted to a defendant convicted of assisting in human trafficking – eighteen months' imprisonment and a nine-month suspended sentence.<sup>46</sup>

In three cases the Supreme Court found cause to reduce the penalties imposed on offenders involved in trafficking in women for the purpose of prostitution. In a ruling issued in January 2008 relating to the case of two joint defendants, the Supreme Court rejected an appeal by a person convicted of human trafficking and sentenced to ten years' imprisonment, but accepted the appeal by the second defendant, convicted of human trafficking and rape, and reduced the penalty of eighteen years imposed by the district court to fifteen years' imprisonment, due to the substantial discrepancy between his penalty and that imposed on the first defendant.<sup>47</sup> In another ruling issued in April 2008 the Supreme Court accepted in part an appeal against the severity of the penalty imposed on a defendant sentenced to four years' imprisonment on account of a conviction for human trafficking; the court reduced the sentence to three years, but rejected the defendant's appeal against a nine-year sentence for his conviction for rape.<sup>48</sup> In July 2008, the Supreme Court accepted in part the appeal by a defendant convicted by the district court of human trafficking and an indecent act without consent. The defendant was acquitted of the latter offense and his sentence was reduced from seven years' imprisonment to six. In the same ruling the court rejected the appeal by another defendant convicted of human trafficking and sentenced to five years' imprisonment.<sup>49</sup>

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<sup>43</sup> CA 5692/06 Archifov v State of Israel (ruling dated 24 February 2008).

<sup>44</sup> CA 371/06 Anonymous v State of Israel (ruling dated 30 April 2008).

<sup>45</sup> CA 4920/07 Anonymous v State of Israel (ruling dated 2 February 2009).

<sup>46</sup> CA 2982/09 Abramov v State of Israel (ruling dated 27 July 2009).

<sup>47</sup> CA 5115/05 Anonymous v State of Israel (ruling dated 24 January 2008).

<sup>48</sup> CA 2589/08 Makievsky v State of Israel (ruling dated 2 April 2008).

<sup>49</sup> CA 3048/08 Radoslasky v State of Israel (ruling dated 2 July 2008).

### *3. The rape of trafficking victims*

The prevailing myth in the past was that the victims of trafficking for the purpose of prostitution could not be raped.<sup>50</sup> Nowadays traffickers in women are occasionally also accused of rape or indecent acts without consent,<sup>51</sup> although, as we shall, see the courts have not entirely abandoned the former approach. In this context it is worth examining in greater depth two rulings issued by the Supreme Court during the period covered by this report. The first was issued in July 2009 by Justice Levy.<sup>52</sup> In this case a defendant convicted by the district court of human trafficking was acquitted of the offense of rape that also appeared in the indictment, but was convicted of an indecent act without consent. The Supreme Court annulled the conviction in this offense. The Supreme Court ruling notes that the complainant testified that:

“The first time Leonid suggested it, I didn’t want to... I told him that I was hurting all over and tired... I told him that I was real tired and he told me ‘I really want to.’ To tell the truth I was a bit scared. I don’t know why, but I was kind of scared to say no... So we had sex... a couple of times we had sex. I can’t explain exactly why I didn’t say no to him.”

From this testimony, the Supreme Court concluded:

“It is possible that the complainant chose, for her own reasons, to color this incident with a different, more moderate significance as an act of love between two partners (‘He licked me from tip to toe and I licked him’ – p. 184). However, in the absence of any evidence to the contrary, we cannot dismiss the possibility that Leonid implored her to have sex with him and continued to do so until she relented. The complainant indeed noted that she ‘was a bit scared,’ but she refrained from expressing this fear to Leonid and, accordingly, we are not convinced that these ‘lickings’ were imposed on her.”

The court went on to conclude that the appellant should be acquitted on the grounds of reasonable doubt. This is an extremely problematic assertion. The relationship between trafficking victims and their traffickers is based on control and fear. It is difficult to attribute free will to women who are subject to the control of a trafficker, and it is difficult to expect that a woman in these circumstances will be able to express her objection to engaging in sexual relations. In order for the foundations of the offense of

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<sup>50</sup> For example, see: Hotline for Migrant Workers, *The Missing Factor - Clients of Trafficked Women in Israel's Sex Industry* (2005), pp. 9-10.

<sup>51</sup> For example, see: GCC (TA) 1056,08, note 37 above; CA 5115/05, note 47 above.

<sup>52</sup> CA 3048/08, note 49 above.

rape to be present and for a person to be convicted of this offense, it is not required that the complainant express active objection to the sex act; it is sufficient that the sexual relations took place without her consent. In the situation described by the court, in which the trafficking victim testified that she did not wish to have sex with the appellant, and even told him that she was tired and in pain, it is apparent that the appellant was aware that she had not given her consent. The court's comment that it "cannot dismiss" the possibility that the trafficker implored her repeatedly "until she relented" lacks foundation. Even if the complainant had not emphasized that she was tired and in pain and had submitted to the trafficker's pleas, it would be difficult to speak of "consent" in the extreme context of human trafficking.

A different approach is reflected in the ruling issued by Supreme Court Justice Meltzer in April 2008.<sup>53</sup> In this ruling the court confirmed the conviction of the appellants on a charge of rape, rejecting his argument that the sexual relations with the complainant were consensual:

"The appellant's attempts to compare the raping of Ol. and the sodomizing of Ir. to ordinary cases of consensual sex between a client and women providing him with sexual services are with all due respect groundless. A person who has been found to have mediated in the 'sale' of a woman for the purpose of prostitution and who, in the framework of his acquaintance with her against this background, demands that she have sex with him; and when she refuses inform her that she may not resist him... certainly cannot be considered someone who has received that woman's free consent... It would appear that the appellant decided, in view of the fact that the 'sellers' intended – in partnership with him – to turn the sisters into prostitutes against their will, that he was also entitled to oblige them to have sexual relations with him. From his perspective, accordingly, their consent or lack thereof was of no consequence, since his approach is that the granting of the said payment constitutes a form of substitute for the need to secure their free and a priori consent... Such an approach is marred by a clear logical fault."

The court ruled that even in the absence of explicit objection, the circumstances were sufficient to conclude that the sexual act occurred without the free consent of the victim, and that the rapist was aware that she had not granted her consent. Of these two approaches adopted by two different Supreme Court Justices, the latter reveals a more precise understanding of the balance of power between trafficking victims and their traffickers.

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<sup>53</sup> CA 2589/05, see above.

#### ***4. The use of human trafficking legislation for prosecutions in offenses other than trafficking, slavery, or forced labor***

The Prevention of Human Trafficking Law (Legislative Amendments), 5767-2006, included for the first time the offense of human trafficking for purposes other than prostitution and amended legislation relating to the offense of holding in conditions of slavery and the offense of forced labor. The amended law also included an article entitled “kidnapping for the purpose of human trafficking.” This article established that “a person who kidnaps another for the purposes stipulated in Article 377A(A) or in order thereby to place him in one of the dangers stipulated in that article shall be liable to twenty years’ imprisonment.”<sup>54</sup> To the best of our knowledge, only one ruling has been issued to date involving this article.<sup>55</sup> The ruling issued by the Haifa District Court in March 2009 related to the case of a defendant who tempted a woman into traveling with him to purchase drugs, took her to a grove, raped her, and attempted to murder her. Although these actions are not tantamount to human trafficking, the Court found that this constituted “kidnapping for the purposes of human trafficking.” The Court ruled that the title of the article does not mandate intent to traffic in a person, but rather refers to the goals that constitute the foundation for the offense of human trafficking, and which are detailed in Article 377A(A) of the penal code. Accordingly, kidnapping for the purpose of organ removal, the birth and removal of a child, slavery, forced labor, procurement for prostitution, the presentation of indecency or the committing of a sex offense, is consistent with the definition of the article, whether or not a trafficking offense is involved. In this case it was determined that the offense constituted kidnapping for the purpose of committing a sex offense, and accordingly the defendant could be convicted of an offense in accordance with this article.

#### ***5. Slavery under a court order***

One of the basic principles of contract law under common law is that an employment contract or a contract for a personal service cannot be enforced by coercion since such enforcement would bear the hallmarks of slavery. This principle is manifested in Israeli

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<sup>54</sup> Article 274A of the Penal Code, 5737-1977.

<sup>55</sup> GCC (Haifa) 406307 State of Israel v Hajazi (ruling dated 5 March 2009).

contract law<sup>56</sup> and in the rulings of the Supreme Court, which emphasize that workers are not their employers' property and are entitled to terminate the contract with their employer.<sup>57</sup> The Supreme Court has explicitly noted the right of migrant workers to terminate their employment and has established that arrangements restricting their ability to do so are arrangements of "quasi-slavery in a modern version."<sup>58</sup> However, a disturbing decision taken ex parte in July 2009 by Judge Oded Shaham of the Jerusalem Magistrate's Court raises concern that the legal system has not fully internalized these principles in the case of migrant workers.

The said decision was made in the case of V.N., a migrant worker from India who came to Israel with a visa for the purpose of working in the caregiving sector. Before she arrived she was asked to sign a work contract which she was not given an opportunity to read. The contract stated that she could not leave her employer during her first year of work – a clearly unlawful provision. In the home of the woman who employed her for nursing needs, V.N. was employed around the clock and was also required to clean the home of her employer's son without payment. For her nursing work she received a sum that is substantially below the minimum wage. Due to these harsh conditions V.N. decided to leave her work; in accordance with the law, she gave her employer prior notice of thirty days before termination of her employment. At the end of the period of prior notice V.N. left her work. At around this time her employer's son submitted a lawsuit requesting that V.N. be required to continue to work in her employer's service. Surprisingly, Judge Oded Shaham acquiesced to this request and issued a temporary injunction requiring V.N. to continue to work for her employer pending a further decision.<sup>59</sup>

It is extremely disturbing that the court adopted the position that it is possible to deny a worker's right to terminate his or her employment. The only way to describe the consequence of the court's approach is slavery under a court order. It is no less disturbing that the court saw fit to coerce a worker into continuing to work for her

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<sup>56</sup> Article 3(2) of the Contracts Law (Remedies for Breach of Contract), 5730-1970.

<sup>57</sup> See, for example: HCJ 8111/96 New Histadrut v Israel Air Industry Ltd., *Piskei Din* 58(6) 481.

<sup>58</sup> HCJ 4542/02 Kav LaOved v Israel Government (ruling dated 30 June 2006).

<sup>59</sup> Sundry Civil App. (Jer.) 5551/09 Elkayam v Oz LaNitzrach (decision dated 1 July 2009).

employer ex parte and without hearing her arguments, on the basis of a petition from her employer and on the presentation of a contract whose illegality is beyond doubt. Only some two weeks later, after the worker responded to the application with the assistance of Kav LaOved, was the temporary injunction lifted.

#### ***6. The rights of victims of trafficking for prostitution under labor law***

In recent years the courts, human rights organizations, and bodies active in the struggle against human trafficking have considered the applicability of labor law to the relations between victims and their traffickers and the authority of the labor court to hear suits submitted by victims against traffickers. On the one hand it has been argued that the application of labor law to these relationships offers many advantages, ensuring an additional legal avenue through which the victims of trafficking for the purpose of prostitution can secure compensation for the injustice they have suffered. This also permits victims to approach a legal institution that is considered relatively accessible. On the other hand, it has been argued that the relations between traffickers and their victims are not labor relations but relations of slavery.<sup>60</sup> According to this approach these relations cannot be considered contractual and voluntary, and the application of concepts from the world of labor normalizes and institutionalizes the phenomenon of trafficking and may impair efforts to uproot this scourge. According to this approach, the laws of damages and the laws of the unjust enrichment are sufficient to ensure that trafficking victims can secure compensation for the damages they have sustained, whether through a civil suit proceeding from criminal prosecution or by means of an autonomous civil action. A further argument that has been raised by opponents of the use of labor law for the purpose of compensating the victims of trafficking relates to the impossible demand by the labor courts that the trafficking victim prove how many clients she received and what sum was collected by the trafficker from each one.<sup>61</sup>

Until recently the National Labor Court had not established any binding guideline on this matter. The court ruled as early as 1996 that labor law applies to the relations

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<sup>60</sup> See, for example: Hotline for Migrant Workers and the Clinic for the Struggle against Human Trafficking of the Hebrew University, *Penalization in Human Trafficking Cases and Ancillary Offenses in 2005*, pp. 6-7, published on the HMW website: [http://hotline.org.il/hebrew/pdf/tif\\_verdicts\\_report.pdf](http://hotline.org.il/hebrew/pdf/tif_verdicts_report.pdf).

<sup>61</sup> See: Hotline for Migrant Workers, *No Harm Was Caused to the Deceased*, note 1 above.

between a pimp and a woman who is employed in prostitution of her own so-called free will.<sup>62</sup> However, this ruling and its underlying logic cannot be applied to trafficking victims. Several rulings by the District Labor Courts have established that labor law applies to the relations between trafficking victims and their traffickers.<sup>63</sup> The first binding ruling on the matter from the National Labor Court came in July 2008.<sup>64</sup> The ruling established that labor law applies in a partial manner to trafficking situations. The court ruled that the relations between trafficking victims and their traffickers are not relations governed by a voluntary contract. However, it stipulated that a contract signed under coercion or usurping, or a contract whose making, content, or purpose are unlawful, immoral, or contrary to the public good, is not inherently void, but rather may be voided by the party that associated in the contract as the result of coercion. Accordingly, the court ruled, such relations may be defined as ones based on “an unacceptable contract obtained by coercion;” these relations cannot grant the full basket of rights enjoyed by an employee, but certain of the rights of labor law are to be granted on their basis.<sup>65</sup>

The National Labor Court referred to the Israeli Law of Contracts and explained that even in cases of a coercive contract or an invalid contract, this law permits the court to require one party to the contract to perform its obligations toward the other party that maintained its part in the contract. Accordingly, the court determined that in cases of human trafficking it is appropriate to exercise the discretion granted to the court and to oblige the traffickers to maintain their part of the contract, in order to reduce the scope of their abuse of the victims of human trafficking.<sup>66</sup> Accordingly, the court continued, it is appropriate to impose on those who traffic in women the obligations of employers in accordance with the Wage Protection and the Minimum Wage Law. The court added that the victims of human trafficking for the purpose of prostitution are entitled on the grounds of restitution in the laws of unjust enrichment to demand that their traffickers

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<sup>62</sup> LAB 56/180-3 Ben Ammi – Galinsky, *Piskei Din Avoda* 31 389.

<sup>63</sup> See, for example: LAB (BS\_ 4634/03 Moldovnova – Salsaversky (ruling dated 11 July 2005); LAB (TA) 1528/05 Pizyova – Normatov (ruling dated 26 January 2006); LAB (JER) 2852/05 Anonymous – Anonymous (ruling dated 20 September 2007).

<sup>64</sup> LA 480/05 Ben Ammi – Anonymous (ruling dated 8 July 2008).

<sup>65</sup> Ibid., paras. 19-20 of the ruling.

<sup>66</sup> Ibid., paras. 21-22 of the ruling.

pay them all the money from their “employment”<sup>67</sup> – a sum that is usually higher than the minimum wage. Lastly, the court determines that trafficking victims will be entitled to claim minimum wage and compensation for the withholding of wages or the restitution of the profit secured from their “employment” – whichever is the higher.

### ***7. The image of the trafficking victim in court rulings***

In recent years some of the official authorities have gradually internalized the fact that the victim of trafficking for the purpose of prostitution is not necessarily a woman who came to Israel convinced that she was supposed to be working as a waitress or a cleaner and was astonished to learn that she had been brought here in order to work in prostitution. Neither do these victims necessarily cooperate with the police in prosecuting their traffickers, rehabilitate speedily, and willingly get on a plane that takes them back to their country of origin, grateful to the State of Israel for saving them from their traffickers. In many cases trafficking victims knew that they were coming to Israel to work in prostitution (though they did not know what conditions they would find). They often become addicted to drugs in order to cope with the anguish they face, and their rehabilitation is a lengthy process that is not always successful. Sometimes the victims are not deceived into coming to Israel but consent to come, due to their lack of alternative options and as a response to grave economic hardship. Some of the victims are repeatedly trafficked inside Israel. Even after they are supposedly rescued by the authorities of the State, they sometimes return to their country of origin without an appropriate psychological and financial foundation, with the result that they once again find themselves the victims of trafficking, whether to Israel or to other countries.

Court rulings in recent years reflect a growing recognition of the fact that it is not necessary to prove the absence of consent on the victim’s part in order to identify a case of trafficking for the purpose of prostitution. Nevertheless, the courts seem to find it difficult to internalize fully the implications of the phenomenon of trafficking for the purpose of prostitution with all its complexities. In a ruling issued in March 2009 by the Beer-Sheva District Court, for example, Judge Avnieli adopted a critical approach toward a trafficking victim.<sup>68</sup> Although the Court emphasized the gravity of the offense

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<sup>67</sup> *Ibid.*, para. 32 of the ruling.

<sup>68</sup> CA (BS) 8127/08 State of Israel v Sahanu, ruling dated 8 March 2009.

of trafficking and the need to uproot this scourge, it also criticized the victim for her lack of objection and for her desire to secure earnings. In the ruling the Court described that in accordance with the victim's affidavit, the complainant worked for 305 consecutive days, nine hours a day, for a fee of 300 NIS per client, of which the traffickers took 250 NIS. The Court added that "indeed, the complainant's affidavit does not raise much sympathy and ostensibly shows that the complainant did not object to working in the manner required of her, since her primary interest was focused on the financial remuneration promised to her, and which she claims she was not paid in full." It is not difficult to imagine why the court showed such a the lack of sympathy on the to the victim, since she failed to meet its expectations: She did not present the façade of an innocent victim who refused to work in prostitution despite the hardship she faced, sought to escape from her traffickers and secure their prosecution, and longed to return penniless to her own country, exposed to the danger of repeated trafficking.

Another unfortunate comment by the Court reflects a lack of understanding of the dynamics of the relationship between trafficking victims and their traffickers. The comment appears in a decision of the Tel Aviv – Jaffa District Court granted by Judge Ganot in response to a motion by the State to detain defendants of human trafficking and associated offenses pending completion of proceedings.<sup>69</sup> In a decision issued in October 2008 the Court decided to reject the state's motion to detain the defendants pending completion of proceedings, after it determined that no prima facie evidence had been submitted suggesting the presence of a human trafficking offense. The court determined that "no evidence has been brought relating to the 'purchase' of any of the complainants; no evidence has been brought indicating that any of the respondents or other persons examined in any manner the suitability of the complainants to engage in prostitution; no evidence has been brought indicating that any payment was made to any person in return for the expenses incurred in bringing them to Israel; none of the complainants was forced to engage in sexual relations without receiving remuneration or in return for the expenses of bringing her to Israel; and no evidence has been brought indicating that can imply the presence of any supervision or control of the complainants' movements and/or the scope of their work."<sup>70</sup>

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<sup>69</sup> SA (TA) 92066/08 State of Israel v Ben Issak, decision dated 16 October 2008.

<sup>70</sup> *Ibid.*, para. 7 of the decision.

This decision constitutes an alarming sign of a potential retreat in the application of explicit judicial principles established by the Supreme Court in defining the offense of human trafficking for the purpose of prostitution. Several years ago the Supreme Court established that the fact that trafficking victims are aware that they are liable to be trafficked, or the fact that they give their consent thereto, does not negate the claim that a trafficking offense was committed and does not diminish from the severity of the offense.<sup>71</sup> The decision of the district court is also contrary to previous case-law in which the Supreme Court found that there is no need to prove complete control over the victims in order for acts to be considered to meet the definition of trafficking.<sup>72</sup> The attempt by the district court to identify a “transaction” or “purchase” of the complainants, and its determination that in the absence of such evidence there is no foundation for indictment for the offense of human trafficking, is also inconsistent with the well-established case-law of the Supreme Court. Recognizing the essence of human trafficking, the Supreme Court has determined that in order to substantiate the presence of such an offense, it is not necessary to locate a “transaction” in the usual property sense of the term. Neither do the rulings of the Supreme Court require proof of the presence of “remuneration” in the usual sense of the word; it is sufficient to show the presence of indirect or limited remuneration in order for the acts to be considered to constitute the offense of trafficking.<sup>73</sup> Furthermore, in accordance with the Supreme Court case-law it would have been sufficient for the District Court to identify circumstances substantiating the presence of “remuneration” in order to conclude that

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<sup>71</sup> Sundry Criminal App. 9190/02 Yaish v State of Israel, *Piskei Din* 57(1) 145, 148.

<sup>72</sup> *Ibid.*

<sup>73</sup> CA 1609/03 State of Israel v Borisov, *Piskei Din* 58(1) 55, 64. The rulings of the Supreme Court have reiterated the principle that the foundation of “remuneration” required in order to convict a defendant of a trafficking offense may be manifested in numerous ways, and that it may not be necessary to search for a property transaction in the usual sense of the term during the committing of the said trafficking. See, for example: Sundry Criminal App. 144903 Fishman v State of Israel (unpublished, decision dated 3 March 2003); Sundry Criminal App. Hannukov v State of Israel (unpublished, decision dated 27 October 2000); CA 11196/02 Frudental v State of Israel, *Piskei Din* 57(6) 40, 44-5. It should be added that the execution of a “transaction” of any kind is not required in order to define an act as a trafficking offense in accordance with the relevant principles of international law, in the light of which the offense of trafficking in Israeli law is to be interpreted: Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the UN Convention against Transnational Organized Crime, UN Doc. A/45/49, Article 3.

evidence was present suggesting that the offense of human trafficking had been committed.<sup>74</sup>

A no less disturbing aspect was the manner in which the court described the relations between the traffickers and their victims in this case in terms of normative labor relations: “The testimonies show that both the respondents and the complainants regarded the complainants’ work in prostitution as an ordinary and normative place of work for all purposes; accordingly, it is only natural that their ostensible employers – Respondents 1 and 2 – were angry at them when they could not or did not wish to work, whether because they were having their period or because they did not wish to work for their own reasons.”<sup>75</sup> To disconnect the incidents from the context in which they occurred – the relations between a woman engaged in prostitution and her pimp – allows the court to normalize the balance of power and to translate relations of control into routine employer-employee relations. It is doubtful, however, whether the court’s description is accurate, and it is doubtful whether it is possible to interpret the traffickers’ “anger” at the complainants’ inability to work in prostitution due to their period or “for their own reasons” without reference to the context of the power relationship within which this occurred: the context of women present unlawfully in Israel, who came to the country as the result of grave economic hardship, and who are absolutely dependent on those who pimp them.<sup>76</sup>

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<sup>74</sup> CA 1609/03, note 73 above, pp. 64-5.

<sup>75</sup> SA (TA) 92066/08, note 69 above, para. 7 of the decision.

<sup>76</sup> For a further critique of the decision, inter alia by then-MK Zahava Gallon, see the article by Tomer Zarhin, “Judge: Natural that a Pimp Will be Angry at Prostitutes Who Do Not Wish to Work during Their Period,” Ha’aretz, 22 October 2009.

## **Conclusion**

As was the case with our report for 2007, the current report for 2008 and the first half of 2009 paints an alarming picture regarding the response of the state authorities to the phenomenon of trafficking. The authorities seem to find it difficult to adapt to a reality in which the enormous disparities in power between the employers and the migrant workers create conditions of quasi-slavery in which migrants are denied their liberty and find themselves under the complete control of their employers. Welcome progress has been seen in terms of an understanding of the condition and needs of women trafficked for the purpose of prostitution, though this is still not sufficient. In the case of offenses of slavery and forced labor, however, the authorities show a complete lack of understanding.

Though several statutes and regulations have been adopted with the goal of addressing this reality, all the enforcement authorities responsible for expanding on the legal provisions and examining relevant cases have shown apathy and a complete failure to appreciate the reality facing the victims of slavery and forced labor. The behavior of the authorities raises concern that despite the legislation in the field, they still do not perceive exploitation of migrant workers that borders on slavery or forced labor as one of the gravest offenses in the penal code. Rather they see these phenomena as part of the ordinary field of labor relations and labor law relating to the private field of interpersonal relations, or – at best – as an issue that belongs on a low rung in the ladder of criminal law alongside offenses such as fraud, threats, or usurping.

The enactment of the Prohibition of Human Trafficking Law in 2006 was intended to sharpen the distinction between the grave offense of human trafficking and other less serious criminal offenses, and to apply normative significance to this distinction. The inability of the enforcement authorities to identify grave cases that include the elements of the trafficking offense erodes the meaning of the comprehensive legislation formalizing the offense of human trafficking for purposes other than prostitution, as well as the offenses of slavery and forced labor. Additional attempts to create mechanisms for implementing the law in practice – such as granting status and establishing a shelter for trafficking and slavery victims – have failed to produce the

desired change. The main obstacle to change seems to be the lack of awareness and training among all those involved in these issues on behalf of the state authorities – police officers investigating these offenses, prosecutors making decisions on the basis of the investigative material collected by the police, and Ministry of the Interior officials. Only when those who fill these functions internalize the normative change that has occurred regarding human trafficking victims will it be possible to apply the legislative provisions and procedures relating to these offenses.