
Revisiting CEDAW's Recommendations:

Has anything changed for migrant workers in
Israel in the last two years?

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Introduction

Two years ago, in early 2011, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) convened to consider Israel's report on its compliance with the Convention on the Elimination of All Forms of Discrimination against Women¹. At that time, Israel marked 20 years of membership in the Convention. However, previous to 2011, issues pertaining to migrant women have not been considered by the Committee, and were largely ignored in Israel's periodic reports.

The Committee's concluding observations for Israel during its 48th session included, for the first time, specific recommendations relating to women migrant workers. This was largely the result of Kav LaOved's advocacy; Kav LaOved staff presented before the Committee, describing in detail the myriad forms of discrimination migrant women face in the Israeli labour market and the multi-layered abuse and exploitation that they suffer at the hands of employers, placement agencies and the State. Having considered Israel's report and the information provided by Kav LaOved, the Committee concluded as follows:

The Committee expresses its particular concern at the disadvantaged situation of female migrant workers in the country. In this respect, the Committee is concerned at the difficult working conditions of female migrant workers, who are employed primarily as in-home caregivers, and that they work on a round-the-clock basis with mandatory live-in arrangements. The Committee also notes with concern the 2009 Supreme Court decision in the matter of Yolanda Gloten vs. the National Labour Court, which held that migrant home caregivers are excluded from the Hours of Work and Rest Law, which provides basic labour law protections to workers in the State party generally. Furthermore, the Committee is seriously concerned at the State party's existing policy that migrant workers who give birth must leave the State party with their babies within three months of giving birth or send their babies

out of the State party's borders so as to safeguard their work permits. The Committee is equally concerned that marriage and intimate relationships between migrant workers under an existing State party policy constitute grounds to revoke the couple's work permits.

43. The Committee urges the State party to:

(a) Extend and enforce all labour law protections, including health and safety standards, for all female migrant workers, including migrant home-care workers, ensure their access to legal remedies, and allow them to negotiate freely with their employer whether to reside in the employer's household or not; and (b) Revoke its policies with regard to cancellation of work permits for migrant workers in cases of childbirth, marriage and intimate relationships, in accordance with the State party's obligations under the Convention and the Committee's general recommendation No. 26 on women migrant workers.

The purpose of this report is to examine if and to what extent these recommendations have taken effect in the two years since the report, and how, if at all, the situation of migrant women improved for the better as a result. As we will see, while some progress was achieved in certain areas, much of the Committee's observations did not inform or impact policy choices made by key state actors with respect to migrant women. In light of this, Kav LaOved calls the Israeli government to implement in full the Committee's recommendations, and to afford migrant women equal rights in all spheres related to their residency and employment in Israel.

Migrant Women in Israel – A Brief Overview

Israel is a destination country for migrant workers, mostly from South and South-East Asia (Philippines, Thailand, China, Nepal, Sri Lanka, and India), who are employed in Israel primarily in the construction, agriculture, and home caregiving industries. Israel's reliance on the labour of non-citizen workers is not a new phenomenon.

Since 1967, a significant portion of the Israeli labour market has been based on Palestinian workers living in the occupied territories. In the early 1990s, after the First Intifada, these workers were replaced by migrant workers coming to Israel under temporary worker programs. Their numbers rose again with the beginning of the Second Intifada, which led to drastic reductions in quotas of Palestinian workers.

Women represent the overwhelming majority of migrant workers coming to Israel, comprising over 80% of workers in the caregiving sector, the largest sector for the employment of migrant workers in Israel.² A majority of migrant women are employed as caregivers for disabled and elderly Israelis who meet disability criteria set by the Israeli National Insurance Institute. In the past, in-home care services were provided to senior citizens who were only partially dependent on others and who were of a limited need in care, while those who were heavily dependent on constant care were maintained in government-subsidized nursing facilities or were tended to by Israeli caregivers and nursing staff who earned high hourly wages. As Israeli health care services became increasingly privatized, the demand for round-the-clock in-home care for all elderly and disabled citizens in all types of conditions expanded. The sharp wage decrease for in-home caregivers reinforced this trend. Today, employing a single live-in migrant caregiver providing round-the-clock care is considered to be a primary solution for senior and disabled citizens of a moderate or low income, as the cost of institutional care far surpasses the cost of employing a live-in migrant caregiver.

In addition, some migrant women are employed in agriculture – a sector that has become dominated by migrants since the early 1990s. Working conditions in agriculture are difficult and often prone to exploitation, and migrant women working in agriculture experience unique difficulties, stemming from the fact they often work alone in an all-men work groups.

Migrant Women's Working Conditions

In its concluding observations, the Committee expressed its concern at the difficult working conditions of women migrant workers, who are employed primarily as in-home caregivers, and work on a round-the-clock basis with mandatory live-in arrangements. It recommended that Israel "enforce all labour law protections, including health and safety standards, for all female migrant workers, including migrant home-care workers, ensure their access to legal remedies, and allow them to negotiate freely with their employer whether to reside in the employer's household or not."

Unfortunately, the reality presented before the Committee two years ago, which formed the basis for these recommendations, has not changed for the better, and in some respects was made worse. The harsh and exploitative working conditions experienced by migrant women, both in the caregiving and in the agricultural sector, can be attributed to several main factors:

Round-the-Clock Employment and Mandated Live-In Arrangements in the caregiving sector

The caregiving sector in Israel is based on a system of live-in 24-hour employment. In fact, a condition in the employer's permit to employ a migrant worker requires that the worker will be employed "on a 24-hour basis" and that she will reside in the house of the employer. Violating these conditions may result in the revocation of the employer's permit to employ a migrant worker and subsequently lead to the revocation of the worker's visa. It should be noted that the mandatory live-in policy is at odds with General Recommendation No. 26 on women migrant workers, stating that States parties should lift visa schemes that prohibit women migrant workers from securing independent housing (paragraph 26(a)). In addition, the ILO Domestic Workers Convention (C189), adopted in June 2011, stipulates that

member states must take measures "to ensure that domestic workers are free to reach agreement with their employer or potential employer on whether to reside in the household" (article 9(a)).

This system of 24-hour employment is in itself a grave violation of international labour law as well as Israel's own labour law, which allows a maximum 8-hour workday.³ Indeed, round-the-clock work constitutes a serious step backward for modern labour law, and is in direct contrast to the main gains of workers in the 20th century, which include limits on working hours and recognition in the humanity of workers and their need of leisure time and adequate work-rest balance.

Unsurprisingly, providing care around the clock, particularly to extremely dependant patients, often creates an inhuman workload. This also stems from the fact that while migrant caregivers are supposed to only provide care for their elderly or disabled employer, in actuality they are perceived, and are made to work, as servants for the entire family – performing domestic tasks such as cleaning and cooking for all family members. This results in a workload that is often unbearable. Despite the Committee's recommendations, round the clock employment and mandated live-in arrangements for caregivers continue to be state policy to date.

Widespread Violations of Labour Laws

Employment in the caregiving sector and in the agricultural sector is characterized by a near complete disregard for the minimum standards established by Israeli labour laws. Migrant women working in the caregiving sector are often paid well below the minimum wage, not compensated for work during weekly rest days and holidays, and not paid any social benefits, such as convalescence pay or redundancy payments.

The agricultural sector is just as prone to severe violations of workers' rights. A common complaint among agricultural migrant

workers regards the length of their workday, which can span 10–19 hours. Additionally, workers are not getting enough rest during the day. Most workers report of two short breaks during long workdays (usually 15 minutes in the morning, and half an hour in the afternoon.) A seven day work week has become standard for migrant workers in the agricultural sector, with no rest day. Many workers report receiving one day off monthly. It has also become standard in the agricultural sector for employers to deny migrant workers their annual vacation as prescribed by law. In the vast majority of cases workers receive only 4 annual vacation days, usually coinciding with Thai national holidays.

Frequent reports to Kav LaOved reveal a complete disregard of labor laws by employers in agriculture, mainly the Minimum Wage Law and the Work and Rest Hours Law which mandates overtime pay. The prevalent salary today for migrant workers in agriculture is NIS 130 per 8 hour day (NIS 16.25 an hour), with NIS 20 per hour for overtime. It should be noted that minimum wage is NIS 23.12, with NIS 28.9 or 34.68 per hour for overtime (depending on the number of overtime hours). The majority of workers are not compensated for work during weekly rest time, in contrast with the law. The payment of other social benefits (such as convalescence pay and redundancy payments) is extremely rare. More, employers deferring or refusing to pay wages is one of the most common complaints among Thai migrant workers. The practice of deferring wages is common when farmers suffer financial losses.

A very common practice by employers is to pay salaries via the employment agencies instead of transferring it directly to the workers. These companies generally send the salary directly to banks in Thailand, often late, and usually after having deducting hefty commissions. In exchange for using the agencies as mediators, farmers usually get perks, such as help paying the workers' medical coverage. This practice is illegal, as the Israeli Wage Protection Law explicitly states that salaries must be paid directly to workers. Another common practice by employers is deduction of the license fee (which employers are

supposed to pay to the Ministry of Interior) from the workers' salary. Finally, while it is the employer's legal obligation to afford workers with appropriate housing, many employers fail to abide by this obligation. Some of the most common complaints among workers are the dilapidated and temporary state of the structures, overcrowding and a lack of hot water.

In spite of the Committee's recommendations that Israel extend and enforce all labour law protections on women migrant workers, State enforcement mechanisms continue to be highly inefficient. Investigations are poorly conducted, and sanctions are rarely set on employers or on placement agencies. If sanctions are set, they are usually too minor to deter offenders. Confiscation of migrant worker employment permits from abusive and delinquent employers, or placement permits from placement agencies, is extremely rare.

Lacking and Inefficient Enforcement

In April 2013, Kav LaOved filed several Freedom of Information Act requests with the Population and Immigration Authority (PIBA) regarding enforcement activities against employers and manpower companies that were undertaken by PIBA. PIBA's response revealed worrying data: despite numerous complaints sent by Kav LaOved, in 2011–2012 manpower companies' licenses in the caregiving sector were cancelled on three occasions only; in the agricultural sector, only one license was cancelled. It was revealed further that no manpower company received an order to cease its operation in 2011–2012; only one investigation was lodged in the caregiving sector against a manpower company following a cancellation of a license, and none were opened in the agricultural sector. Finally, there was no case where bail funds posted by manpower company in accordance with PIBA's regulations were actually confiscated as a result of manpower companies' violations of the conditions of their permit. Kav LaOved's request for information

regarding enforcement activities with respect to employers was not answered to date, in breach of the Freedom

Dirty, Difficult and Dangerous

The work migrants undertake in countries such as Israel is generally low-status, poorly paid, physically difficult and in many cases hazardous. The working conditions in sectors dominated by migrants, such as the caregiving sector and the agricultural sector, often result in health deterioration, disease and Injuries.

Despite popular imagery of care work as "light" work performed inside the house, working as a caregiver is quite often hard, hazardous and conducive to physical and mental injuries. Care work is associated with increased risk to develop chronic illnesses, such as diabetes, cancer and heart diseases. Additionally, caregivers may develop various mental conditions associated with their circumstances of employment, such as mental fatigue, a feeling of depersonalization, depression and anxiety. In extreme cases, care workers have been admitted to mental institutions or committed suicide. Original research conducted in Israel on the mental state of care workers from the Philippines discovered particularly high suicidal and depressive syndromes among them.⁴

Israeli enforcement authorities completely overlook the inherent dangers associated with care work, as well as the need for health and safety standards for this industry. Recognizing this deficit, the Committee emphasized in its recommendations the need for Israel to extend and enforce all labour law protections, including health and safety standards, for caregivers. Despite these recommendations, health and safety standards for the caregiving sector have not been written.

The agriculture sector suffers from many safety hazards as well, including hazardous chemicals (pesticides,) operating heavy machinery, working high above ground, etc. Workers often complain

of safety hazards which negatively impact their health. When it comes to work hazards in the agricultural sector, the most common complaints involve spraying chemicals without proper protective gear (as required by law) and extended exposure to hazardous materials. Ailments likely associated with this spraying are often reported among migrant agriculture workers, including rash, nose bleeds, headaches and difficulty breathing. Some of the workers complained that their employers ignored these ailments and refused workers' requests to be excused from hazardous activities. In addition, the ability of workers to seek medical attention is very limited due to language barriers as well as the dependency on the employer to get a referral. Finally, many employers seek to "get rid" of sick workers by forcefully sending them back to Thailand – a practice which prevents many workers from complaining or seeking medical attention.

Exclusion of migrant caregivers from the Protection of the Work and Rest Hours Law

In 2009, workers in the caregiving sector were officially and categorically excluded from the applicability of the Work and Rest Hour Law by virtue of Israel's Supreme Court decision in HCJ 1678/07, Yolanda Gluten v. The National Labor Court (judgment of 29.11.2009).⁵ In this judgment, the Israeli Supreme Court ruled that migrant caregivers are not protected under the Work and Rest Hours Law and are therefore not entitled to receive overtime pay. The Work and Rest Hours Law governs such fundamental issues as limits on the length of the workday (8 hours), breaks during the workday, mandatory weekly rest days and pay for work during holidays. Excluding migrant caregivers from this law means that they do not enjoy any of these protections, and can therefore be legally employed 24 hours a day, with no breaks, with no weekly rest, and with no payment for hours worked in excess of 8 hours, on weekends or on holidays. The exclusion is at odds with General Recommendation No. 26 on women migrant workers,

stating specifically that State parties "should ensure that occupations dominated by women migrant workers, such as domestic work and some forms of entertainment, are protected by labour laws, including wage and hour regulations, health and safety codes and holiday and vacation leave regulations" (Paragraph 26(b)).

In its concluding observations, the Committee noted "with concern" the Gluten Judgment, and stressed Israel's obligation to extend and enforce all labour law protections for all women migrant workers, including migrant caregivers. However, in March 2013, the court reinforced the Gluten Judgment. In an additional review of the judgment conducted before an extended panel of nine justices, the court found, by a majority of six justices with three justices dissenting, that the work of caregivers is not regulated under the Work and Rest Hours Law.

The Gluten judgment aggressively undermines the foundations of protective labour legislation in Israel and its status as cogent law which cannot be conditioned upon. It reflects positions that were never expressed before by the Israeli Supreme Court in relation to the status of labour laws, and the possibility for workers and employers to deviate from the obligatory framework of the protective labour laws. It categorically excludes an entire group of disadvantaged, mostly women, workers from the applicability of a protective labour law. In so doing, the judgment not only significantly alters Israeli labour law as it was developed and interpreted over the years, but also opens the doors to a full-scale segregation of the Israeli labour market on the basis of gender and national origin, and to the application of a discriminatory legal regime on the work of migrant women. Today, as a result of the judgment, Israeli lower labour courts are compelled to reject lawsuits by migrant caregivers for overtime pay, even when workers prove, or it is otherwise undisputed, that they worked in excess of 40 hours a week.

From Justice Edna Arbel's minority dissenting opinion in Gluten: "It is not possible to ignore the fact that this judgment will impact primarily the lives and rights of foreign workers... This court, to which

foreign workers' access is very low, is supposed to use as their mouth and shield against the tyranny of the government or the public. It is difficult to accept that it will be this court to turn its back on them.'The protection of the rights of foreign workers is obligated from Israel's values as a Jewish and democratic State, and it is essential for the preservation of the moral character of the State'... One of the basic moral obligations towards the migrant workers, enshrined in many international conventions, is not to discriminate between them and the residents of Israel... a different result from the one I have reached means discriminating between Israeli workers who are entitled to the protection of the Work and Rest Hours Law, entitled to just pay for the many hours they invest in their work, and are entitled to a weekly rest day and hours of leisure. A result which, in my view, we must not accept. 'The rights of the weak person are by nature not carried over waves of popularity or sympathy, but grounded in a solid and unyielding moral conviction'..." (paragraphs 36-38 to Justice Edna Arbel's minority opinion).

Exclusion from the Protection of the Ombudsman on the Rights of Migrant Workers

In a legislative amendment to Israel's Foreign Workers Law (of 24.3.2010), the Knesset (Israeli parliament) voted in favour of excluding migrant caregivers from most of the authorities of the Ombudsman on the rights of migrant workers. It is within the Ombudsman's authority, inter alia, to handle complaints from migrant workers about their working conditions; to file civil lawsuits against offending employers and to intervene in pending cases. The meaning of this legislative amendment is that the Ombudsman will be authorized to handle complaints by migrant workers employed in the construction, agriculture and industry sectors only.

The amendment is blatantly discriminatory against women. Migrant workers in construction, agriculture and industry – the sectors

where the ombudsman will be free to operate – are overwhelmingly men; Migrant workers in the caregiving sector, on the other hand, are overwhelmingly women. Excluding caregivers from the Ombudsman's protection also serves to reinforce biased notions that women performing care work are not "real" workers entitled to equal treatment and protection. It is at odds with General Recommendation no. 26, stating that "constitutional and civil law and labour codes should provide to women migrant workers the same rights and protection that are extended to all workers in the country" (Paragraph 26(b)) and that States parties should "repeal or amend laws that prevent women migrant workers from using the courts and other systems of redress" (Paragraph 26(c)).

In a response letter to Israeli NGOs who protested the amendment, the Ministry of Industry Trade and Labour (now Ministry of the Economy) cited the reasons for this exclusion: "the decision not to apply the authorities of the Ombudsman on the rights of migrant domestic caregivers, except for cases where there is suspicion for trafficking in persons, slavery or forced labour or sexual harassment, stems from the fact that in the caregiving sector there are two weak populations the government should defend: the first, the population of the migrant workers employed in this sector; the second – the population of permit holders – the employers." This statement reflects a dangerous sentiment that has unfortunately become well accepted with Israeli policy makers, according to which assisting elderly and disabled care patients means infringing upon the rights of their workers and denying them access to justice in cases where their rights are violated. Excluding a particularly vulnerable group of workers from the protection of a central institution in charge of enforcing their rights reflects an entirely misguided understanding of the State's role in enforcing the rights of migrant workers, and thwarts the goals this institution was intended to accomplish.

Despite the Committee's recommendation that Israel ensure migrant

women's "access to legal remedies", the exclusion of migrant caregivers from most of the Ombudsman's authorities persists. A petition to the High Court of Justice challenging the constitutionality of the exclusion, filed by a migrant worker from Sri Lanka, together with Kav LaOved and the Association for Civil Rights in Israel (HCJ 4007/11 Liangi vs. The Knesset), was rejected. Justice Rubinstein, delivering the opinion of the court, adopted in full the reasoning of the Ministry of Industry, Trade and Labor: "indeed, the group of foreign workers is a weak group which is prone to abuse and exploitation... but the need to protect the group of the foreign workers does not mean at all hurting another weak group, and it does not mean that protecting rights will be carried out while shutting our eyes to other public and human interests." (Judgment of 6/10/2011, paragraph 12).

Limiting Workers' Access to Redress Upon Termination of Employment

When a migrant worker is fired, or quits, or if her employer passes away, and she has completed the allowed duration of her work visa (63 months; a care-giver may stay longer if she continue caring for the same employer), she will generally need time which sufficient to claim the rights she is due after years of work in Israel.

The Interior Ministry's policy with respect to this issue used to be that migrant workers lawfully present in Israel who stopped working and are not entitled to change employers anymore, will be allowed to remain in Israel an extra "grace period" of 30 days only. During this time they will not be detained or deported so they can make arrangements prior to their final departure, after which they will be indefinitely barred from returning to the country.

Kav LaOved advocated for many years to extend the 30 day "grace period", which has proven to be insufficient for workers to obtain all that is due to them from employers and agencies, certainly if a lawsuit in the labour court was needed. Kav LaOved's experience showed that many employers or employers' families capitalize on this inherent

disadvantage of workers. They simply refuse to pay what the workers are owed knowing that workers will soon become targets of detention and deportation, and have no real chance to access the labour courts.

In 2011, Kav LaOved's advocacy efforts finally resulted in a positive change: in May of that year the head of PIBA announced that the grace period for migrant workers who finished working in Israel will be extended to 60 days. Unfortunately, this decision, while published in some announcements by PIBA, was not updated in the relevant PIBA regulations, despite many requests by Kav LaOved. As a result, in several cases migrant workers were detained within the 60 days grace period. Kav LaOved petitioned the administrative court in Jerusalem on this matter, demanding PIBA will update all relevant regulations without further delay. The Petition is still pending.

Discrimination in Respect to Maternity or Marriage

For many years, Israel employed a particularly draconian policy with respect to migrant women maternity rights. According to this policy, giving birth in Israel resulted in the immediate revocation of a migrant's work authorization, exposing her to detention and deportation. Under this policy, a woman who gave birth could only choose between leaving Israel with her baby within three months of giving birth or sending her baby out of the country, usually to be cared for by a relative in her home country, as a condition for her work permit to be renewed.

It is difficult to exaggerate the severity of this policy, which was grounded in an instrumental attitude towards migrant workers and resulted in their extreme objectification. The de facto outcome of this policy was the penalization of migrant women for childbirth, demonstrating an utter disregard for – if not a full blown attack on – the well being and the physical and emotional health of women and their children. It represented an illegitimate intervention in women's reproductive choices, and coerced many to resort to abortions so as to maintain their documented status.

This policy was also at odds with Israeli labour law, prohibiting workers' dismissal on the grounds of pregnancy and maternity; it further contradicted General Recommendation No. 26 on women migrant workers, stating that State parties should lift bans that prohibit women migrant workers from becoming pregnant (paragraph 26(a)).

In addition, migrant women were not (and are still not) allowed to marry or even have romantic partners. This too is grounds for revoking one's work authorization, and under most circumstances will lead to detention and deportation. These policies are grounded in Israel's desire to ensure that migrant workers stay in the country temporarily, and that they are kept, in the language of the Interior Ministry, from "taking root" and will return to their countries upon completion of their work in Israel.

In its concluding recommendations, the Committee stated it is "seriously concerned" with these policies and urged Israel to "revoke its policies with regard to cancellation of work permits for migrant workers in cases of childbirth, marriage and intimate relationships, in accordance with the State party's obligations under the Convention and the Committee's general recommendation No. 26 on women migrant workers."

In April 2011, the Israeli Supreme Court handed down a long-awaited decision in a petition Kav LaOved filed in 2005, together with other civil society organizations, challenging the constitutionality of the "procedure for the handling of a pregnant migrant worker and a migrant worker who gave birth in Israel". Citing the CEDAW Committee recommendations, the Supreme Court accepted the petition, and declared the procedure to be unconstitutional, due to its disproportional violation of migrant women's basic right to family and parenthood. Justice Procaccia, who delivered the opinion of the court, reasoned as follows:

The procedure for the handling of a pregnant migrant worker violates the migrant worker's constitutional right to

parenthood, afforded to her according to Israel's legal system. The procedure, taken simply, while not imposing on the worker to separate from her child after his birth, still forces upon her a choice between two evils: one, to leave Israel with her baby after the birth, and to miss an additional period of work in Israel allowed in her work permit, and by so to suffer severe economic hardship; and the second – to return to Israel to continue working without the child, leaving him to be cared for by others in a country overseas... It should be mentioned that the worker's arrival to Israel involves a significant financial investment, and her natural financial expectations are that this investment will be returned during the period of work in Israel, and that additionally, she will be able to secure other financial gains and support her family across the sea. Forcing a woman to choose between continued employment while realizing her legitimate financial expectations, and realizing her right to motherhood, cannot be reconciled with the normative and legal-constitutional perceptions of Israeli society. Constructing the alternatives in such a way is, first and foremost, a violation of the migrant worker's right to parenthood.

As a result of the judgment, the procedure for the handling of a pregnant migrant worker and a migrant worker who gave birth in Israel was revised. It now permits women who gave birth in Israel, and are working here legally under 63 months, to either stay in Israel with their children until they complete 63 months of work, or leave with their children and return to Israel, alone, within one year. While this is a positive development, the new procedure still fails to afford appropriate protection to migrant women's reproductive freedom and to their right to parenthood. Firstly, most of the women concerned are employed as caregivers, which as mentioned, in Israel means working around-the-clock on a (mandatory) live in basis. Women are faced, then, not only with the obstacle of securing their employer's consent to allow them to live with their child at his or her home, but also with having to combine the constant, round-the-clock care the employer requires, with the constant, round-the-clock care an infant needs. These obstacles have

led to a reality where very few women actually stay in Israel with their babies and complete their allowed duration of employment, as the revised procedure allows. Many still "choose" to separate from their children, so they may continue working in Israel.

Another serious obstacle faced by migrant women is the fact the new procedure applies to workers who are in Israel under 63 months, whereas in the caregiving sector, women may stay and work in Israel legally for substantially longer periods, as long as they continue working for the same employer. If a woman gives birth after she completed 63 months of stay in Israel, the procedure does not apply to her.

Unfortunately, contrary to the policy on pregnancy, the policy on marriage and relationships between migrants remains unaltered. Every year, Israel deports migrant workers who hold valid permits and reside here legally, for the sole reason that they dared to marry or develop intimate relationships with other migrant workers. This policy has encouraged the deplorable practice of employers and employment agencies "informing" on migrant workers who they have been employing under illegal conditions, and who are attempting to claim their rights, in order to ensure that they are deported before they are able to do so.

Trafficking in Persons, Slavery and Forced Labor

The experience amassed by Kav LaOved has shown that working conditions for migrant women, as well as migrant men, may deteriorate to situations of slavery or forced labour. In addition, the methods for recruiting and employing migrant workers in Israel enhance migrants' vulnerability to phenomena of trafficking, debt bondage and forced labour. These include:

Payment of high brokerage fees resulting in debt bondage

Israel does not engage in bilateral cooperation with migrant caregivers' countries of origin on such issues as workers' recruitment for work in Israel. As a result, migrant caregivers pay hefty brokerage fees to brokers who facilitate their arrival to Israel. The Committee on the Elimination of All Forms of Discrimination against Women recognized, in General Recommendation No. 26 on women migrant workers, the need for bilateral and regional agreements between States parties who are sending or receiving and transit countries, protecting the rights of women migrant workers (paragraph 27).

According to a recent survey conducted by Kav LaOved in 2013, encompassing 835 participants who work as caregivers, the average amount paid by migrant workers in this sector stands at 8,400 USD. These sums are often collected in the country of origin by local agencies, and are shared with their corresponding Israeli agents. Workers typically raise this money by loans taken from multiple sources – local grey market lenders who charge high interest rates, banks, family members and other relatives, neighbours and friends. Many workers mortgage their or their family's property to raise the money. Our experience has taught us that on average, a migrant caregiver requires about a year to two years of uninterrupted employment to return a loan in full.

While the illegal charging of brokerage fees from migrant workers is not a human trafficking offence in itself, it is considered an enabler of the phenomenon. High brokerage fees lead to debt bondage and force workers to accept exploitation. Before they at least finish paying back their loans, workers have little or no motivation to report any infringements of their rights or to escape even the most exploitive working conditions.

A positive development in this regard is the signing of a bilateral agreement on recruitment of workers in agriculture between Israel and Thailand (TIC – Thailand-Israel Cooperation) and the signing of bilateral agreements for the construction sector with Moldova and Bulgaria. These agreements are based on a transparent form of recruitment

of workers facilitated by the relevant government agencies of both countries, and they strictly limit the allowed sums to be charged from workers in connection with their arrival to Israel. However, in the caregiving sector – the largest sector employing migrant workers in Israel – there are no such agreements to date.

Inability to change or otherwise choose one's employer

In the past, migrant workers with a legal work visa in Israel suffer undue restrictions on their right to choose their employer, which in many cases lead to situations of forced labour and slavery. Under this system, a migrant worker's permit to stay in Israel was conditioned on the worker's active employment by the person registered as the worker's legal employer. Work termination due to any reason (e.g. illegal and inhumane exploitation, employer bankruptcy or death, dismissing a worker who complained of rights violations, dismissal due to a worker's illness) resulted in the loss of work and stay visas. In 2006, the Israeli Supreme Court found that binding workers to their employers in such a fashion is "a form of modern slavery" and that it must be revoked. It described this arrangement as "infringing on the inherent right of liberty, infringing on the human's freedom to act. It nullifies the autonomy of free will. It tramples on the basic rights to be released from a work contract. It deprives basic financial negotiating power from the already weak side of the employment relationship. In so doing, the binding arrangement to an employer causes harm to the dignity and freedom of humans in their most basic meaning."

However, instead of uprooting a system considered by the country's highest court as constituting, "a form of modern slavery", the Knesset decided to reinforce and strengthen the binding of migrant workers in the caregiving sector to employers.

As part of an amendment to the Entry into Israel Law that passed in 2011, the Minister of Interior can limit the geographical area in which migrant caregivers can work, and the number of transfers between employers that they can have and also limit their work to specific sub-

sectors within the caregiving sector. This amendment, which is not yet active as its implementation is to be executed through future regulations, clearly undermines the Supreme Court's ruling, and will allow severe exploitation of workers who will have to accept illegal working conditions or risk detention and deportation.

Sexual Violence

Sexual assault of women migrant workers by their employers is a widespread phenomenon in Israel, amounting in some cases to trafficking and enslavement. It is common both in the women-dominated caregiving sector, and in the agricultural sector. While complaints about violence by employers or family members, including sexual assault, are prevalent, they are rarely officially reported. In the caregiving sector, several factors make for a convenient environment for this type of abuse: the worker's dependence upon the employer for wages and lawful immigration status, her endless availability for work, the intimate situations of care, often involving washing and clothing the employer, and in-home employment that fosters social isolation.

Caregivers are vulnerable to sexual abuse not only by the employer, but in many cases by family members such as sons and grandchildren. In the agricultural sector, women are too very vulnerable to sexual abuse. Often working alone in a men-dominated sector, migrant women in agriculture, most of them Thai, report that having a male co-worker as a "boyfriend" provides a degree of protection that significantly decreases the chance of being sexually harassed and threatened by other co-workers. A prevalent phenomenon identified by Kav LaOved is how Thai women enter this type of relationship as a means for survival. Yet once in the relationship, women may find themselves abused or harassed by their "boyfriends," leading to further disempowerment and vulnerability.

Despite the gravity of the phenomenon, investigations of

perpetrators are poorly conducted, given low priority, and lack reliable translators – thus barring victims who do not speak English from complaining all together.

Discrimination in Respect to Healthcare and Social Security

Migrant workers in Israel are excluded from the application of the National Medical Insurance Law. Instead, the Israeli Law of Foreign Workers requires employers of foreign workers to provide them with private medical insurance at the employer's expense. The health insurance provided to migrant workers in accordance with the Foreign Workers Law is far inferior to the national medical insurance provided to Israeli citizens and residents. For example, such insurance does not cover pre-existing conditions and expires completely if a worker becomes incapable of working for three months or more. In such cases insurance companies can send the worker off to her country of origin, where adequate care may not be accessible. Many insurance companies prefer this solution over actually covering costly medical care. Additionally, such insurance must cover prenatal care only if the insurance was purchased at least nine months before the worker became pregnant. As a result, many migrant women cannot receive prenatal care.

Private insurance companies systematically evade their obligation to fund medical treatments. As an example, almost every migrant worker who develops cancer is declared as having lost the ability to work and is sent out of the country. Also, when a worker must change insurance companies because she changes employers, a medical condition that emerged under the first company's coverage will then be denied coverage as a "pre-existing condition" by the second company.

The relegation of migrant health care to the hands of private companies is problematic also in that employers often fail to provide

workers with medical insurance, leaving them with no access to medical treatment. Sanctions against employers for such violations are rarely placed.

Migrant workers' right to social security in Israel is substantially limited. Migrants are covered only partially by the National Insurance Law – for childbirth (with significant exceptions), for work related injuries and for employer insolvency. Workers are not covered for such fundamental entitlements as unemployment, non-work related accident compensation, disability and old age allowance, and so on. This remains the case even if they reside in Israel many years and have become de-facto permanent residents, as is the case with some migrant caregivers.

Pregnancy and maternity coverage is particularly insufficient. To start, migrant women are denied allowance in the case of bed-confinement during their pregnancy. Additionally, National Insurance benefits can be revoked if there is a break in the insurance payments, if the mother had stopped working too early before the delivery, or if the insurance payments were paid for less than 6 months.

Additionally, undocumented women workers are only entitled to in-kind payments from the National Insurance Institute, and are excluded from all other birth related benefits accorded to women generally, such as maternity leave payments.

Conclusions

While some progress has been achieved for migrant women since the CEDAW Committee published its concluding recommendations for Israel two years ago, many of the policies and practices in Israel with respect to migrant women are still not consistent with the CEDAW Convention and with its interpretation, such as General Comment no. 26 on women migrant workers.

In order to eliminate women migrant workers' continuous and severe rights' violation and discrimination Israel must, at a minimum:

- » Nullify forced live-in arrangements and uproot round-the-clock employment in the caregiving sector
- » Enforce Israel's labour and other protective laws vigorously
- » Reverse the exclusion of migrant caregivers for the Work and Rest Hours Law and from the protection of the Ombudsman on the Rights of Migrant Workers
- » Allow migrant women who gave birth in Israel to continue working legally – even if they are in Israel for over 63 months
- » Cancel the Ministry of Interior's policy sanctioning marriage between migrant workers
- » Create mechanisms for bilateral cooperation with source countries of migrant workers so as to monitor workers' recruitment and combat the charging of brokerage fees resulting in situations of debt bondage
- » Eliminate immigration policies limiting workers' ability to freely change their employer and their access to redress; properly investigate and prosecute allegations of sexual abuse, and
- » Extend the National Medical Insurance Law and full social security coverage to migrant workers.

Finally, in order to create a full framework for the protection of migrant workers, Israel should ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as recognized in the Committee's concluding observations for Israel in its 33rd session.

Footnotes

- 1 During its 48th session, which took place during January–February 2011, country reports from Bangladesh, Belarus, Kenya, Lichtenstein, South Africa and Sri Lanka were considered as well.
- 2 According to a report by the Knesset (Israeli Parliament) Research and Information Centre of June 2010, in April 2010 some 52,832 migrant caregivers were registered with licensed bureaus, over 80% of whom were women.
- 3 According to the Israeli Work and Rest Hours Law of 1951, a working day shall not exceed 8 working hours and a working week shall not exceed 45 working hours. There is a general permit to employ workers no more than 4 additional hours a day (these hours must be compensated as overtime hours).
- 4 Ayalon, L., Suicidal and Depressive Symptoms in Filipino Home Care Workers in Israel, *Journal of Cross-Cultural Gerontology* March 2012 27(1) 51–63
- 5 For the full text of the judgment in English please visit: <http://www.docstoc.com/docs/39521566/The-Supreme-Court-Presiding-as-the-High-Court-of>

Kav LaOved (Worker's Hotline) is an independent non-profit, non-governmental organization committed to the defense of workers' rights and the enforcement of Israeli labor law designed to protect every worker in Israel, irrespective of nationality, religion, gender, and legal status.

Modes of Action

Individual assistance to workers via public reception hours, the telephone hotline, the website and social media, field visits and more

Legal and procedural support by advising and representing workers

Public advocacy through development of position papers, attendance in parliamentary committees, ongoing dialogue with various government ministries, and principled petitions to Israeli labor courts

Cooperative partnership with state authorities, monitoring current policies, encouraging effective enforcement over employers, and supervising the granting of employment licenses and work permits

Education and community outreach by raising awareness of worker's rights to individual workers and society at large through workshops, lectures, research, reports and media

Partnerships with a wide range of Israeli and international organizations, unions, and institutions

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Worker's Hotline
✓ عنوان العامل

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