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Kav LaOved - The Worker's Hotline

Kav LaOved - The Worker's Hotline is an independent, non-profit, non-governmental organization committed to defending the rights of workers and to enforcing Israeli labour law. Kav LaOved ("KLO") upholds Israeli labor law, which is intended to protect every worker in Israel, irrespective of nationality, religion, gender, and legal status. Since its establishment in 1991, KLO has helped workers from all sectors recognize and exercise their rights. KLO's services target the most disadvantaged workers in Israel such as those employed hourly or receiving low wages, Palestinians, asylum seekers, migrant caregivers, foreign agricultural workers, and new immigrants.

Kav LaOved is pleased to submit this shadow report on women in the Israeli labour market to the 68th session meeting of Committee the Elimination of All Forms of Discrimination Against Women ("CEDAW"). This report builds on KLO's shadow report submitted to the 48th session of CEDAW in 2010. ¹

¹ Previous reporting by KLO to CEDAW focused solely on migrant caregivers. This report will comment on changes since 2010 for migrant caregivers and we encourage those interested in the issue to refer to KLO's 2010 report on the CEDAW website.

Executive Summary

This report will address Articles 11, 12, 14, and 16 of *Convention on the Elimination of All Forms of Discrimination Against Women* (“the Convention”). It will provide background on four sub-groups of women in the Israeli labour market and describes the discrimination they face. As this report responds to the List of Issues Prior to Reporting (LoIPR), it is not an exhaustive account of labour market discrimination towards women in Israel.

The first part will outline the various ways in which live-in female migrant caregivers are discriminated against by being governed by different employment laws than the rest of the labour market in violation of Article 14 of the Convention and in response to paragraph 20 of CEDAW's LoIPR for Israel.

Addressing paragraph 23 of the LoIPR, this report will summarize two major issues facing marginalized migrant women. The second part will outline how migrant housecleaners suffer from their work being perceived as “women’s work” and thus have their rights regularly violated during their employment. The third part will look at how asylum seeker women are regularly fired by their employers while pregnant, in violation of Israeli labour law and the various complications which result from this practice.

The fourth part will outline how racial discrimination is often compounded with gender discrimination, through the example of Arab women within Israel. In response to paragraph 22 of the LoIPR findings of disadvantages faced by Arab women in the Negev will be described.

Background

1. Certain characteristics of the Israeli labour market make women susceptible to discrimination or abuse. These include the practice of employing migrant caregivers, the informality of the housecleaning sector, the employment of asylum seekers, and discrimination towards Arabs.
2. Women make up an increasing proportion of migrant workers in Israel. The Population and Immigration Authority (PIA) reported that in 1995, 85% of “regular” foreign workers were men

and by 2010 only 48% were. For irregular foreign workers, a population that is more vulnerable to abuse because of their status, 69% were women in 2015.²

3. Certain sectors of the Israeli labour market are dominated by women. Female caregivers and housecleaners make up a significant portion of KLO's clientele and upwards of 85% of their respected fields.³ While Israel's policy on migrant caregivers and regulations for migrant housecleaners are seemingly gender-neutral, KLO maintains that these fields are historically and inherently gendered and that discrimination against migrant caregivers or housecleaners constitutes discrimination against women.
4. Since Israel's last reporting cycle to CEDAW in 2010, over 54,000 asylum seekers have entered Israel, around 14% of them women.⁴ KLO's mandate has adjusted to address the challenges they face in the Israeli labour market. These women are particularly vulnerable to discrimination and abuse in the workplace. Their conditional release document, which they must renew every two months, clearly states that it does not permit them to work, so any work they do perform is on an informal basis. While the judiciary of Israel has stated that it will not prosecute those who employ asylum seekers, lack of official immigration status leaves the community ripe for exploitation.⁵ This extends to maternity benefits as will be described below.
5. In addition, KLO has carried out studies and reported on issues faced by Arab women to show how they are penalized in the labour market for both their race and gender. This occurs without legal barriers to work, such as those faced by asylum seekers. Their experiences highlight how gender discrimination in Israel must be considered through an intersectional lens.
6. The national health insurance scheme lacks coverage for foreigners. This includes migrant caregivers, asylum seekers, and migrant housecleaners. While employers are required by law to establish health plans for their employees who are not covered by the state, private health plans do not cover "pre-existing conditions". This leads to further complications if a worker changes employers. In many cases, their health plan is restarted and any medical condition that emerged under the first company's coverage will then be denied coverage under their new insurance.

² Population and Immigration Authority, *Labor Migration to Israel*, (2016) <https://www.gov.il/BlobFolder/reports/foreign_workers_in_israel_2016_report/he/foreign_workers_israel_review_0916.pdf> p. 7. ("Labor Migration")

³ Ibid p. 35.

⁴ Neta Moshe, *בישראל אזרחי מעמד חסרות לנשים ובריאות רווחה שירותי*, Knesset (June 2013) <<http://www.knesset.gov.il/mmm/data/pdf/m03273.pdf>>.

⁵ Kav LaOved, *Are Asylum Seekers Allowed to Work in Israel?* (August 2015) <<http://www.kavlaoved.org.il/להעסיק-אסור-או-מותר-2/>>.

Live-In Caregivers' Exclusion from Israeli Labour Law

7. Caregivers constitute the largest sector of Israel's migrant labour market.⁶ Of these workers, 85% are women.⁷ The migrant caregiving industry is governed by its own set of laws while the male-dominated migrant labor fields of agriculture and construction are governed by Israeli law and bilateral agreements. Masculine forms of labor enjoy the full range of entitlements under Israeli law while feminine jobs are deprived of overtime pay, rest hours, and other entitlements.
8. Live-in migrant caregivers continue to be excluded from laws governing payment for overtime and rest law.⁸ The 1951 *Hours of Work and Rest Law* stipulates that a worker must have 36 consecutive hours rest each week and receive overtime pay for work over 8 hours.⁹ The Ministry of Economy uses its discretion to limit this for live-in caregivers to 25 hours weekly for rest and no overtime pay.¹⁰ They are also prohibited from living outside of their employer's home and from holding a second job.¹¹ This highlights an inherent contradiction in government policies. Caregivers are not deserving of overtime because they live at their workplace and at the same time they are tied to their employer's house because their employer cannot be left unsupervised. This was affirmed in a 2016 National Labor Court Decision in the Zeltman Case.¹² While these policies in no way single out women they do affect them disproportionately. The same stipulations do not apply for migrant agricultural or construction workers.
9. In addition, since 2012, caregivers have had a different set of laws than other workers within Israel regarding early notice before resignation. Other workers must give one day of early notice per month worked in their first year and only reach one month of prior notice after working for three years.¹³ In contrast, migrant caregivers must give a week's notice already after seven days of work and after one year of work must give notice an entire month before leaving their

⁶ 45,122 caregivers make up 59% of the total noncitizens currently working in Israel, Labor Migration *supra* p. 24.

⁷ *Ibid.* p. 35.

⁸ Population and Immigration Authority, *Foreign Workers' Rights Handbook*, (August 2017)

<https://www.gov.il/BlobFolder/generalpage/foreign_workers_rights_booklets/en/Zchuton_ENG_0817_0.pdf> pp. 12, 14 ("Rights Handbook")

⁹ *Hours of Work and Rest Law, 1951* (Israel), ss. 7, 8, 10-13.

¹⁰ Rights Handbook *supra* p. 12.

¹¹ *Ibid.*, pp. 4, 6.

¹² *Israel: Consideration of reports submitted by States parties under article 18 of the Convention pursuant to the simplified reporting procedure* (June 2017)

<http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/ISR/CEDAW_C_ISR_6_5955_E.pdf> para 219. ("Israel Submission").

¹³ Kav LaOved, *Workers' Rights- for Hourly Workers*. January 2017 <<http://www.kavlaoved.org.il/en/wp-content/uploads/sites/3/2017/06/%D7%96%D7%9B%D7%95%D7%AA%D7%95%D7%9F-%D7%9C%D7%A4%D7%99-%D7%A9%D7%A2%D7%95%D7%AA-%D7%90%D7%A0%D7%92%D7%9C%D7%99%D7%AA-2017-1.pdf>>.

employer.¹⁴ While failure to do so for other workers results in reduced pay proportionate to the amount of notice that should have been given, caregivers risk having their visa canceled by the Director of Foreign Investigation Unit¹⁵ and could then be deported.

10. Caregivers' geographical mobility is also restricted. Their visas are contingent on working within one of three geographic areas.¹⁶ In cases where the geographical restrictions are violated or employment cannot be found, the workers face deportation. For those in the outermost geographical region, there are very limited options for change employers. Fortunately, these restrictions have recently been adjusted to allow those in the periphery of the country to be assigned work in the center of the country if their last employer died or was placed in a nursing home.¹⁷ This may reduce the number of caregivers who must choose between leaving the country or illegal employment to pay off loans taken for brokerage fees.
11. Lastly, Israel not ratifying Article 16, citing religious freedom, has a negative impact on migrant caregivers. KLO is concerned that protecting the right of religious groups to govern marriage relieves the state from accountability to CEDAW for violations of migrant workers' right to enter marriage as per sub-section (a). Under their visas, migrant workers are prohibited from migrating with members of their immediate family. This can be applied broadly and flexibly, allowing the Interior Ministry to apply the definition of "first degree family members" to an intimate partnership between two migrant workers.¹⁸
12. While KLO respects Israel prioritizing religious autonomy, it should not be used to restrict romantic relations of migrants. It is not in line with the values of the Convention to restrict the personal lives of women in such a way that they cannot freely choose with whom they have romantic relationships. Certainly no one ought to be threatened with deportation for entering such a relationship. Furthermore, the laws and regulations governing migrant work in Israel incentivize employers or agencies to report intimate relations in the case that the worker was not paid their full salaries or benefits so that they are deported before they can make legal claims.

¹⁴ Population and Immigration Authority, *Procedure for Giving Prior Notice Before Resignation* (July 2012)
<https://www.gov.il/BlobFolder/policy/pre_notice_before_resignation_procedure/he/Procedure%20for%20Giving%20Prior%20Notice%20Before%20Resignation.pdf> p. 2.

¹⁵ *ibid.* p. 1.

¹⁶ Foreign caregivers with a visa for the "Peripheral Region" is only permitted to work in the North and South outlying areas of Israel, a foreign caregiver with a visa for the "Central Region" can work everywhere in Israel except for Tel Aviv and a visa for the "Tel Aviv Region" permits caregiving work anywhere in the country.

¹⁷ Kav LaOved, *Softening the Geographical Restrictions* (July 2017)
<<https://www.facebook.com/MigrantCaregivers/posts/1482768101803426>>.

¹⁸ Rights Handbook, *supra* p. 8.

Israel's response to the LoIPR, that migrant workers are free to marry Israelis, does not signal willingness to reconsider this approach.¹⁹ Being permitted to enter romantic relationships only with Israeli citizens does not constitute freedom to choose and does not address the fact that in many cases this would require conversion, denying their religious freedom.

13. The need to set up private health insurance also discourages migrant caregivers from changing employers. Private companies will not cover "pre-existing conditions". Although the requirements for this work are often associated with increased risk to develop chronic illnesses such as diabetes, cancer and heart disease, this health plan structure encourages women to stay in hazardous work environment or risk insurmountable debt should they be stricken with such a complicated health condition.²⁰
14. These many limitations on caregivers' freedom in Israel leave them incredibly vulnerable for abuse. Exuberant and illegal brokerage fees have risen on average USD \$3,600 in the last five years.²¹ Workers typically raise this money by loans taken from the local grey market lenders who charge high interest rates and thus carry the potential for violence against individuals and their families should they fail to repay a loan. The need to pay back these fees limits the ability for a woman to escape abusive or harmful work conditions, creating a form of debt bondage.
15. These various limitations to the freedoms of caregivers, combined with lack of regulations surrounding brokerage fees, puts members of this community in significant danger. Particularly for those with the most geographically restricted visas, they are often left with the option of remaining in dangerous or abusive working conditions or risk returning home before they have earned enough money to pay back their brokerage fees. Without bilateral agreements governing brokerage fees, as has been shown to greatly reduce brokerage fees for migrant agricultural work²², this situation continues to worsen.
16. These limitations amount to a failure by Israel to uphold Article 11, particularly sub-article 1(d), requiring "equal remuneration, including benefits, and to equal treatment in respect of work of equal value".

¹⁹ Israel Submission, *supra* para. 230.

²⁰ Hani Ben-Israel, *Revisiting CEDAW's Recommendations*, (December 2013) <<http://www.kavlaoved.org.il/en/revisiting-cedaw-two-years/>> p. 23.

²¹ Idit Leibowitz, *Black Money, Black Labor*, (July 2016) <<http://www.kavlaoved.org.il/en/dramatic-rise-in-brokerage-fees-paid-by-caregivers-in-israel/>>.

²² Jacob Udell et al., *Migrant Agricultural Workers in Israel: Context, Issues, and Recommendations for Ensuring Fair Employment* (December 2013) <<http://www.kavlaoved.org.il/en/wp-content/uploads/sites/3/2014/05/KLO-Agriculture-Report-Dec-2013.pdf>>.

Housecleaners Not Recognized as Workers

17. While the government does not collect numbers on the gender distribution of housecleaners, 86% of those who have turned to KLO for assistance are women. In addition to being female dominated, the housecleaning market includes many women with precarious immigration status, such as asylum seekers, individuals who have overstayed their permits, or those who did not leave the country once they no longer met the conditions of their visas. The work is highly irregular, with women often having several employers. The people whose houses they clean often do not see themselves as employers and thus obligated to pay for legal entitlements such as holidays, vacation, or pension contributions.
18. Additionally, because employers of housecleaners do not see themselves as such, they often do not make the necessary payments to the national insurance agency, or "bituach leumi." As this agency is responsible for workers' compensation in cases of workplace accidents and maternity benefits, housecleaners are regularly denied such protections. Of the housecleaners who turned to KLO for assistance, 56% had employers who did not make the necessary insurance payments. This group is thus discriminated against in their ability to access workers' compensation and are denied rights associated with motherhood in violation of Article 11(2).
19. In response to paragraph 23 of the LoIPR, it is noteworthy that there is no legal stipulation for how a foreign national is to be insured under a health plan if they have more than one employer.²³ In KLO's experience, housecleaners who have many different employers are often not insured at all. This leads to huge medical costs or foregoing treatment altogether in the case of accident or ill health. This is derived from the ongoing notion that housecleaning, as "women's work", is not a legitimate job deserving of a health insurance plan.

Asylum Seeker Women Fired during Pregnancy

20. A 2014 report published by KLO, based on surveys conducted with clients, found that the greatest issue facing female asylum seekers is the illegal termination of work due to her pregnancy.²⁴

²³ Noa Shauer, *Housecleaning: Position Paper for International Women's Day* (August 2016) <<http://www.kavlaoved.org.il/5032-2/>>.

²⁴ Noa Kaufman, *Current Situation: Female Asylum Seekers in the Israeli Labor World* (December 2014) <<http://www.kavlaoved.org.il/en/in-light-of-international-womens-day-kav-laoved-workers-hotline-is-issuing-a-report-reviewing-the-situation-of-thousands-of-asylum-seeking-working-women-in-israel/>>.

Although the *Women's Employment Act* forbids the practice, asylum seekers regularly find themselves without income precisely when they are most in need. Furthermore, maternity leave pay is determined according to three month's salary prior to giving birth. Legally, she is still entitled to her maternity leave in instances where she is not at fault for her unemployment. This, however, requires intervention from KLO, resulting in delays to receiving payment, and instances of partial payment or no payment at all. The number of women turning to KLO for this issue has continued to rise with 15 women in 2012, 33 in 2013, 98 in 2014, 89 in 2015, 107 in 2016.

21. Asylum seekers in Israel are not insured under the national health insurance system and instead must rely on employers to make the necessary insurance arrangements, as detailed in the *Foreign Workers Act*. This privatization of health care creates many problems accessing health services. Private insurance plans must legally cover prenatal care only if the insurance was purchased at least nine months before the worker became pregnant. KLO staff regularly must negotiate with employers to rehire the women or bring lawsuits on their behalf.
22. In accessing social services, asylum seeker women who give birth in Israel also suffer from discrimination by the national insurance agency. The problems arise from the application process for maternity leave pay and from direct exclusion from benefits.
23. Within the application for maternity leave pay from national insurance agency, one requirement is form 355, where employers must stipulate the work done in the ten months prior to the delivery and indicate that national insurance was paid out every month. Most asylum seeker women are employed through manpower agencies. They are placed at various worksites by an agent of the manpower company and often have little information about who the agent works for, their legal employer. In KLO's experience, the agent often does not cooperate in submitting the form or it is unclear who is responsible for the form within the company. Although most these workers receive payslips which prove employment, salary, and payments to the national insurance, the national insurance agency insists that form 355 is submitted and authorized by the employer. This results in claims taking up to six or seven months after the woman has given birth, rendering the purpose of maternity payments moot.
24. Furthermore, asylum seeker women who are told by a doctor that they should not work because it could harm the child are not legally entitled to pay for the period between when they receive the medical instruction and when they give birth, while Israeli women are. This also amounts to a

double penalty as they both lose the salary that they would have received and maternity leave pay, which is based on salary in the three months since they have given birth.

25. Lastly, women make up only 14% of the asylum seeker population but are nearly 30% of the clientele in the asylum seeker division. This would indicate that the barriers to maternity benefits are one dimension of general discrimination towards asylum seeker women in the workplace.

Gender Based and Racial Discrimination Towards Arab Women in Israel

26. The striking feature of Arab women in the Israeli labour market is how low their participation is compared to the rest of society. Only 26.3% of female Arab citizens of Israel in 2013 were employed, compared to 64.9% of Arab men and 64.7% of Jewish women.²⁵ This employment gap strongly suggests that Arab women are being discriminated against for both their race and gender. A study conducted in 2015 by staff at KLO's Nazareth office aimed to understand the various causes for this gap. Major factors found to discourage Arab women's participation in the labour market include: limited opportunities for rural communities, violation of basic labor rights, and lack of returns on education.
27. KLO's 2015 study was of sixty-one women divided between the north of Israel, the "Little Triangle"²⁶ area, and the Negev. Touching on the rights of rural women, Article 14, the respondents from the Negev had longer distances to travel for work, the lowest level of education (47% had not completed high school), were more likely to make below minimum wage (45% of respondents), and were more likely to feel discriminated against for being a woman (45%).²⁷
28. For all respondents, lack of available jobs close to home was a major hindrance to finding employment. Other organizations have reported on the lack of industrial development and public transportation in Arab towns.²⁸ 39% of the survey respondents needed a vehicle to reach their workplace, despite the financial burden of using one. They thus lack the adequate transportation required for rural women in Article 14(h).

²⁵ The Central Bureau of Statistics, *The Statistical Abstract of Israel* (2014).

²⁶ The cities of Tira, Taybe, and Umm Al-Fahm

²⁷ Hanna Hamdan-Saliba and Gadeer Nicola, *Workers on the Margins: Arab Women in the Israeli Labor Market* (2015) <<http://www.kavlaoved.org.il/wp-content/uploads/2016/11/Eng-book.pdf>> pp. 13, 19, 30.

²⁸ *Ibid.*, p. 6.

29. KLO researchers found that a significant portion of respondents did not receive their full labor rights. In violation of Israeli law, 62% did not receive notice of the terms of their employment, 28% received below minimum wage, 40.5% did not receive overtime pay, 33% were not reimbursed for travel expenses to work, 31% did not have a pension fund set aside, 44% did not receive holiday pay, 64% were not paid their annual vacation, 38% did not receive recuperation pay.²⁹
30. While obtaining post-secondary education improved the likelihood that Arab women be paid minimum wage or above (88% of respondents compared to 52% for high school education or lower), returns on that education are still lacking. Only 11 of 34 respondents who had post-secondary education held jobs which benefit their education. As the majority (62%) of the interviewees worked in Arab towns and villages, even when they pursue education, befitting jobs cannot be found within a reasonable distance while remaining in their communities.³⁰
31. Overall, the respondents were keenly aware of the discrimination that they faced in the labor market. 45.5% of the group responded that their pay was not equal to that of a male worker in the same position. Of the ten respondents who had been pregnant during their employment, half reported being discriminated against during that time. 67% reported discrimination ethnic discrimination in the workplace and 39% in the terms of their employment.³¹

²⁹ Ibid., pp. 18-28.

³⁰ Ibid., pp. 22-23.

³¹ Ibid., pp. 29-35.