

Submission to the Committee on the Elimination of Discrimination Against Women (CEDAW) for the Pre- sessional Working Group of 66th session: Adoption of a List of Issues Prior to Reporting for Israel

June 19, 2016

THE WORKER'S HOTLINE-KAV LAOVED

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's work upholds Israeli labour law, which is intended to protect every worker in Israel, irrespective of nationality, religion, gender, and legal status. Since its establishment in 1991, Kav LaOved has helped workers from all sectors recognize and exercise their rights.

Kav LaOved's services target the most disadvantaged workers in Israel, including those employed by contracts and receiving low wages, Arab citizens of Israel, Palestinians, migrant workers, refugees and asylum seekers, and new immigrants¹.

BACKGROUND

Kav LaOved's work heavily focuses on discrimination towards all disenfranchised workers. Our cases, however, indicate patterns of discrimination specifically towards women. Each sector of work presents its own problems for migrant worker women. Caregivers suffer from work regulations that directly contradict Israeli labor law. Women working in agriculture suffer from their minority status among agricultural laborers and a lack of protection against dangers that arise as a result. Asylum seeking women are regularly illegally dismissed while pregnant, which leads to a variety of negative consequences. The following is a report on these forms of discrimination, as well as others, and what Kav LaOved believes the state party of Israel must address in its upcoming report to the CEDAW committee.

¹["About Kav LaOved: Protecting Worker's Rights," Kav LaOved - Worker's Hotline.](#)

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DISCRIMINATION TOWARDS WOMEN WITH RESPECT TO EMPLOYMENT

CAREGIVING

Caregiving makes the largest sector of migrant workers in Israel, approximately 60,000 and is comprised of approximately 80% women². Thus, laws and regulations regarding this field disproportionately impact migrant women.

Kav LaOved has found that caregivers are in binding agreements with their employers, forcing them to work around the clock, seven days a week. Kav LaOved has adopted a strong position against these agreements which regularly lead to workers residing in the employer's home and thus employed on a 24-hour basis without time off, paid vacation, or overtime compensation. This creates an environment suitable for exploitation, slavery and forced labor. As of this reporting period, the Israeli government has not changed its position regarding round-the-clock employment. This continues to be a major violation of International Labour Law³ and Israel's own maximum 8-hour workday and 45 hour work week⁴.

Although the binding agreements were struck down by the Supreme Court of Israel in 2006, where they were described as a "modern-day form of slavery," the arrangements have continued. In 2011, shortly after the previous CEDAW reporting cycle for Israel, and in opposition to the committee's recommendation, the Knesset re-instated the binding agreements. In 2009, in the Supreme Court decision *Yolanda Gluten v. The National Labor Court*⁵, the Israeli Supreme Court ruled that migrant caregivers were not protected under the Hours of Work and Rest Law. In March 2013, this ruling was reaffirmed. Additionally, in September 2012, the state instituted a new policy de facto excluding caregivers from the Prior Notice Law. Under the new conditions caregivers risk deportation if they leave the house of an employer before the prior notice period ends, thereby binding workers to their employers and leaving them vulnerable to abuse for an extended period of time prior to resignation⁶.

² ["Caregivers: Background," Employment Sectors, Kav LaOved- Worker's Hotline.](#)

³ ["C189 - Domestic Workers Convention, 2011 \(No. 189\)", International Labour Organization, United Nations.](#)

⁴ ["Hours of Work and Rest Law, 5711-1951," International Labour Organization, United Nations.](#)

⁵ [Ben-Israel, Hanny. "Revisiting CEDAW's Recommendations: Has anything changed for migrant workers in Israel in the last two years?," December 2013. Kav LaOved - Worker's Hotline.](#)

⁶ ["New Procedure of Prior Notice for Caregivers," Kav LaOved - Worker's Hotline.](#)

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Kav LaOved respectfully suggests that the Committee ask the state party to provide an account detailing proposed legislation that would limit this form of workplace abuse and labour law violation which disproportionately impacts women.

Another labour rights violation facing the caregiving sector is the exclusion from the protection of the Ombudsman when there is a question concerning the rights of migrant workers. The Ombudsman handles complaints from the construction, agriculture and industry sectors, which are male dominated divisions. Kav LaOved recognizes the exclusion of caregivers as a form of discrimination towards women. Aside from limiting their channels of redress, it reinforces negative stereotypes that women performing care work are not “real” workers entitled to equal treatment and protection. On various occasions when Israeli NGOs protested this reality, state authorities acknowledged the disenfranchisement of migrant caregivers but expressed that it has a greater obligation to protect the interest of another weak group, the employers⁷.

Kav LaOved respectfully suggests that the Committee ask the state party to provide an account of efforts aimed at protecting elderly citizens without discriminating against already disenfranchised women.

AGRICULTURE

In the agriculture sector, female migrant workers, almost entirely from Thailand, are outnumbered 10 to 1, putting them at great risk of gender-based violations such as sexual harassment and assault. While sexual harassment and assault are beyond the scope of CEDAW, these instances of abuse and exploitation create an environment where working conditions for female agricultural workers are drastically different than those of their male counterparts. Agricultural workers reside in their place of work, meaning that some women are vulnerable to violations beyond the scope of their workday. Female migrant workers are often housed in buildings without locks on doors, and may only have access to communal co-gender bathrooms. The agricultural sites are typically isolated from urban centers and therefore access to victim services is largely limited. Kav LaOved has received reports from women who were sexually assaulted by both fellow migrant workers and Israeli men alike⁸.

⁷ Ben-Israel, Hanny. “Revisiting CEDAW’s Recommendations: Has anything changed for migrant workers in Israel in the last two years?”, December 2013. Kav LaOved - Worker’s Hotline.

⁸ Wexler, Fallon. “Female Migrant Agricultural Workers in Israel and Gender-Based Violations of Labor Rights.” December 2013. Kav LaOved - Worker’s Hotline.

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Kav LaOved respectfully suggests that the Committee require the state party to provide an account of steps being taken to reduce sexual assault towards female agricultural workers by fellow agricultural workers and Israeli men.

VIOLATIONS OF THE RIGHT TO FREE MOVEMENT AND FAILURE TO SUPPRESS ALL FORMS OF TRAFFICKING IN WOMEN

Caregiving is also a sector in which an employee's geographical mobility is restricted. Migrant caregivers are given visas that are contingent on working within one of three geographical areas. In cases where the geographical restrictions are violated or employment cannot be found within 90 days, the workers face deportation. These restrictions were introduced in 2011 and can be seen as a dismissal of migrant caregiver issues since the last reporting cycle. In addition to the geographic stipulations, workers may switch employers only three times within two years, after which they can be legally deported. Furthermore, the reasons for employment termination are reported by the employers, who have incentive to misconstrue facts to avoid paying severance. In the case of a dangerous workplace, caregivers cannot depend on the government either, as claims of harmful work environments are often disregarded by immigration authorities.

These limitations on movement leave women vulnerable to trafficking. Exuberant (and illegal) brokerage fees are taken for every caregiver entering Israel. These loans are often taken from local grey market lenders who charge high interest rates and thus carry the potential for violence against individuals and their families. The need to pay back these fees limits the ability for a woman to escape abusive or harmful work conditions, essentially creating a form of debt bondage. In the case of deportation, the state creates a situation where women are vulnerable to attacks by loan sharks in their home country. Kav LaOved stresses the need to eliminate limitations on the number of employers, geographical restrictions and the existence of brokerage fees. Kav LaOved recognizes the potential to improve the conditions for migrant workers by implementing bilateral agreements, which resulted in the drastic reduction of brokerage fees for Thai agricultural workers following the implementation of such an agreement with Thailand.

Kav LaOved respectfully suggests that the Committee asks the state party to provide an account of efforts made by the Israeli government to create similar solutions for migrant caregivers.

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DISCRIMINATION IN RESPECT TO MARRIAGE AND INTIMATE PARTNERSHIPS

Since the fifth report submitted to CEDAW by the State of Israel, there have been no notable changes made to prevent the legal discrimination towards female migrant worker with respect to marriage and intimate relations. For example, under their work 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. Thus although their visa allows them to reside and work in the country legally, migrant workers are deported every year for developing intimate relations with one another. Additionally, employment agencies that have not paid their workers full legal salaries or benefits are incentivized to report intimate relations, as this information would lead to deportation before their employees are able to claim wages or benefits legally owed to them.

Kav LaOved respectfully suggests that the Committee asks the state party to report on efforts to formulate policies and enforcement tactics that will not interfere with the rights of women to intimate relationships and marriage, as well as plans for redress in cases of labour exploitation.

DISCRIMINATION IN RESPECT TO SOCIAL SECURITY AND OF APPROPRIATE SERVICES IN CONNECTION WITH PREGNANCY

Women, making up roughly 14% of the 47,000 asylum seekers in Israel, primarily from Eritrea and Sudan, face marginalization due to their status, nationality, and gender. In a report published by Kav LaOved in 2014 based on surveys conducted with clients, Kav LaOved found that the greatest issue facing female asylum seekers is the illegal termination of work due to her pregnancy⁹. Although the Women’s Employment Act forbids the practice, asylum seekers regularly find themselves without income precisely at the moment when they are most in need. Furthermore, maternity leave pay is determined 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 Kav LaOved, resulting in delays to receiving payment, and instances of partial payment or no payment at all. The number of women

⁹ Kaufman, Noa, “Current Situation: Female workers asylum seekers in the Israeli labor world.” Kav LaOved - Worker’s Hotline.

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turning to Kav LaOved for this issue has continued to rise with 15 women in 2012, 33 in 2013, 98 in 2014, 89 in 2015 and already 54 cases in 2016ⁱ.

Kav LaOved respectfully suggests that the Committee confirm with the state party what efforts are being made to reduce illegal terminations during pregnancy for asylum seeker women. In addition, Kav LaOved suggests that this information be publicly distributed to ensure policies are properly enforced.

Furthermore, 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. Most notably, it means that women terminated while pregnant also lose access to crucial social benefits such as maternity insurance and hospitalization provisions. The burden to remedy these situations falls onto NGOs such as Kav LaOved, which must negotiate with employers to rehire the women or submit lawsuits on their behalf.

Kav LaOved respectfully suggests that the Committee receive an account from the state party, detailing what actions have been carried out by the state to assist women once they have been illegally terminated from their positions.

In terms of social services, asylum seeker women who give birth in Israel also suffer from discrimination in the hands of the national insurance agency (“bituach leumi”). The problems arise from the application process for maternity leave pay and from direct exclusion from benefits.

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. Unfortunately the majority of asylum seeker women are employed through manpower agencies. They often are given little information about the company that actually employs them and instead work through an agent. In Kav LaOved’s experience, the agent often does not cooperate in submitting the form or it is unclear where the form should be sent to in the company. Although the vast majority of these workers receive pay slips which would be proof of work, salary and payments for national insurance, the national insurance agency insists that form 355 is submitted and authorized by her employer. This results in claims taking up to six or seven months after the woman has given birth, defeating the purpose of maternity leave pay.

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Furthermore, asylum seeker women who are told by a doctor that they should not work because it could cause harm for the child are not legally entitled to pay for the period of time 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, could also suffer as a result.

Kav LaOved respectfully suggests that the Committee asks the state party what efforts are being made to reduce bureaucracy and assist workers in accessing paid maternity leave.

DISCRIMINATION CONCERNING HEALTH FACED BY OTHER INDUSTRIES

While private health insurance plans are perhaps most harmful for asylum seeker women, this issue is prevalent for all migrant worker women. Private health plans do not cover “pre-existing conditions”. This leads to complications when 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 by the second company. In the caregiving sector where the position requirements 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. Similar issues arise for agricultural workers who are exposed to pesticides and may operate heavy machinery. Additionally, private insurance plans must cover prenatal care only if the insurance was purchased at least nine months before the worker became pregnant. Thus, these women are offered incomplete and inadequate health services in comparison to both their fellow migrant workers and their Israeli women counterparts.

Kav LaOved respectfully suggests that the Committee receive an account from the state party, detailing any efforts that have been taken to provide health services to migrant women where private services fall short.

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**FAILURE TO ENACT LEGISLATURE AND OTHER MEASURES,
INCLUDING SANCTIONS WHERE APPROPRIATE, PROHIBITING ALL
DISCRIMINATION AGAINST WOMEN**

Since the last reporting cycle for CEDAW, Kav LaOved has observed a deficiency in sanctions, legislation, and government priorities addressing the perpetrators of offenses against female migrant workers.

While violations of migrant workers' rights are common, sanctions against abusive employers are incredibly rare. Kav LaOved continues to regularly submit appeals and complaints to the Ministry of the Economy regarding unlawful employment practices. In addition, Kav LaOved consistently requests information from the Population and Immigration Authority (PIBA) to monitor the results of complaints. This has revealed that sanctions against employers acting unlawfully are minimal and growing even more infrequent. While in 2011 and 2012 three licenses were revoked from manpower companies in the caregiving sector, not a single caregiving agency's permit was revoked in the last two years. Without sanctions, manpower agencies continue to violate the rights of workers with an understanding that there will be no consequence to their actions.

Kav LaOved respectfully suggests that the committee investigates the lack of sanctions for employers who violate the rights of women and asks the state party for justification concerning the lack of sanctions.

While Israel has extensive laws regarding the prevention of sexual harassment and gender discrimination in the workplace, these statutes are not included in the Foreign Workers Law. As one example, this means that the right to separate living or bathing facilities for males and females migrant workers is not guaranteed. This is especially concerning when one considers that the migrant agricultural sector is a predominantly male working environment. The omission of anti-gender discrimination policies in the Foreign Workers Law represents a failure to enact regulations that prohibit unequal working conditions for female agricultural workers¹⁰.

Kav LaOved respectfully suggests that the Committee asks the state party to provide a detailed account of any planned regulation intended to

¹⁰ [Wexler, Fallon, "Female Migrant Agricultural Workers in Israel and Gender-Based Violations of Labor Rights," Kav LaOved – Worker's Hotline](#)



protect the safety and quality of work conditions for female migrant agricultural workers.

In recent years, Kav LaOved has witnessed a shift away from the plight of female migrant workers as a priority for the Israeli government. Previously, the Knesset committee on the status of women and gender equality contained within it a subcommittee for the fight against women's trafficking. It dealt with issues of sex trafficking, labour trafficking, and violations against asylum seekers. The committee addressed issues of sexual assault against foreign caregivers and even collaborated with Kav LaOved in the past. However, during the 19th Knesset (2013-2015), David Tsur, head of the subcommittee, announced that it would only be dealing with prostitution henceforth, forgoing investigations on labour trafficking and enslavement. The 20th Knesset (2015-present) has continued in this manner, focusing exclusively on sex trafficking and prostitution. Additionally, the 20th Knesset decided to entirely dissolve the subcommittee on foreign workers in June 2015.

Kav LaOved respectfully suggests that the Committee asks the state party for an account detailing any current legislative efforts that address the discrimination faced by female migrant workers.

ⁱ The peak in 2014 is reflective of a partnership with the Eritrean Women's Center which educated Eritrean women on their rights and lead to a spike in reporting of illegal work termination.

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