

האגודה לזכויות האזרח בישראל

جمعية حقوق المواطن في اسرائيل

The Association for Civil Rights in Israel



ACRI's Update to CERD on Migrant Workers and Employment Rights

ACRI wishes to inform the CERD Committee of a recent Supreme Court ruling concerning the "binding" arrangement of migrant workers that was documented on page 37 of our shadow report.

As a result of a principled petition submitted to the Supreme Court by The Hotline for Migrant Workers, The Association for Civil Rights in Israel (ACRI), Kav La'Oved, and Physicians for Human Rights – Israel, the Supreme court ordered the cancellation of the policy of binding migrant workers to one specific employer.

On 30 March 2006, the Supreme Court accepted the petition and ruled that the policy of binding migrant workers to their Israeli employers violates their basic rights and must therefore be revoked. The Court ordered the State to prepare a new policy for the employment of migrant workers within six months, which will not include the binding of workers to a specific employer. According to the binding arrangement, a worker who leaves his/her employer for any reason whatsoever, be it because of their terms of employment, untenably low wages, or because he/she is "transferred" to an alternative employer by his/her former employer (in many cases the worker does not know that by so doing he/she is breaching the conditions of his work visa), he/she becomes a criminal and an illegal resident who can therefore be expelled from the country.

The ruling that was issued by Justice Edmond E. Levy states that the binding arrangement, which conditions the issuance of a work visa to a migrant worker for work in the fields of agriculture, home nursing, or industry with one specific employer, disproportionately violates his/her basic rights, primarily the right to dignity, freedom and autonomy. Justice Levy further emphasizes that this arrangement undermines the balance that should exist between an employee and an employer, and denies the migrant worker the ability to negotiate on his or her own behalf. This situation creates fertile ground for multiple forms of exploitation of the worker by the employer, including phenomena such as delayed payment, the payment of a salary that is lower than the minimum wage, the non-provision of social benefits, the confiscation of the worker's passport by the employer, and the provision of disgraceful living conditions. Justice Levy also emphasizes that the binding arrangement violates International law, particularly the long-recognized right to freely choose an occupation.

The justices chose not to examine, at this point, the new arrangement that relates to the employment of migrant workers in the construction sector, which differs from the policy for workers in the fields of agriculture, home nursing and industry. According to this arrangement, which came into practice in May 2005, the workers are bound to employment agencies but are relatively free to change employers and their employment agency. The justices criticized this arrangement – an arrangement that forces third-party

involvement on the work market - but chose not to examine its legal status at this point, as it has not yet been in place for a sufficient period of time. However, the Court ordered the state to closely supervise the implementation of this new arrangement and in particular to ensure workers will in fact be allowed to change employers and employment agencies.