



Israeli NGO for the Protection of Disadvantaged Workers

Kav LaOved's (Worker's Hotline) Shadow Report on the Situation of Female Migrant Workers in Israel

Submitted to the

**Committee on the Elimination of All Forms of Discrimination Against women
48th Session**

Geneva, Switzerland
December 2010

Prepared by
Kav LaOved

Nachalat Binyamin 75

POB 2319 Tel-Aviv-Jaffa 61022,

Tel. 972-73-2153508 Fax. 972-3 6178417

Email: hanny@kavlaoved.org.il; Web: www.kavlaoved.org.il

Content

1. Introduction.....	3
2. Executive Summary.....	4
3. Violations under Article 11(1) – Discrimination in Respect of Employment	
A. Round-the-Clock Employment.....	5-6
B. Widespread Violations of Labour Laws.....	6-7
C. Hazardous Working Conditions Resulting in Health Deterioration and Injuries.....	7
D. Exclusion from the Protection of the Work and Rest Hours Law.....	8-9
E. Exclusion from the Protection of the Ombudsman on the Rights of Migrant Workers.....	10
F. Limiting Workers' Access to Redress.....	11
4. Violations under Article 11(2) – Discrimination in Respect of Maternity and Marriage	
A. Discrimination in Respect of Marriage.....	12-13
B. Discrimination in Respect of Pregnancy and Maternity.....	13-14
5. Violations under Article 6 – Failure to Suppress All Forms of Traffic in Women	
A. Payment of Exuberant Brokerage Fees Resulting in Debt Bondage.....	15
B. Inability to Change or Otherwise Choose One's Employer.....	15-16
C. Sexual Violence.....	16
6. Violations under Article 12 – Discrimination in Respect of HealthCare.....	17
7. Violations under Article 11(e) and Article 12(2) – Discrimination in Respect of Social Security and of Appropriate Services in Connection with Pregnancy.....	18
8. Conclusions.....	19

1. Introduction

In conjunction with the 48th session of the Committee on the Convention on the Elimination of All Forms of Discrimination Against Women, Kav LaOved (Worker's Hotline) is pleased to submit a report on the situation of female migrant workers employed in Israel for the Committee's consideration. Kav LaOved welcomes the Committee's inclusion of issues pertaining to female migrant workers in the list of issues and questions for Israel, and is hopeful that recommendations for a profound reform in this area will be included in the Committee's concluding observations, in the spirit of General Recommendation No. 26 on women migrant workers.

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 care-giving 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 care-giving sector, the largest sector for the employment of migrant workers in Israel.¹ These migrant women are employed as care-givers 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 care-givers 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 care-givers reinforced this trend. Today, employing a single live-in migrant care-giver 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 care-giver.

The reality of employment in the traditionally female dominated and migrant dominated care-giving sector, which will be elaborated upon in this report, is one of severe basic rights' violations, exploitation and state sanctioned discrimination, usually justified under the auspice of state sovereignty with respect to managing labour migration. Migrant women are not equally protected in the Israeli labour market, and they suffer multi-layered abuse and discrimination at the hands of employers, placement agencies and the State. Considering the unique and extremely disadvantaged situation of migrant women in Israel is therefore vital in assessing the State of Israel's compliance with CEDAW.

¹ According to a report by the Knesset (Israeli Parliament) Research and Information Centre of June 2010, in April 2010 some 52,832 migrant care-givers were registered with licensed bureaus, over 80% of whom were women.

2. Executive Summary

Female migrant workers in Israel suffer from severe basic rights' violation and exploitation, and are blatantly discriminated against in the areas of employment, maternity, marriage, health-care and social security.

In the area of *employment*, female migrant workers in the care-giving sector labour under extremely harsh conditions, resulting in health deterioration and injuries; they do not enjoy the de-facto protection of Israeli labour laws due to their disadvantaged position within the Israeli labour market and lax State enforcement; they are made to work on a round-the clock live-in basis and do not enjoy leisure time or an adequate work-rest balance; they are excluded from the Israeli Work and Rest Hours Law and from the protection of the Ombudsman on the Rights of Migrant Workers; and their access to redress is further limited by restrictive immigration policies.

Female migrant workers are particularly vulnerable to *trafficking, forced labour* and situations of *debt bondage*. These result from exuberant brokerage fees charged in the process of their migration to Israel, and from restrictive visa policies limiting workers' ability to change or otherwise choose their employer. Sexual exploitation of female migrant workers is widespread, yet hardly investigated or prosecuted.

In the area of *maternity* and *marriage*, migrant workers are harshly discriminated against in that they are penalized – i.e., they are detained and deported – for pregnancy, childbirth and marriage (to other migrant workers).

In the area of *health care*, migrant workers in Israel are discriminated against in that they are excluded from the application of the National Medical Insurance Law. Instead, they are insured by a far-inferior private insurance scheme, severely curtailing their access to medical treatment.

In the area of *social security*, migrant workers in Israel are discriminated against in that they are covered only partially by the National Insurance Law. Pregnancy and maternity coverage is particularly insufficient.

In order to eliminate discrimination against female migrant workers Israel must, at a minimum, nullify forced live-in arrangements and uproot round-the-clock employment in the care-giving sector; vigorously enforce Israel's labour and other protective laws; reverse the exclusion of migrant care-givers for the Work and Rest Hours Law and from the protection of the Ombudsman on the Rights of Migrant Workers; abolish the Interior Ministry's "Procedure for the Handling of a Pregnant Migrant Worker" sanctioning migrant women for childbirth and the Interior Ministry'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.

3. Violations under CEDAW Article 11(1) – Discrimination in Respect of Employment

Female migrant workers in the care-giving sector labour under extremely harsh and often exploitive conditions. While in theory Israeli labour laws apply to the employment of migrant workers, such as the Law on Minimum Wage, lax enforcement and other structural factors as well as workers' limited access to redress render these labour rights virtually meaningless in the employment relationship. The harsh and exploitive working conditions in the care-giving sector can be attributed to several main factors:

A. Round-the-Clock Employment

The care-giving 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)).

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.² Indeed, round-the-clock work creates a grave anomaly for modern labour law, a 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. According to a 2009 report published by the Israeli Ministry of Industry, Trade and Labour (MOITAL), care-givers are employed an average of 6 days a week and spends an average of 6 nights a week in the employer's home. The number of average working hours per day, according to employers, is 21 (however, it is not clear if the employers consider working hours only of the total hours of stay in the house). Additionally, while migrant care-givers 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 inhumane and unbearable.

² 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).

In a survey conducted by Kav LaOved among migrant care-givers,³ all of the care-givers surveyed reported being on standby 24 hours a day; more than 90% said they work more than 9 hours a day, averaging 12.7 hours a day. This totals 140 hours a month more than the 186 monthly hours that define a full time position according to Israeli labour law, with sleep deprivation being one of the most common complaints. Many complaints entailed the need to work a full time job during the day despite lack of sleep at night. Such situations are aggravated even further when care-givers are forced to work beyond the scope of their employment, labouring for several family members, cleaning large households or caring for additional patients, typically spouses, who also require constant attendance.

Mandated live-in arrangements are a source of great vulnerability not only because of the workers seemingly endless availability for work, but also because of social isolation and the destruction of the worker's zone of privacy. And indeed, sexual assault of migrant care-givers is a widespread albeit under-reported phenomenon (see below).

B. Widespread Violations of Labour Laws

Employment in the care-giving sector is characterized by a complete and total disregard for the minimum standards established by Israeli labour laws. Enforcement of labour laws is lax to non-existent. Workers are paid well below the minimum wage, are not compensated for work during weekly rest days and holidays; and are not paid any social benefits, such as convalescence pay or redundancy payments.

It is not uncommon for employers to neglect to pay any wages to migrant workers, or to withhold their wages for several months. In the care giving industry, employers will save money by systematically replacing their care-givers every month or two, without paying their wages for the last month of employment. Most caregivers are given only one day off per week. Only 6% of migrant caregivers surveyed by Kav LaOved said they got a 36-hour rest period each week, as required by Israeli law.

N is a migrant worker from India who arrived in Israel on January 2009 to work as a care-giver in order to provide for her family. N's arrival to Israel was arranged by an agency in India at the cost of \$7,000. N was told by the agency that she will work in nursing an elderly woman for a salary of \$625 per month, plus weekly allowance and payment for vacations. N was handed a contract she never read by the agency, who explained the general terms only. After arriving in Israel, the agency and the employer's son told N she has to work for one year at least and is not allowed to quit before the conclusion of one year of work. N had to work between 14-18 hours every day, nursing her employer in every aspect of her daily life (feeding, bathing, walking, medicating, changing etc.) The employer required close care at night as well as she woke up several times. N was paid well below the minimum wage, with no payment for overtime hours or for work during weekends and holidays. The payments were routinely delayed. N slept for an average of 2 hours every night, and was fed so poorly that she lost 7 kg in 5 months. In addition, the employer's son made N clean his own house without payment. N turned to her agency for help, but they ordered her to stay, claiming she was not allowed to quit under no circumstances according to her contract.

³ The survey is based on data collected from 100 migrant workers who live with their employer who visited the Kav LaOved offices between November 2009 and January 2010.

State enforcement mechanisms are usually highly inefficient. Investigations are poorly conducted, and sanctions are rarely set on employers. If sanctions are set, they are usually too minor to deter offenders. Confiscation of migrant worker employment permits from abusive and delinquent employers is extremely rare. This means that repeated offenders can continue employing migrant care-givers.

While crimes against workers are not properly tried and sanctioned, Israel invests in a 200 inspector task force to hunt down and deport migrant workers who lost their legal status, including those who lost it due to fraud, exploitation and abuse. This encourages further abuse of migrant workers, as employers can count on the victims being deported, rather than confronting them in court.

C. Hazardous Working Conditions resulting in Health Deterioration and Injuries

Despite popular imagery of care-giving as "light" work performed inside the house, working as a care-giver is quite often hard, hazardous and conducive to physical and mental injuries. Israeli enforcement authorities completely overlook inherent dangers associated with care work, as well as the need for health and safety standards for this industry.

Care-giving involves intense physical efforts, such as lifting heavy patients. Many patients who employ migrant care-givers are unable to move unaided and are homebound. They need someone to help them turn in bed, wash them, escort them to hospitals or physicians, help them with wheelchairs, etc. When care is provided at the person's home by a single care-giver, she is required to perform all these tasks unaided, whereas in hospitals and nursing homes the same tasks are performed by a team of at least two people. Backache and disc hernia are common problems caused by lifting heavy patients. Other common complaints include lack of sleep, lack of nourishing food, unbearable workload and mental fatigue. 46% of those responding to Kav LaOved's survey said they had suffered or still suffer from backache.

B is a migrant worker from the Philippines who came to Israel in 2006 to work as a care-giver. She came to Kav LaOved's offices in November 2010 "to talk". She said she is finding the work to be very hard. She has not had a proper night's sleep for four years. She shares her bed with a restless, elderly blind woman who sleeps fitfully, tosses and turns, keeps asking what the time is, wants to go to the lavatory, groans, asks for water. Every morning after breakfast, her patient falls asleep in her arm chair and B has the house work to do. After lunch her patient dozes in bed and the B goes to the pharmacy to bring her medication. After four years doing this work, B went to see the family doctor and was prescribed sedatives. She is irritable, cannot concentrate, has difficulty breathing, suffers dizzy spells. B was recently admitted to *Abarbanel* mental hospital. She has no history of mental illness. She will soon be sent home because she has been declared unable to continue to work as a care-giver.

Care-givers often suffer from various mental conditions associated with their circumstances of employment, such as mental fatigue and a feeling of depersonalization. They may develop depression and anxiety, and in extreme cases have been admitted to mental institutions or committed suicide.

D. Exclusion from the Protection of the Work and Rest Hours Law

In 2009, workers in the care-giving 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).⁴ In this judgment, the Israeli Supreme Court ruled that migrant care-givers 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 care-givers 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 States 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)).

The petitioner in this case, Ms. Gluten, was a migrant worker from the Philippines, employed in Israel as a live-in caregiver for an elderly patient. When she was fired, she sued her employer in court, *inter alia*, for overtime pay. The lawsuit was rejected, and she appealed the judgment to the National Labour Court. The National Labour court dismissed the appeal by a majority vote, stating the Israeli Work and Rest Hours Law – one of Israel's central pieces of labour legislation – does not apply to care-givers, and therefore Ms. Gluten is not entitled to overtime pay. Ms. Gluten then filed a petition to the Supreme Court against the National Labour Court. She argued, *inter alia*, that because the overwhelming majority of care-givers in Israel are female migrant workers., this categorical exclusion of care-givers from the Work and Rest Hours Law amounts both to status/ethnicity based discrimination and to gender based discrimination,

The Israeli Supreme Court rejected Ms. Gluten's petition against the National Labour Court, stating that treating caregivers differently is not a form of discrimination but rather legitimate "distinction", compelled by the special nature of live-in care-giving. It also stated that denying overtime pay to migrant care-givers actually serves their own interests, reasoning that if migrant workers' wages will rise, they will have fewer opportunities to work in Israel:

"The accepted view on protective labour laws is that these laws are cogent and cannot be deviated from even if it is argued that their application damages "the good" of the worker... The view that protective labour laws protect universal values and therefore cannot be overridden was expressed more than once in the legal literature... Also, Convention 97 of the International Labour Organization on Migrant Workers (which was signed and ratified [by Israel] on March 30, 1953) states that migrant workers should not be discriminated against in relation to citizens of the state where it comes to payment regulations, and, as is specifically stated in this context, regulations of overtime pay.

⁴ For the full text of the judgment in English please visit: http://www.kavlaoved.org.il/UserFiles/news2783_file.doc

I myself am not convinced that this position should not ever be questioned. We live in a complicated and not ideal reality, and this should be considered when examining the possibility of diverging from the provisions of the protective labour laws when it is necessary to ensure the protection of the interests of migrant workers themselves. These interests and the unique reality of the work in the care-giving sector might serve as a basis for the position that creating different regulations in the case of caregivers stems from necessary distinction and not from forbidden discrimination. It should be remembered that the state can supervise the local job market, but it is unable to supervise the global labour market and the employment conditions expected for migrant workers in their home countries. The state must bring about the most beneficial outcome for the migrant workers, and this includes considering the outcome and allowing the worker to choose the most beneficial work conditions for him compared to all other options [...]

The application of the protective labour laws in a way that in actuality causes harm to the welfare of the worker is an absurd application. It should be mentioned in this context that in light of the existing immigration laws in the State of Israel, those concerned are not labour migrants [who intend to settle down and integrate] but workers who come here for a limited period; in light of the unique situation in the country, it is doubtful that this reality will change soon. The families of caregivers usually stay at their countries of origin. This fact too influences the financial burden that stems from caring for their welfare as well as on the necessary balance between leisure and work. Indeed, this reality reflects arrangements that are not ideal, and the hope is that these regulations will be improved with appropriate legislation." (para. 25-26 to the judgment, emphasis added).

Of course, excluding care-givers from the applicability of the Work and Rest Hour Law thwarts the social aims of the law, and leaves tens of thousands of predominantly female workers with no meaningful bargaining power or a collective voice, outside the essential protection of cogent labour legislation, exposed and vulnerable as never before to exploitation, abuse and discrimination

Special attention is called to the dangerous reasoning openly expressed in the Gluten Judgment, according to which denying migrant workers certain justices is actually in their own interest as it encourages more employment opportunities. This type of reasoning undermines the foundations of protective labour legislation 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 female workers from the applicability of protective labour laws. In so doing, the judgment not only changes significantly 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 women migrants. Today, as a result of the judgment, Israeli lower labour courts are compelled to reject lawsuits by migrant care-givers for overtime pay, even when workers prove, or it is otherwise undisputed, that they worked in excess of 40 hours a week.

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

In a recent legislative amendment to Israel's Foreign Workers Law (of 24.3.2010), the Israeli parliament voted in favour of excluding migrant care-givers from the protection 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. Migrant care-givers will not be allowed to lodge complaints against their employers, except for cases of trafficking for slavery and forced labour or in cases of sexual abuse or violence. All other violations – such as on matters of minimum wage, overtime pay, working hours, wage withholding, overall working conditions, housing conditions, health and safety, passport withholding, etc. – will not be handled by the Ombudsman.

While the law is silent as to the reasons for this exclusion, statements by ministers in the Israeli Government as well as by officials in the Population, Immigration and Border Control Authority and the MOITAL reveal the reasoning behind it. In a response letter of 2/6/2009 to Israeli NGOs, the MOITAL minister, Fuad Ben Eliezer, stated that "the decision not to apply the authorities of the Ombudsman on the rights of migrant domestic care-givers, 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 care-giving 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." The statement by the MOITAL minister reflects a populist and dangerous sentiment that has unfortunately become well accepted with Israeli policy makers. Policy makers believe that 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.

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 male; Migrant workers in the care-giving sector, on the other hand, are overwhelmingly female. The de facto consequence of this exclusion is hence a "men's only" ombudsman. Excluding care-givers 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)).

F. Limiting Workers' Access to Redress

When a worker in the care-giving sector is fired, or quits, or if her employer passes away, and she has completed the allowed duration of her work visa (51 months), she has extremely limited access to redress. According to the Interior Ministry's procedures, migrant workers lawfully present in Israel who stopped working and who have been in Israel for over 51 months, are only allowed to remain in Israel an extra "grace period" of 30 days. 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. These are often women who have worked for employers for several years, and deserve substantial sums of money in severance pay.

The 30 day "grace period" is insufficient for these workers to obtain all that is due to them from employers and agencies, and it is certainly insufficient if a lawsuit in the labour court is needed. 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. Despite these well known realities, the Interior Ministry refused Kav LaOved's appeal to extend the "grace period" given to migrant workers from 30 days to 90 days. As a result, many workers have virtually no access to redress and are forced to return home empty handed, often after many years of work in Israel.

4. Violations under Article 11(2) – Discrimination in Respect of Maternity or Marriage

In addition to being severely discriminated against in the area of employment, female migrant workers are subject to exceptionally harsh forms of State discrimination based on such forbidden grounds as maternity and marriage. Some of the policies Israel employs in this regard do not have a single parallel in the world, to the best of Kav LaOved's knowledge. According to these policies, migrant women lawfully working in the country do not have the right to become pregnant or have children. Giving birth in Israel results in the immediate revocation of a migrant's work authorization, exposing her to immigration detention and deportation. Likewise, migrant women are not allowed to marry or even have romantic partners. This too is grounds for revoking one's work authorization, and under most circumstances automatically leads 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."

In order to achieve this goal of keeping migrant workers from "taking root" in the country, Israeli law provides that migrant workers can lawfully stay in the country for a maximum of 63 months, after which time they are forever banned from returning to Israel. If they don't leave, they will be detained and deported. The only exception to the 63 months policy is for migrant workers employed in the care-giving sector. Due to the special nature of care work and the emotional attachment many care patients develop towards their care-givers, a 2004 amendment to the Entry into Israel Law basically removed this time limit, on condition that the worker stays with the same employer.

Yet even for migrant care-givers, who can lawfully stay in Israel for many years, the policy emphasizes that their integration in society is entirely undesirable and must be obstructed. To accomplish this goal, Israel has quite simply chosen to prohibit migrant workers from engaging in a broad spectrum of human activities seen as indicative of long-term settlement aspirations, and to penalize "offenders" and even suspected "offenders" with detention and deportation. These policies are considered more elaborately below.

A. Discrimination in Respect of Marriage

According to Israeli policy, migrant workers are not allowed to marry or form intimate relationships with other migrant workers; at least not if they want to hold on to their work authorization and avoid being targeted for detention and deportation. This policy is the extension of a more general policy, for which the legal basis is an administrative procedure of the Israeli Interior Ministry, and which forbids migrant workers who are first-degree family members from immigrating jointly into Israel.

According to this policy, one of the basic conditions for migrant workers to gain a labour permit in Israel is to leave their families behind. No immediate family members are permitted to join them. When workers are settled in the country, no immediate relatives may visit – even for a brief period. If it is discovered that two members of the same family are residing in Israel on a migrant

worker visa, the Interior Ministry will revoke the visas of both workers and will typically order both workers deported.

Additionally, the Interior Ministry's reading of the procedure prohibiting family members from immigrating together into Israel is very broad and flexible, and is extended to any intimate relationships between migrant workers *formed in Israel*. This means that when two migrant workers meet in Israel and enter a relationship, they too become, in the eyes of the Interior Ministry, "first degree family members" in violation of their visa conditions, and hence legitimate targets for detention and deportation.

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.

B. Discrimination in Respect of Pregnancy and Birth

Another activity which is seen as indicative of long term settlement aspirations and therefore severely sanctioned is pregnancy and parenthood. According to the Interior Ministry's "Procedure for the Handling of a Pregnant Migrant Worker"⁵, when a female migrant worker lawfully present in Israel gives birth in the country, her residency permit is immediately revoked. She can obtain a residency permit, which does not entitle her to work, for up until three months following the expected date of childbirth. At the end of that period she must leave the country immediately with her child. In the alternative, she is given the option to send the baby abroad (to be cared for by a relative) as a condition of retaining her documented status and work permit in Israel. It is Kav LaOved's experience that many women opt for the second "option" – sending their new born babies back to their home country, normally with a returning migrant worker. Some keep their children and are forced underground, in fear of detention and deportation.

It is hard to exaggerate the draconian nature of these policies, grounded in an instrumental attitude towards migrant workers resulting in their extreme objectification. The *de facto* outcome of these policies is the penalization of migrant women for pregnancy, childbirth and marriage. They demonstrate 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. They represent an illegitimate intervention in women's reproductive choices, coercing many to resort to abortions so as to maintain their documented status.

These policies are also at odds with Israeli labour law, prohibiting workers' dismissal on the grounds of pregnancy and maternity. They are also at odds with General Recommendation No. 26

⁵ For the full English text of the Procedure for the Handling of a Pregnant Migrant Worker please visit: http://www.kavlaoved.org.il/UserFiles/news3052_file.doc

on women migrant workers, stating that States parties should lift bans that prohibit women migrant workers from becoming pregnant (paragraph 26(a)).

It should be considered that Israel has openly decided to base the care-giving sector – the largest employment sector in Israel for migrant workers – almost entirely on the workforce of young migrant women of childbearing age (who, as mentioned, can stay in Israel with no time limit if they continue to be employed by the same employer). Still, Israel seems to believe it can have a reasonable expectation that these women will relinquish any hope for motherhood, and even a romantic relationship.

G., a migrant worker from the Philippines employed in Israel as a care-giver, became pregnant with her partner, a migrant worker from Thailand. G. was informed by the Interior Ministry that after giving birth, her child would not be able to remain in Israel. She would need to choose between leaving Israel with her baby and sending the infant to her family in the Philippines. For G., the only realistic option was to entrust her baby to another female migrant worker, who she paid to accompany the newborn to the Philippines. Afterward, when G. applied to the Interior Ministry to renew her work permit, she was told that a new procedure was in effect: since she had given birth in Israel, her work permit would not be renewed, and she was now required to leave the country. A short time later, even before she had time to consider her predicament, G. was arrested. The Interior Ministry had decided to deport G. because she was the mother of a child born in Israel and because she was in a relationship with another migrant worker. Only after the Hotline for Migrant Workers petitioned the Tel Aviv District Court in this matter did the Interior Ministry release G. on bail and allow her to continue working in Israel – contingent on a signed affidavit that she did not have a steady partner

5. Violations under article 6 – Failure to Suppress all Forms of Traffic in Women

The experience amassed by Kav LaOved in dealing with migrant care-givers has consistently shown that working conditions for workers in this sector can easily deteriorate to situations of slavery or forced labour. In addition, the methods for recruiting and employing migrant workers in Israel create great vulnerability to phenomena of trafficking, debt bondage and forced labour. The main factors that create a hospitable environment for phenomena of trafficking are the following:

A. Payment of exuberant brokerage fees resulting in debt bondage

Israel does not engage in bilateral cooperation with migrants' countries of origin on such issues as workers' recruitment for work in Israel. As a result, migrants pay hefty brokerage fees to brokers who facilitate their arrival to Israel. It should be noted in this context that the Committee 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).

Each migrant care-giver arriving in Israel pays on average more than 7,000 USD, with fees often skyrocketing to 10,000 USD and even 13,000 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 (3%-5% monthly), 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 care-giver 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. Exuberant 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. Brokerage fees also encourage brokers to bring new paying workers from abroad, rather than assign work to migrants already in Israel. This creates a glut of job-seeking migrant workers in Israel, thus reducing wages and fostering exploitation.

B. Inability to change or otherwise choose one's employer

Migrant workers with a legal work visa in Israel suffer undue restrictions on their right to choose their employer, which lead to forced labour and slavery. A migrant worker's permit to stay in Israel is 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) results in the loss of work and stay visas. This situation imparts on employers the power to render a worker's situation illegal, and allows them to extort, exploit and enslave workers. 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."

Instead of implementing this judgment and uprooting a system considered by the country's highest court as inducing "a form of modern slavery", Israel is now planning to reinforce and strengthen the binding of workers to employers.

As part of the legislation proposal for the Economic Policy Law for the years 2011-2012 (legislative amendments), which will now be deliberated as an independent bill, the Israeli government plans to amend the Entry into Israel Law, 5712-1952 in 2011. Under clause 23(2) of the proposed changes, the Minister of Interior can limit the geographical area in which migrant care-givers can work, and the number of transfers between employers that they can have. This proposal 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.

C. Sexual Violence

Sexual assault of female migrant workers by their employers is a widespread phenomenon in Israel, amounting in some cases to trafficking and enslavement. It is especially common in the female-dominated care-giving sector. Complaints about violence by employers or family members, including sexual assault, are prevalent but rarely officially reported. Several factors make care-giving 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.

Care-givers are vulnerable to sexual abuse not only by the employer, but in many cases by family members such as sons and grandchildren. In other times, family members are active contributors to the worker's sexual abuse. We have found that members of the family who are aware of the sexual assaults by the employer act as accomplices, trying to convince the care-giver to go along with it or present it as a normal part of the job.

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. Additionally, The MOITAL has systemically declined to use its authority to revoke employment permits of known offenders, resulting in workers continuous abuse at the hands of the same employers.

6. Violations under Article 12 – Discrimination in Respect of Healthcare

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 than 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.

7. Violations under Article 11(e) and Article 12(2) – Violations of the Right to Appropriate Services in Connection with Pregnancy and the Right to Social Security

Migrant workers' right to social security in Israel is very 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 care-givers.

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 female 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.

8. Conclusions

Israel is in violation of CEDAW with respect to the employment of female migrant workers in Israel. In order to eliminate female migrant workers' continuous and severe rights' violation and discrimination, Israel must, at a minimum, implement the following:

1. **Nullify forced live-in arrangements** for migrant workers in the care-giving sector and allow workers to negotiate freely with their employer if to reside in the employer's household.
2. **Uproot round-the-clock employment** so as to afford female migrant workers with leisure time and an adequate work-rest balance.
3. **Vigorously enforce Israel's labour laws**, including health and safety standards.
4. **Vigorously enforce the prohibition to charge brokerage fees** beyond the maximum amount allowed by Israeli law.
5. **Reverse the exclusion of migrant care-givers for the Work and Rest Hours Law and from the protection of the Ombudsman on the Rights of Migrant Workers** by virtue of appropriate legislation.
6. **Cancel the Interior Ministry's "Procedure for the Handling of a Pregnant Migrant Worker"** and refrain entirely from sanctioning migrant women for pregnancy and childbirth by revoking their work authorization or by any other means.
7. **Cancel the Interior Ministry's Policy sanctioning marriage and intimate relationships between migrant workers** and refrain entirely from sanctioning migrant women for marriage and romantic partnerships by revoking their work permits or by any other means.
8. **Create mechanisms for bilateral cooperation** with source countries of migrant workers so as to monitor workers' recruitment and in particular, combat the charging of brokerage fees resulting in situations of debt bondage.
9. **Eliminate immigration policies limiting workers' ability to freely change their employer and that limit their access to redress.** In particular, extend workers' "grace period" from 30 to 90 days and withdraw the proposed draft bill that will limit the number of transfers between employers and place geographical limits on migrant workers' visas.
10. **Properly investigate and prosecute allegations of sexual abuse** with adequate resources, including the exercise of the authority to cancel employers' permits.
11. **Extend the coverage of the National Medical Insurance Law to migrant workers**, particularly to workers in the care-giving sector residing in Israel for extended periods.
12. **Extend full social security coverage to migrant workers.**
13. **Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.**

Kav LaOved (Worker's Hotline) is a non-profit non governmental organization committed to protecting the rights of disadvantaged workers employed in Israel and by Israelis in the Occupied Palestinian Territories, including Palestinians, migrant workers, subcontracted workers and low-income Israelis. Kav LaOved aims to educate and empower workers and to expose violations of their human rights, while at the same time fostering a new atmosphere of social responsibility towards workers on the part of employers, government, and the courts.