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Why is labour migration an issue of such public, social and political concern? How did it acquire such an importance? This book deals with exploitation on a massive scale. It is estimated that there are roughly 20 to 30 million unauthorized migrants worldwide, comprising 10%-15% of the world's immigrant stock. The book focuses on migrant workers, accompanied by as many dependents, who are driven by circumstances beyond their control to work in a country other than their own, in a foreign society that cannot function without them.

Most countries admit only a limited number of labour immigrants to meet their labour market needs and priorities. As for most of them it is the only alternative to poverty and a life of misery in their home countries, many other labour immigrants are illegal immigrants that are fated to be persecuted, and when apprehended they are imprisoned or deported to their countries of origin to a life of misery.

The key issue that attracted us to editing a book on the subject is that immigrant labourers constitute a very serious problem in Western societies. This book deals with tragedies. The flow of both authorized and illegal workers over borders nowadays presents a quite formidable challenge in countries all over the world. No question, the uprooted labour immigrants have a significant impact on both economies that of their home countries, and that of their host countries. The remittances they send home in places like the Philippines and Mexico often exceed official development aid. And yet there is a heavy price to pay: Undocumented workers have become the world's most vulnerable, exploited labourers – subject to all sorts of abuse, subject to raids, arrests and deportation, forced to work at low pay and miserable conditions, hunted by the police in their host country, and despised and looked down upon by the citizens of the countries where they work, driven to the fringes of society, and to criminal activities.

The papers presented in this book cover a wide range of areas from various aspects. The points of view on and from different countries try to look at the very complex subject of migrant labourers from three main aspects – social, legal and criminological. Theses papers cover a wide range of areas such as - prejudices and racial intolerance, official policies, living and health conditions, psychological and psychiatry aspects, criminality and victimization and human trafficking. Some of the papers advance the Conflict theory, which seeks to catalogue the ways in which those in power seek to stay in power. Others reflect on basic facts advanced by other sociological and criminological theories.
INTRODUCTION

M. Shechory, S. Ben David and D. Soen

"The passport is the noblest part of a human being. It cannot be created in such an easy way as a human being. A human being can be created anywhere, in the most frivolous manner, and for no good reason -- but a passport never. It is therefore recognized when it is good, whereas a human being can be ever so good and still not be recognized"

[Bertolt Brecht, 1961, Flüchtlingsgespräche (Refugee Conversations)]

"Human history is the history of migration and the most sophisticated civilizations arose where human traffic was heaviest. The ancient Near East, the Indian sub-continent, China, the Americas, Europe -- all had constant influxes of migrants bringing new ideas and change" (New Internationalist, 1991, p.). The phenomenon of labor migration was shaped by historical events. Prior to the industrial revolution, labor migration was mainly an "inside story": it was restricted to the confines of the country itself. People migrated in their own country from one region to another one. This migration was initiated by economic cycles. In the wake of the industrial revolution, labor migration turned into something of an international phenomenon, it became a trans-national process. Yet, it was still restricted by borders, language and culture limitations. Because of the arrival of globalization, migration -- both legal and illegal - turned into one of the defining issues of the 21st century. The flow of authorized and illegal workers over borders presents a formidable challenge in countries throughout the world (Martin et al., 2005). It is estimated that there are roughly 20 to 30 million unauthorized migrants worldwide, comprising 10%-15% of the world's immigrant stock (United Nations, 2005). These undocumented workers have become the world's most exploited workforce -- subject to raids and arrests, forced to work at low pay and under miserable conditions (Chacon & Davis, 2006). According to the IOM (International Organization for Migration) there are more than 200 million estimated international migrants in the world today (IOM, 2008). Migrants comprise about 3.0% of the global population. This vast number of migrants worldwide could constitute the 5th most populous country in the world (World Bank, 2008). Women account for 49.6% of these global migrants (United Nations, 2005). In 2007 the remittance flows of these migrants were estimated at US$ 337 billion worldwide. US$ 251 billion went to
developing countries (World Bank, 2008). In places such as Mexico and the Philippines the remittances sent home by the migrant laborers exceed the official development aid (Koser, 2007). In fact, in 2003 these remittances constituted 7.1% of the GDP in Sri Lanka, 6.1% in Bangladesh and 5.8% in Pakistan (Maimbo et al., 2005). All in all, these remittances are outstripping foreign aid and are ranking as one of the biggest sources of foreign exchange for poor countries. Following a boom in the 1990s, this flow of money is lifting entire countries out of poverty, reshaping international politics (Kapur & McHale, 2003). Approximately 60 to 65 million migrant workers, accompanied by as many dependants, are estimated to be working in a country other than their own (IOM, 2008). The last decade has seen an increase in the number of countries experiencing labor migration and a growing tendency for many countries to be both countries of origin as well as destination. In fact, immigration is said to be changing the face of Europe's traditional nation-states. Throughout the 2nd half of the 20th century immigrants, guest workers, refugees, asylum seekers as well as ex-colonials have begun arriving in European countries, making Europe their home (Gorodzeisky & Semyonov, 2009). They are now of crucial importance to the economies of some European countries. Thus roughly a quarter of the workforce in Switzerland consists of foreign workers. Given the high rate of labor market participation of its native population, Switzerland would not be able to maintain its current level of economic activities without foreign workers (Sheldon, 2001). This global mobility of labor is largely driven by economic reasons. Labor tends to move from the poor countries to the rich ones (Smart, 1997); migrant labor usually fills the “three-D” jobs: dirty, demeaning and dangerous. This phenomenon has changed considerably both the social composition of several European countries as well as the ethnic fabric of numerous European cities (Lahav, 2004; Pettigrew, 1998; Sassen, 1996). Consequently, the question about the place of foreign workers in society has become ever more relevant and pressing. They have been transformed from a labor market problem to what is now deemed an issue of national identity (Fetzer, 2000; Baumgartl & Favell, 1995).

The International Organization for Migration noted that in recent years the migrant worker population has grown by six million people annually, a rate that is greater than the worldwide population growth rate (ILO, 2006) and it is predicted that the volume of cross-border movements of workers in search for employment is likely to continue to grow, especially in view of globalization having thus far failed to generate enough jobs and economic opportunities where people live (World Commission on the Social Dimension of Globalization, 2004). The persistently large income gap between most developing Asian economies and high-income countries, as well as rising intraregional income disparities, provide a powerful economic underpinning for expanding Asian migration flows (ADB, 2008).

Parallel to the increased international labor mobility, the levels of exploitation and deregulation have accelerated. The illegal employment of migrant labor, a phenomenon that appears to be on the increase in Europe, has raised a number of issues, such as the possibility of domestic workers being crowded out, the negative effect on native wages (Gavosto et al., 2009; Winter-Ebmer & Zweimueller, 1999), the losses of national revenue resulting from the non-payment of taxes and social security contributions, and problems relating to the living conditions, legal protection and integration of the foreign workers working illegally (Boswell and Straubhaar, 2004). It was estimated that around 500,000 migrants enter EU countries illegally every year. The overall number of these workers was put around 500,000 in Germany, 300,000 in France, 200,000 in the UK and 800,000 in Italy. There are estimates
that 70% of them are engaged in illegal labor (Djaji, 2001). The difficulty to claim grievance in labor courts or labor standards offices because of the workers' temporary migration status has been raised by several scholars (Smith & Paoletti 2005). Lack of legal protection for migrant workers heightens their attractiveness as instruments of “maintaining competitiveness” because they are obliged to work in situations where decent work conditions are not enforced (Stalker, 2000). Moreover, the emergence of new ethnic communities in the wake of labor migration changed the ethnic fabric of Western societies (Raijman et al., 2003). Consequently, foreign laborers are often viewed by citizens both as a threat to economic success as well as to national identity and social order. They are prone to become a target for prejudice, hostility and discrimination (Pettigrew, 1998). Research points out that anti-foreigner sentiment tends to be more pronounced where the size of the out-group population is relatively large and to be less pronounced where economic conditions are relatively prosperous (Semyonov et al., 2007). The push for greater cooperation in the area of international migration poses serious challenges to the upholding and advancing of the human rights of migrants (Piper, 2008), and major concerns with regard to employment rights are breach of contract and the non- or underpayment of wages (Verité, 2005; Piper, 2006).

The phenomenon of labor migration has many angels and can be analyzed from different points of view, some of which are contradictory or even conflicting. The prime stimulus for editing this book is the fact that labor migrants, which constituted a very serious problem for quite a number of Western societies, are now impacting other societies as well. Labor migration became a global problem. As already mentioned, the flow of both authorized and illegal workers over borders nowadays presents a quite formidable challenge in countries all over the world.

This book deals with tragedies, with exploitation on a massive scale. It focuses on a population of millions of migrant workers, accompanied by as many dependents, who are driven by circumstances beyond their control to work in a country other than their own, in a foreign society that cannot function without them. They are legally admitted in numbers calculated to meet the host countries’ labor market needs and priorities. Many others come or stay illegally, facing persecution, imprisonment or deportation back to their countries of origin, to life of misery and no hope.

The chapters are grouped in three sections: Studies of Social Issues: Who pays the Price?, Policy and Legislation – Trying to cope, and Criminology and Victimology Aspects: Trafficking and Victimization. Among the topics covered by the chapters are prejudices and racial intolerance, official policies, living and health conditions, psychological and psychiatric aspects, criminality, victimization and human trafficking. Some of the chapters advance the Conflict theory, which seeks to catalogue the ways in which those in power seek to stay in power. They also reflect the basic fact stated by the Conflict paradigm, namely that all problems are caused by different groups and their status, and how they compete for the necessities in life. Other chapters derive their core from several other sociological and criminological theories.

The first section, Studies of Social Issues: Who pays the Price? includes six chapters. In Chapter One, Rebeca Raijman explores the role of perceived symbolic and real threats, and of negative stereotypes, on exclusionist attitudes to labor migrants in Israel. An overview of the respondents’ attitudes toward labor migrants reveals a consistent pattern of negative attitudes, which are manifested through prejudice and feelings of social distance. The meanings of the findings are discussed within the unique ethno-national context of Israeli society and in light
of sociological theories on ethnic exclusionism. Riva Ziv, presents in Chapter two, findings from a study of stereotypical attitudes and social distance between Israeli women and female foreign workers. She found an extreme social gap and negative stereotypes that existing between these groups. This is a gap that does not allow for the kind of personal interaction between the employee and her employer that would reduce stereotypical attitudes.

In Chapter three, Marie Louise Seeberg and Ragnhild Sollund, based on a qualitative study of two immigrant categories, nurse and au pair, explore the links between different visa regulations for care workers coming to Norway, and how these entail different possibilities and consequences for the migrants. Their findings clearly show that immigrating as an au pair means being vulnerable to exploitation and de-skilling. Au pairs lack protection of both Norwegian and Philippine authorities.

In Chapter four Cecile T. Lowe using documentary narratives of Filipina migrant domestic servants in Hong Kong aims to focus some attention on the human face of migration. Although there are many successful stories, the reality for the majority of these workers reality is dominated by extreme hardships, a struggle for daily survival and fight for sanity.

In Chapter five Klaus Hoffmann, Tilman Kluttig and Thomas Ross focus on the epidemiological bases of migration to Germany and the special position of migrants in the German judicial and health care systems. Their concern is to present the background to clinical treatment of forensic psychiatric migrant patients. The chapter shows how forensic psychotherapy may be a helpful and integrative instrument while accepting and acknowledging cultural differences without loosing its neutral position.

Galia Sabar and Yonatan N. Gez in chapter six examine African labor migrants in Israel and their struggle for a right of residency. A significant part of the chapter is dedicated to examining African migrant children’s inclusion in the Israeli education system, as a way of assessing state handling of these children on the one hand and their integration into Israeli society on the other. Though focusing on African migrant laborers in Israel, this study touches on broader dilemmas migrant parents face worldwide.

The second section, Policy and Legislation includes five chapters. In chapter one Hani Offek explores the issue of pension insurance for migrant workers in Israel. The conclusion of this chapter is that the pension insurance for migrant workers will enhance the notion of the welfare state and will lead to coordination among countries in order to ensure the effectiveness of pension insurance. Therefore it may serve as a catalyst for the development of a global perception of social justice.

In the second chapter Ofer Sitbon assesses the changes initiated by the arrival of tens of thousands of migrant workers in Israel through an analysis of their treatment by Israeli courts. The courts' judgments usually reflect the wavering between the tendency to protect human rights, and the reluctance to grant rights to people who do not belong to the national/ethnic collective. However the price of the need to accept the future permanent presence of non-Jewish immigrants will be very high, as it can erode the legitimacy of both sides of the Jewish and Democratic State equation.

In chapter three Anabel Lifszyc Friedlander analyzes Israel’s policy on the issue of granting citizenship to the children of foreign workers. The research revealed that policy on this issue emerges from the need to solve ad hoc problems rather than the product of national strategic planning. Therefore there is a need for a thoroughgoing debate for the setting out of
a clear national policy that will protect both the rights of the foreign workers and the national character of the State of Israel.

In chapter four Christoph Junkert and Axel Kreienbrink present an overview of the phenomenon of the illegal employment in Germany in general and of immigrants in particular. A persisting demand for undocumented migrant workers and the anticipation of future regularizations are seen as strong pull factors for further illegal migration flows. However regularizations for undocumented workers, as they are demanded by charitable and human/migrants’ rights organizations, have not been, and most likely will not be, carried out in Germany. In the fifth and final chapter in this section, Efrat Shoham provides a brief background for understanding associated issues of migrant workers in Israel and describes the qualitative research conducted over a six-month period in the Masiyahu Prison, which studied and documented, central problems existing in the imprisonment process of undocumented migrant workers in Israel, including the inability to communicate with the prison staff and the general prison population and the cultural and religious differences existing among the jailed, undocumented migrant workers.

Criminology and Victimology Aspects: Trafficking and Victimization, The third section of the book illustrates and addresses these issues specifically. Nana Derby, in Chapter one presents a comparative assessment of human trafficking in Ghana, by qualitative interviews with child survivors, their parents and representatives from governmental and non-governmental organizations. The resultant framework holds that contemporary slaves are persons who, through conditions beyond their control, work under exploitative and dehumanizing conditions that alienate them from their freedoms and commoditize their bodies, turning them into saleable products the proceeds of which they cannot access. Gabriel Cavaglion in chapter two examines the glocal (global and local) pushing and pulling socio-economic factors in sex trafficking of women from the Former Soviet Union to Israel in the last 20 years. He concludes that these women are viewed as dehumanized merchandise by themselves as well by traffickers, the clients, the media and the public. As part of a pervasive culture of consumerism, the sex industry "turns out" a woman by eradicating her identity, erasing her sense of self, and any belief that she is entitled to dignity and bodily integrity.

Savarimuthu Samuel Asir Raj and Karuppannan. Jaishankar in chapter three examines issues of victimization of Indian migrant workers who suffer in South East Asia, especially in Singapore and Malaysia. They describe an encounter with wide range of human rights abuses in the workplace, including extremely long hours of work, incomplete and irregular payment of wages, psychological, physical, and sexual abuse and poor living conditions. Finally, they examine the role of Indian government to ameliorate the gravity of the situation through bilateral and multilateral means in international relations.

Janice Joseph in chapter four examines the plight of female migrant domestics a significant percentage of approximately 10 million foreign/migrant workers in the six Gulf States. All foreign workers can enter these countries only under the kafala, or ‘sponsorship’ system. That means that they can enter or leave the country only by an explicit permission of their employer, and they are not considered employees and therefore they are not protected by national or labor laws. As a result they are often subjected to exploitation and abuse. Moreover in cases where abused migrant workers left (or fled) their abusive sponsor or employer, the criminal justice system treats them as criminals because of the kafala system.

In chapter five, Mariska Kromhout, Joanne van der Leun and Henrieke Wubs provide insight into the backgrounds of irregular workers in the Netherlands, and also discuss the
involvement of these migrants in crime and prostitution. The Netherlands has been one of the countries actively involved in dealing with the issue of irregular migrants since the early 1990’s. Policies toward irregular immigrants have become much more restrictive over time. As a result, for those irregular migrants who find ways to get employed in the Netherlands, the social and financial constraints increase the risk that they become victims of exploitation.

REFERENCES


SECTION 1.
STUDIES OF SOCIAL ISSUES:
WHO PAYS THE PRICE?
Chapter 1

PREJUDICE, SOCIAL DISTANCE, AND DISCRIMINATORY ATTITUDES TOWARDS LABOR MIGRANTS IN ISRAEL

Rebeca Raijman

ABSTRACT

This chapter examines theoretical propositions regarding the social mechanisms that produce hostility and discriminatory attitudes towards out-group populations. Specifically, we compare the effect of perceptions of socio-economic and national threats, social contact and prejudice on social distance expressed toward labor migrants. To do so, we examine exclusionary views held by majority and minority groups (Jews and Arabs) towards non-Jewish labor migrants in Israel. Data analysis is based on a survey of the adult Israeli population based on a stratified sample of 1,342 respondents conducted in Israel in 2007. Altogether our results show that Israelis (both Jews and Arabs) are resistant to accepting and integrating foreigners into Israeli society. Among Jews this is because the incorporation of non-Jews challenges the definition of Israel as a Jewish state and poses a threat to the homogeneity of the nation. Among Arabs, this is probably due to threat and competition over resources. The meanings of the findings are discussed within the unique ethno-national context of Israeli society and in light of sociological theories on ethnic exclusionism.

We explore the role of perceived symbolic and real threats, and of negative stereotypes, on exclusionist attitudes to labor migrants in Israel. Labor migration has become an institutionalized phenomenon in the Israeli labor market and society. During the 1990s Israel became a host country to labor migrants, arriving from virtually every corner of the world. Initially recruited to replace Palestinian daily commuters in the construction and agriculture sectors, by 2007 migrant workers comprised 8 percent of the labor force. Their share in the Israeli labor market soon surpassed that of Palestinian labor force from the occupied

1This research was supported by a grant from the G.I.F, German-Israel Foundation for Scientific Research and Development (grant # 769-241.4/2002). I thank Or Zahavi for her help in data analysis.
territories, working in Israel for over two decades; it also ranked Israel the most heavily
dependent among the industrialized economies on foreign labor (Kemp & Raijman, 2008).

Labor migration in Israel has become a major public issue around which much debate is
taking place. The explicit position of the State is that Israel is not an “immigration” country
but rather an “Aliya” (Jewish immigration) country. The official discourse that frames
debates about labor migrants in Israel is a basic assumption that non-Jewish labor migrants
pose a challenge to the Jewish character of the state. Unwillingness to accept non-Jewish
immigrants is expressed through exclusionary immigration policies (e.g. limitation of family
reunion and refusal to secure residence status), restrictive naturalization rules, and a double
standard: an exclusionary model for non-Jews as against an “acceptance-encouragement”
model for Jews (Raijman, Semyonov & Schmidt, 2003). Thus, Israel may be viewed as an
immigrant–settler society based on an ethno-nationalist structure, defined both ideologically
and institutionally. As such, it provides an illuminating setting for testing attitudes towards
non-Jewish out-group populations.

THEORETICAL BACKGROUND:
EXPLAINING DISCRIMINATORY ATTITUDES TOWARDS OUT-GROUPS

We follow Pettigrew’s (1980) definition of prejudice and discriminatory attitudes (see
also Quillian, 1995; Scheepers, Gijsberts, & Coenders, 2002). Thus, we refer to ‘prejudicial
attitudes’ or ‘anti-minority sentiments’ as a collection of negative views—‘antipathy
accompanied by faulty generalization’. And like previous researchers we take the view that
prejudice is a defensive reaction to threats and challenges, whether explicit or implicit, to the
dominant group’s exclusive superiority in access to resources and privileges (see also Bobo &
Hutchings, 1996; Semyonov, Raijman & Gorodzeisky, 2006).

One of the commonest studied forms of prejudice and discrimination relates to peoples'
intentions and dispositions to behave negatively to out-group members. This form of
exclusion, labeled by Bogardus (1928) as social distance, is typically measured by asking
about people's willingness to maintain personal contact of various degrees of intimacy (as a
neighbor, through close kinship by marriage, as a boss in the workplace) with members of
particular social groups. Numerous studies have documented a hierarchy of social distance
preferences in the USA (Dovidio, Brigham, Johnson & Gaertner, 1996) and in Europe
(Hangendoorn 1995). These studies reveal that social distance hierarchies tend to be
consensual within social groups when at the top of this hierarchy are Europeans, followed by
Asians, and finally blacks.

Fear of competition and feelings of threat have been singled out as the main predictors of
discriminatory attitudes to out-group populations (Quillian, 1995; Stephan & Stephan 2000;
Scheepers et al. 2002; Semyonov, Raijman & Yom-Tov, 2002; Raijman et al., 2003; Raijman
& Semyonov, 2004; Semyonov et al. 2006). Perceived threat from foreign workers might
affect the way citizens think about the presence of foreigners in the host society. Increased
competition over scarce resources is likely to generate greater hostility to out-group members
because they are often perceived as a threat to in-group prerogatives.

The country relies on the system of jus sanguinis (community of descent) to determine the citizenship status of immigrants and their descendants.
Stephan and Stephan (2000) proposed the integrated threat framework that distinguishes different dimensions of threat, which can be broken down into two general types. The first type refers to inter-group anxiety and negative stereotypes as an expression of threat at the individual level, serving as a basis for expectations concerning the behavior of members of the out-group. It has been suggested that the generalization of perceived negative characteristics of out-group populations is fertile ground, in which discriminatory attitudes towards them are more likely to emerge.

The second type of threat refers to two basic forms of collective/group-level threat: realistic (or socio-economic) and symbolic (or cultural) (Canetti-Nisim, Ariely & Halperin, 2008). Realistic threat stresses competition on the socio-economic level and the impact of socio-economic forces on ethnic antagonism. Symbolic threat traces the roots of hostility to cultural preferences and prejudice, and stresses the role of national identity in explaining discrimination against minority and out-group populations.

The realistic threat posits that anti-minority attitudes are influenced by an individual’s perception of group conflict or even the threat of group conflict (Blumer, 1958; Blalock, 1967; Quillian, 1995; Coenders, 2001; Rajzman & Semyonov, 2004). The logic embodied in this framework suggests that individuals in vulnerable positions in the society and in the labor market hold negative attitudes to out-group populations because they feel threatened by their presence. That is, individuals of low socio-economic origin feel that out-group populations generate greater competition over scarce resources (e.g., fewer jobs, lower wage rates, and more competition for housing, social services and education) (Espenshade & Hempstead, 1996; Esses, Dovidio, Jackson & Armstrong, 2001). According to this view, the perception of threat or fear of competition (at the individual or the collective level) rationalizes exclusionary attitudes towards subordinate minorities (e.g. labor migrants).

Symbolic threat means ethnic minorities and migrants are seen as posing a threat to the cultural and national homogeneity of society. The sense of cultural threat reflects fear of the intrusion of values and practices perceived as both alien and potentially destructive to the national culture. Such feelings stimulate prejudice, which leads to discrimination against out-group populations (Schnapper, 1994; Baumgartl & Favell, 1995; Fetzer, 2000; Stephan & Stephan, 2000; Canetti-Nissim et al., 2008).

By this approach, conservative views (mainly expressed through religious fundamentalism and a right-wing political orientation) mobilize negative sentiments toward out-group members, activate prejudice and lead to discrimination against out-group populations (Scheepers, Gijberts & Hello, 2001; Van der Brug & Fennema 2003). Hence, the perception of threat to cultural and national homogeneity of the society prompts anti-minority sentiments (Fetzer, 2000; Rajzman & Semyonov, 2004); and these sentiments become more pronounced the more the minority differs from the majority ethnically and culturally (Wimmer, 1997; Fetzer, 2000). Symbolic threat is of especial importance and meaning in Israel, where membership in the nation (i.e. Jewish origin) is a prerequisite for substantial membership in the state (citizenship) (e.g. Shafir & Peled, 2002). Exclusionary attitudes (especially among Jews) towards out-group populations are thus based not only on an economic rationale and labor market competition but also on the commitment to maintain the Jewish character of the state (Rajzman & Semyonov, 2004; Rajzman, forthcoming).

But exclusionary attitudes towards out-group populations are affected not only by perceptions of realistic and symbolic threats and negative stereotypes but also by inter-group contact (Pettigrew & Tropp, 2000). According to the contact hypothesis prior contact between
the groups provides information about characteristics of the out-group, and therefore affects both perceptions of its threat and discriminatory attitudes to it (see e.g. Pettigrew, 1998; Wagner, van Dick, Pettigrew & Christ 2003). Furthermore, the quality, not the quantity, of the contact affects the way realistic and symbolic threats are perceived (Stephan & Stephan 2000). Positive contacts should lead to improved inter-group relations, thereby reducing fear of competition, prejudice and social distance. By contrast, people with no contact or negative experiences of social interaction are more likely to feel threatened by the presence of out-group populations and more likely to discriminate against them. However, it has also been argued that even when the contact is not positive, it helps at least to reduce uncertainty about the characteristics and behavior of the other group (Stephan & Stephan 2000. p. 32).

Here we aim to contribute to the literature on prejudice and exclusionary attitudes by distinguishing among the effects of social contact, stereotypes and threats on expressions of social distance from labor migrants. In so doing we attempt to shed light on the nature and meaning of membership of Israeli society, but also of contemporary multi-ethnic societies.

**METHODOLOGY**

The analysis reported here is based on a survey of the adult Israeli population based on a stratified sample of 1,342 respondents conducted in Israel in 2007 by the B.I. and Lucille Cohen Institute for Public Opinion Research at Tel Aviv University. The questionnaire contains data on respondents' demographic and socioeconomic characteristics. Interviews were face-to-face and lasted about 50 minutes. Response rate was 62 percent, which is high by any standard in Israeli society.

**Variable Measurement**

The items related to perception of socio-economic threat, social distance and stereotypes were factor-analyzed simultaneously to check that they comprised three empirically distinct latent variables. As expected, principal component analysis revealed a clear three-dimensional structure, with all items having a substantial loading on one dimension (see Appendix 1).

**Dependent Variable: Social Distance**

Social distance from labor migrants was measured on a 1-7 scale based on responses to the following four questions: Would it be unpleasant if (1) your neighbor was labor migrant, (2) a relative married a labor migrant, (3) your child studied with a child of a labor migrant, (4) your boss was a labor migrant? The four items were used to construct the latent variable social distance from labor migrants.³

**Explanatory Variables**

Realistic threat or fear of socio-economic competition by labor migrants was measured on a 1-7 scale (1= not affected at all; 7= strongly affected) based on responses to the questions: To what extent do foreign workers negatively affect (1) your wage level, (2) your
employment opportunities, (3) your welfare benefits? The three questions were asked twice: once at the individual level and once at the collective level. We expected a difference between the individual and the collective level of perceived threat, but factor analysis showed that all six measured items measured only one latent variable, which we labeled threat of socio-economic competition.\(^4\)

The latent variable stereotypes was measured on a 1-7 scale based on responses to the following four questions. To what extent you agree with the following statements: Labor migrants (1) lack occupational skills, (2) bring diseases, (3) tend to be violent, (4) tolerate inferior living conditions? The four items were used to construct the latent variable (negative) stereotypes of labor migrants.\(^5\)

Symbolic threat was measured as an interaction term between two variables. The first variable is the response (on 1 to 4 scale) to the question: “To what extent do you agree that in the future the proportion of foreign workers would be so high that they would be a threat to the Jewish majority in the state. The second variable measures (on 1 to 7 scale) response to the question: “whether Israel should be a Jewish state” and serves as an indicator of identification-level with the ethno-national character of the state. The interaction between these two variables provides us with a measure of the sense of threat posed by foreign workers weighted by the level of commitment to preserve the ethno-national character of the state (Raijman & Semyonov, 2004).

Social contact was measured by two questions. First the respondent was asked if he or she had a personal relationship with a foreign worker. If the answer was affirmative the respondent was then asked to evaluate his or her experiences with such a worker on a 1-7 scale (1=negative, 7=positive). From the combination of the two answers we constructed a series of dummy variables (had a positive contact, had a negative contact, no contact=omitted category).

To isolate the effects of social contact, perception of threats, and stereotypes on social distance we controlled for the usual series of socio-demographic variables in this type of studies, such as age (in years), gender (male=1), and ethnicity. The last was measured as a series of dummy variables differentiating Arabs from Jews of diverse ethnic origin: (a) new immigrants (from the former Soviet Union (FSU), hereinafter Olim), (b) Asian-African origin (hereafter Mizrahim), and (c) European-American origin (hereafter Ashkenazim) (the omitted category). Other variables were political orientation (right, center, and missing values) (the omitted category was left) and religious orientation (1=religious). Respondents' socioeconomic characteristics were education (years of formal schooling) and household income per capita (in NIS – New Israel Shekels).

### Descriptive Overview

Table 1 shows a descriptive overview of the mean values for social contact and the indicators that compose these latent variables: perception of socio-economic threat, perception of national threat, stereotypes, and feelings of social distance from labor migrants.

---

\(^3\) Cronbach's alpha = .82.  
\(^4\) Cronbach's alpha = .89.  
\(^5\) Cronbach's alpha = .76.
in Israel. The data in Table 1 reveal that on average half of the Jewish respondents and over 70 percent of the Arab respondents reported having no contact with labor migrants. For Jewish respondents the social contact with labor migrants tended to be a pleasant experience whereas for the small percentage of Arabs who reported some contact it was reported as an unpleasant event.

Israeli Jews express fairly moderate levels of threat to their social and economic well-being. In all items, and for all groups, the collective level of threat is much higher than the individual level. Perception of competition is most evident in the economic aspect, especially at the group level. This perception is most apparent among subordinate groups (Asian-African origin and even more markedly in Israeli Arabs) who tend to feel that the presence of foreign workers in the country has detrimental consequences for their employment opportunities and wage levels.

Perception of competition over welfare benefits is not as pronounced as the perception of labor market competition. Note that migrant workers are not entitled to any welfare services granted by the state to its citizens. Nevertheless, a substantial portion of respondents perceive that the presence of labor migrants in society negatively affect their welfare rights. Here too, significant differences in attitudes are evident by ethnicity. Arab respondents tend to perceive greater threat and competition (at the individual and group level) generated by foreign workers than do Jewish respondents.

The data also reveal that Israelis perceive the presence of labor migrants as a potential threat to the Jewish character of the state. Notably, Arabs scored higher than Jews in this statement. However, Jews, but not Arabs, support the idea that “Israel should be a Jewish state.” Specifically, while over 70 percent of the Jewish respondents strongly agree with this statement, less than 3 percent of the Arabs support the notion that Israel should be a Jewish state. The difference between Jews (regardless of ethnic origin) and Arabs is clearly captured in the mean values of the interaction term that measures symbolic or national threat ( = 16 for Mizrahim, = 13 for Ashkenazim and Olim, and =3.9 for Arabs).

Ethnicity does indeed have a significant effect on the perception of stereotypes. Arabs, more than Jews, are likely to subscribe to negative stereotyping of labor migrants, with Ashkenazim displaying lower levels of endorsement of such attitudes. Among the Jewish respondents, Ashkenazim are the least likely to perceive labor migrants in a negative way.

---

6 By means of ANOVA we found that the observed differences in the mean scores between ethnic categories were significant.
7 This is because individuals who occupy a position somewhat higher in the social system may not actually experience direct competition at the individual level; however, they may fear threat to the in-group as a whole.
8 The lower scores by Olim on this specific question (compared with the other Jewish groups) can be explained by the high percentage of non-Jews among new immigrants from the FSU and the relatively high number of mixed marriages in this population which tend to oppose the religious character of the state.
### Table 1. Social Contact, Socio-economic Threat, National Threat, Stereotypes and Social distance
(means, standard deviations, and percentages)

<table>
<thead>
<tr>
<th></th>
<th>Mizrahim</th>
<th>Ashkenazim</th>
<th>Olim</th>
<th>Arabs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Social contact</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No contact</td>
<td>50.8%</td>
<td>43.5%</td>
<td>48.1%</td>
<td>73.8%</td>
</tr>
<tr>
<td>Not a pleasant experience</td>
<td>15.1%</td>
<td>9.0%</td>
<td>17.9%</td>
<td>16.6%</td>
</tr>
<tr>
<td>A pleasant experience</td>
<td>34.1%</td>
<td>47.5%</td>
<td>34.0%</td>
<td>9.6%</td>
</tr>
<tr>
<td><strong>Socio-economic threat</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Threat to welfare:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collective</td>
<td>3.9 (2.3)</td>
<td>28.8%</td>
<td>3.5 (2.2)</td>
<td>22.9%</td>
</tr>
<tr>
<td>Individual</td>
<td>3.5 (2.2)</td>
<td>24.6%</td>
<td>2.9 (2.1)</td>
<td>17.9%</td>
</tr>
<tr>
<td>Threat to employment:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collective</td>
<td>4.3 (2.2)</td>
<td>37.9%</td>
<td>3.8 (2.3)</td>
<td>27.9%</td>
</tr>
<tr>
<td>Individual</td>
<td>3.3 (2.3)</td>
<td>24.1%</td>
<td>2.7 (2.2)</td>
<td>15.8%</td>
</tr>
<tr>
<td>Threat to earnings:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Collective</td>
<td>4.3 (2.3)</td>
<td>37.9%</td>
<td>3.8 (2.3)</td>
<td>28.0%</td>
</tr>
<tr>
<td>Individual</td>
<td>3.3 (2.3)</td>
<td>23.6%</td>
<td>2.7 (2.1)</td>
<td>14.2%</td>
</tr>
<tr>
<td><strong>National threat</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Threat to Jewish character of the state (<strong>strongly agree=3,4)</strong></td>
<td>2.4 (0.9)</td>
<td>43.2%</td>
<td>2.1 (0.8)</td>
<td>26.9%</td>
</tr>
<tr>
<td>Israel should be Jewish state (<em>strongly support=6,7)</em>*</td>
<td>6.5 (1.3)</td>
<td>88.5%</td>
<td>6.3 (1.5)</td>
<td>82.4%</td>
</tr>
<tr>
<td>National threat (weighted by two questions above)</td>
<td>16.0 (6.8)</td>
<td>-</td>
<td>13.3 (6.4)</td>
<td>-</td>
</tr>
<tr>
<td><strong>Prejudice</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lack of occupational skills</td>
<td>3.7 (2.1)</td>
<td>22.4%</td>
<td>3.3 (2.1)</td>
<td>19.4%</td>
</tr>
<tr>
<td>Bring disease</td>
<td>3.5 (2.0)</td>
<td>19.8%</td>
<td>3.0 (2.1)</td>
<td>15.8%</td>
</tr>
<tr>
<td>Violent</td>
<td>3.2 (1.9)</td>
<td>14.4%</td>
<td>2.6 (1.9)</td>
<td>10.1%</td>
</tr>
<tr>
<td>Tolerance of inferior living conditions</td>
<td>4.7 (2.2)</td>
<td>45.6%</td>
<td>4.3 (2.3)</td>
<td>38.0%</td>
</tr>
<tr>
<td><strong>Social distance</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Neighbor</td>
<td>4.7 (1.9)</td>
<td>39.8%</td>
<td>4.4 (2.0)</td>
<td>32.0%</td>
</tr>
<tr>
<td>Family</td>
<td>6.5 (1.2)</td>
<td>85.7%</td>
<td>6.0 (1.6)</td>
<td>73.4%</td>
</tr>
<tr>
<td>Child (in class)</td>
<td>4.7 (1.9)</td>
<td>38.5%</td>
<td>4.4 (2.0)</td>
<td>32.6%</td>
</tr>
<tr>
<td>Boss (<strong>strongly oppose=6,7)</strong></td>
<td>5.3 (1.9)</td>
<td>53.2%</td>
<td>4.9 (1.9)</td>
<td>43.8%</td>
</tr>
<tr>
<td>N</td>
<td>307</td>
<td>360</td>
<td>316</td>
<td>358</td>
</tr>
</tbody>
</table>
As for the social aspect, Israelis are seen to adopt substantially negative attitudes to labor migrants, perceiving them as social outsiders. Their exclusion is manifested through feelings of social distance (especially in respect of close intrusion into citizens’ private lives, for example, marrying a close relative). Yet the data reveal considerable differences between majority and minority respondents in the expression of social distance.

Subordinate groups (Mizrahi Jews and Arabs) are more likely to express higher levels of opposition towards social contact with labor migrants as neighbors, family members, children's classmates and bosses in the workplace). For example, about 94 percent of Arab respondents and 86 percent of Mizrahim would find it unpleasant if a foreign worker married a family member, compared with 70 and 73 percent of Ashkenazim and Olim, respectively; 52 percent of Arabs and 40 percent of Mizrahim would find it unpleasant if a foreign worker were a neighbor, compared with only 32 and 25 percent of Ashkenazim and Olim, respectively. Differences among the groups are less marked regarding a foreign worker being a supervisor at work, with Mizrahim and Arabs (subordinate groups) displaying higher levels of distance (53 and 47 percent, respectively) than Ashkenazim and Olim (44 percent).

The lowest levels of social distance were reported in respect of foreign workers’ children sharing the same classroom as respondents’ children. Only 18 percent of Olim reported unpleasantness due to such contact, compared with 39 percent, 33 percent and 31 percent of Mizrahim, Ashkenazim and Arabs, respectively.

Next we analyze how far the attitudes detailed above are affected by social contact, real and symbolic threats, and stereotypes.

**Explaining Prejudice and Social Distance**

We estimate five regression models. In model 1, *social distance* is predicted as a function of socio-economic characteristics (education and income), ethnicity, age, gender, religiosity, and political orientation. Then several endogenous variables are added: *social contact* in equation 2, *realistic* (socio-economic) threat in equation 3, *symbolic* (national threat) in equation 4, and *(negative) stereotypes* in equation 5. These endogenous variables, added to the set of socio-economic and demographic characteristics, allow us to examine whether and to what extent the endogenous variable intervene in all exogenous variables and attitudes to labor migrants. Results are presented in Table 2.

The results for model 1 are in line with theoretical expectations and previous findings. Discriminatory attitudes to labor migrants – social distance – are more evident among men, right-wing supporters, religious people and subordinate minorities (Arabs and Mizrahim) and negatively related to income per capita. Surprisingly, we found no significant effects of years of schooling on social distance after controlling for family income per capita.

When the dummy variables for social contact are added (in model 2), the coefficient for ethnic origin (Mizrahim) on social distance ceases to be significant, suggesting that the effect has been mediated by social contact. Indeed, respondents who had 'a pleasant experience’ with migrant workers were more likely than respondents who had 'no contact' with labor migrants to convey lesser feelings of social distance, whereas those reporting 'not a pleasant experience’ were more likely to express higher levels of social distance from labor migrants.
Table 2. OLS predicting Social distance from labor migrants in Israel Unstandardized (standard error) and standardized coefficients

<table>
<thead>
<tr>
<th>Variable</th>
<th>(1) Social distance</th>
<th>(2) Social distance</th>
<th>(3) Social distance</th>
<th>(4) Social distance</th>
<th>(5) Social distance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Constant</td>
<td>-.698 (.173)</td>
<td>-.546*** (.168)</td>
<td>-.923*** (.17)</td>
<td>-.840*** (.17)</td>
<td>-.610*** (.162)</td>
</tr>
<tr>
<td>Years of formal schooling</td>
<td>-.003 (.008)</td>
<td>-.001 (.008)</td>
<td>.003 (.008)</td>
<td>.007 (.008)</td>
<td>.13 (.007)</td>
</tr>
<tr>
<td>Age</td>
<td>.002 (.002)</td>
<td>.002 (.002)</td>
<td>.001 (.002)</td>
<td>.001 (.002)</td>
<td>-.000 (.002)</td>
</tr>
<tr>
<td>Men</td>
<td>.126* (.05)</td>
<td>.109* (.05)</td>
<td>.100* (.05)</td>
<td>.081 (.048)</td>
<td>.115* (.045)</td>
</tr>
<tr>
<td>Income per capita</td>
<td>-.000** (.000)</td>
<td>-.000* (.000)</td>
<td>-.000* (.000)</td>
<td>-.000* (.000)</td>
<td>-.000* (.000)</td>
</tr>
<tr>
<td>Religious</td>
<td>.577*** (.06)</td>
<td>.532*** (.06)</td>
<td>.507*** (.05)</td>
<td>.492*** (.06)</td>
<td>.430*** (.056)</td>
</tr>
<tr>
<td>Politically right</td>
<td>.658*** (.08)</td>
<td>.667*** (.08)</td>
<td>.603*** (.07)</td>
<td>.576*** (.07)</td>
<td>.427*** (.071)</td>
</tr>
<tr>
<td>Politically center</td>
<td>.367*** (.07)</td>
<td>.377*** (.07)</td>
<td>.360*** (.07)</td>
<td>.359*** (.07)</td>
<td>.277*** (.065)</td>
</tr>
<tr>
<td>Political definition (missing values)</td>
<td>.493*** (.08)</td>
<td>.487*** (.08)</td>
<td>.452*** (.08)</td>
<td>.453*** (.08)</td>
<td>.382*** (.073)</td>
</tr>
<tr>
<td>Arabs</td>
<td>.388*** (.08)</td>
<td>.224*** (.08)</td>
<td>.482*** (.08)</td>
<td>.260*** (.09)</td>
<td>-.058 (.088)</td>
</tr>
<tr>
<td>Mizrahim</td>
<td>.151* (.07)</td>
<td>.079 (.07)</td>
<td>.028 (.07)</td>
<td>.013 (.07)</td>
<td>.011 (.065)</td>
</tr>
<tr>
<td>Olim</td>
<td>.037 (.07)</td>
<td>.053 (.07)</td>
<td>.051 (.07)</td>
<td>-.060 (.07)</td>
<td>-.111 (.066)</td>
</tr>
<tr>
<td>Not a pleasant experience</td>
<td>-</td>
<td>.21* (.07)</td>
<td>.197* (.07)</td>
<td>.168* (.07)</td>
<td>.059 (.067)</td>
</tr>
<tr>
<td>A pleasant experience</td>
<td>-</td>
<td>-.461*** (.06)</td>
<td>-.418*** (.06)</td>
<td>-.396*** (.05)</td>
<td>-.333*** (.053)</td>
</tr>
<tr>
<td>National threat</td>
<td>-</td>
<td>-.21</td>
<td>-.03*** (.004)</td>
<td>.024*** (.004)</td>
<td>.016*** (.004)</td>
</tr>
<tr>
<td>Socio-economic threat</td>
<td>-</td>
<td></td>
<td>.182*** (.03)</td>
<td>.074*** (.028)</td>
<td>.348*** (.028)</td>
</tr>
<tr>
<td>Prejudice</td>
<td>-</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>R²</td>
<td>.17</td>
<td>.23</td>
<td>.26</td>
<td>.28</td>
<td>.36</td>
</tr>
<tr>
<td>N</td>
<td>1342</td>
<td>1342</td>
<td>1342</td>
<td>1342</td>
<td>1342</td>
</tr>
</tbody>
</table>

P<.01**  P<.05*  P<.001***.
The coefficients listed in column 3 and 4 of Table 2 show the impact of both the national and the socio-economic threat on feelings of social distance. The findings provide firm support for the hypothesis that threats are likely to prompt anti-migrant sentiments. That is, respondents who feel threatened by competition in the socio-economic arena (β = 0.18) and those who perceive labor migrants as a threat to the homogeneity of the nation are more likely to report higher levels of social distance (β = 0.17).

Note that the coefficient for the variable ethnic origin (Arabs) decreases after controlling for socio-economic threat. This confirms the proposition that subordinate groups in the society tend to feel more threatened by the presence of out-group populations, and are therefore more likely to express exclusionary attitudes to them. Also, part of the effect of national threat on social distance is mediated by the socio-economic threat as evinced by the reduction in the value of the regression coefficients for national threat between models 3 and 4.

The final model (column 5) confirms the theoretical expectations of the integrated threat framework. Individuals reporting higher levels of negative stereotypes, perceptions of symbolic threats, and perceptions of real threats are more likely to report higher feelings of social distance from migrant workers (β = 0.35, 0.12, and 0.07, respectively).

After controlling for social contact, perceptions of threat, and stereotypes the effect of ethnic origin (Arabs) ceases to be significant. By contrast, we still find significant direct effects of religiosity, political orientation, and income per capita on social distance. Specifically, the direct effect of religiosity on social distance is strong (β = 0.19) and significant, with right- and center-oriented respondents also being more likely than others to express higher levels of social distance from labor migrants (β = 0.20 and 0.12, respectively). The meanings of these findings are discussed next.

CONCLUSIONS

The social climate enveloping minorities and immigrants has long been considered an important factor in determining the way national minorities and foreigners adapt to the host society and the relations between groups in societies (Lahav, 2004). Attitudes to minorities and migrants are a key factor in the creation and reproduction of patterns of racial and ethnic labor-market inequality, segregation in housing, and general inter-group tension. The ever-expanding literature on the topic uniformly suggests that the relative position of an ethnic or immigrant group in a society is strongly influenced by both public attitudes and government actions. Although the two factors are not mutually exclusive but interdependent, both form the context of reception, which in turn affects the nature and character of ethnic relations in society.

Drawing on a representative sample of the adult population of Israel, this chapter set out to identify the role of social contact, real and symbolic threats, and stereotypes in discriminatory attitudes to labor migrants. Together, our results show that Israelis (Arabs and Jews of any ethnic origin) are resistant to accepting and integrating foreigners into Israeli society.
Our results shed light on the varied factors that induce exclusionary attitudes. They suggest that the combination of realistic and symbolic threats as well as negative stereotypes accounted for a substantial amount of the variance in social distance from labor migrants.

These exclusionary attitudes do rest on the economic rationale and labor market competition, but also on the commitment (especially of Jews) to maintain Israel's Jewish character and fear of negative consequences that negative stereotypes create (Stephan & Stephan, 2000, p. 27). Although each threat was a significant predictor of discriminatory attitudes, negative stereotypes and perception of symbolic threat seem to play a much more important role than feelings of real threat in explaining exclusionist attitudes to out-group populations in Israel.

Our findings suggest, however, that discriminatory attitudes to foreign workers cannot be fully explained by perception of threats and stereotypes. Specifically, individuals of higher income are less hostile to migrant workers and individuals who incline politically to the right and center, and who have high levels of religiosity, seem to be more antagonistic to foreign workers.

These differences can be attributed to liberal views held by individuals of higher socio-economic status and to conservative views held by religious and right-leaning people (Scheepers et al., 2001; Wimmer, 1997). Furthermore, the strong and direct effect of degree of religiosity on social distance reflects the unique linkage between religion and ethnic culture in Israel. In Israel, being a religious Jew, particularly Orthodox, implies the rejection of others even more than in other Western countries (see e.g. Pedahzur & Yishai, 1999, p. 115).

Whatever the reason for discriminating against labor migrants, excluding them from the public and private spheres creates de facto, a new subordinate group in Israeli society. Differences among sub-populations notwithstanding, Israelis are willing to benefit from the cheap labor foreign workers provide but are reluctant to incorporate them in the society. Labor migrants may thus be considered “margizens”, that is, a new category of people who, denied membership in the host society, remain excluded in legal, social, cultural and political terms (Martiniello, 1994; Kemp, Rajman, Reznik & Schammah, 2000; Rajman & Semyonov, 2004). They have become the new hewers of wood and drawers of water in Israeli society.

### APPENDIX 1:
**Factor Analysis for Socio-Economic Threat, Stereotypes, and Social Distance**

<table>
<thead>
<tr>
<th>Socio-economic threat</th>
<th>Socio-economic threat</th>
<th>Social distance</th>
<th>Stereotype</th>
</tr>
</thead>
<tbody>
<tr>
<td>Threat to welfare services - collective</td>
<td>.70</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Threat to welfare services - individual</td>
<td>.78</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Threat to job opportunities - collective</td>
<td>.79</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Threat to job opportunities - individual</td>
<td>.81</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Threat to wage level - collective</td>
<td>.75</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Threat to wage level – individual</td>
<td>.78</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>
Appendix 1. Continued).

<table>
<thead>
<tr>
<th>Stereotypes</th>
<th>Socio-economic threat</th>
<th>Social distance</th>
<th>Stereotype</th>
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<tbody>
<tr>
<td>Labor migrants lack occupational skills</td>
<td>-</td>
<td>-</td>
<td>.65</td>
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<tr>
<td>Labor migrants bring diseases</td>
<td>-</td>
<td>-</td>
<td>.75</td>
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<tr>
<td>Labor migrants tend to violence</td>
<td>-</td>
<td>-</td>
<td>.67</td>
</tr>
<tr>
<td>Labor migrants do not mind living in poor conditions</td>
<td>-</td>
<td>-</td>
<td>.68</td>
</tr>
<tr>
<td>Social distance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Your neighbor is a labor migrant</td>
<td>-</td>
<td>.80</td>
<td>-</td>
</tr>
<tr>
<td>A relative marries a labor migrant</td>
<td>-</td>
<td>.60</td>
<td>-</td>
</tr>
<tr>
<td>Your child studies with child of a labor migrant</td>
<td>-</td>
<td>.86</td>
<td>-</td>
</tr>
<tr>
<td>Your boss is a labor migrant</td>
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<td>Eigenvalue</td>
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<td>1.2</td>
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<td>8.2</td>
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</table>

REFERENCES


Chapter 2

STEREOTYPICAL ATTITUDES AND SOCIAL DISTANCE BETWEEN ISRAELI WOMEN AND FEMALE FOREIGN WORKERS

Riva Ziv

ABSTRACT

The purpose of the present study was to investigate whether contact with female foreign workers would decrease stereotypical attitudes toward them. The hypothesis examined was that Israeli women who do not employ female foreign workers held more stereotypical attitudes of this group than women who do employ foreign workers. It was also assumed that the level of willingness to establish social closeness is higher among Israeli women employers than among non-employers, whereas female foreign workers will adopt the stereotype attitudes that the Israeli women hold on them. The Bogardus social distance scale questionnaire and a stereotypes assessment questionnaire were distributed to 168 subjects. The results indicated that Israeli women employers and non-employers did not differ in their social distance toward foreign workers. Regarding the connection between stereotypical attitudes and willingness for social closeness it was found that among foreign workers, the greater the social distance to their own reference group, the more they perceive them as educated and sociable. Among employers - the greater the social distance to Israelis, the more they perceive them as misbehaved. The greater the social distance to foreign workers the more they perceive them as well behaved. Among non-employers - the greater the social distance to foreign workers, the more they perceive Israelis and foreign workers as well behaved.

THEORETICAL BACKGROUND

In the past two decades, the study of social stereotypes and prejudice has become one of the central issues in social science. The reason for this development is the recognition that both stereotypes and prejudice play a determinative role in shaping intergroup relations (Bar-Tal & Teichman, 2005). Pettigrew (1998) specified conditions for optimal intergroup
relations: equal group status within the situation (Halperin, Pedahzur & Canetti, 2007), common goals and intergroup cooperation (Alexander, Brewer & Livingston, 2005).

There are several theoretical explanations for the development of stereotypes and prejudices. In the present study, we will focus on two major theories: The integrated threat theory and the social dominance theory.

According to the integrated threat theory, an individual forms negative attitudes toward another social group when he perceives conflict or competition over limited resources between that group and his own. The threat, whether real or imagined, intensifies group cohesion and identification on the one hand and promotes the formation of prejudices on the other (Stephan, Ybarra, & Bachman, 1999).

According to the social dominance theory (Sidanius, 1994) every person has the basic need to retain or improve the relative position of his group within the social structure. For that purpose, prejudices and stereotype attitudes are being used, in order to justify the inequality within the various social groups (Overbeck, Jost, Mosso, & Flizik, 2004).

Prejudices and stereotypes enable the classification of individuals into social categories, lead to sweeping conclusions about them (Andersen, Klatzky & Murray, 1990; Ashmore & Del-Boca, 1981) and serve as a basis for behavior commensurate with stereotypical attitudes (Hamilton, Sherman, & Ruvolo, 1990, Angermeyer & Matschinger, 2005). Studies that dealt with this subject found that, on the whole, as opposed to the in-group, the out-group is perceived as a negative homogenous group (Brigham, 2006; Fiske, 1980; Hamilton, Dugan & Trolier, 1985; Hertel & Kerr, 2001; Klein, 1991; Lewis & Sharman, 2003; Ybarra, 1999). Although a preference exists for the in-group over the out-group as well as less estimation for the out-group (De -Vries, 2003), it may be that one group holds negative stereotypes with regard to the other group while the other group may hold positive stereotypes toward the first group (Munford, 1994; Pyant & Yanico, 1991; Bauder, Preibisch, Sutherland, & Nash, 2002). Similarly, a specific group may feel affinity toward another group, while the other group does not demonstrate the same affinity (Shechory, 2005).

This asymmetry is demonstrated by Shechory (2005) in two groups: Eastern origin and western origin Israelis, and afro and white Americans in the USA. Researches that were made in Israel (Peres, 1976; Shwarzwald & Amir, 1984) showed that eastern origin Israelis adopted the western origin Israelis point of view, and have shown social preference for the western origin Israelis. There were similar findings among afro and white Americans in the USA. Whereas the white Americans had a positive opinion on themselves and a negative one on the afro Americans is that, they tended to adopt the point of view of the majority group, and developed a negative point of view of themselves and a positive one of the white Americans (Greenwald & Oppenheim, 1968).

Stereotypical attitudes may influence the willingness for close social contact between different groups (Qian, 2002). Close social contact refers to the readiness of individuals or of groups to maintain contact with others who are not part of the same social group and to the level of empathy and understanding that exists between individuals, between an individual and a group or between groups (Bogardus, 1925, 1933, 1968; Owen, Eisner & McFaul, 1981) or to a lack of willingness among members of a given group to form close relations with members of another group (Walsh, 1990; Garrott, 1985). The fear of strangers and the other, coupled with the fear of a potential threat on limited resources and of damage to one’s culture create fertile ground for the sprouting of prejudices and stereotypes regarding those ethnic groups (Schwarzwald & Tur-Kaspa, 1997; Loveband, 2004).
The level of willingness to establish social contact is measured by the Social Distance Scale, which is based on the assumption any given individual is positioned in the center of concentric social circles. The smallest circles closest to the individual represent intimate social relations such as marriage, while the larger-distant circles represent more distant relations such as neighborliness, friendship or work relations. Entry into the more intimate circle is conditioned upon the willingness to enter into all other circles. In this way the smallest circle into which the individual enters reflects the measure of social distance. Indeed, this measure serves to indicate the views and the respect between various groups (Borgadus, 1925, 1933, 1968).

The present study examined the stereotypical attitudes of Israeli women towards foreign female workers who came to work in Israel, and the willingness of each of the groups to maintain social contact with those in their own group compared to with members of the other group.

During the 1990s Israel became a host country to labor migrants, initially recruited to replace Palestinian daily commuters in the construction and agriculture sectors (Kemp & Raijman, 2008). The precise number of foreign workers in Israel is unknown but is estimated as some 400 thousand (some of the foreign workers enter Israel without legal work permits) (Schwarzwald & Sabu-Manor, 2005). Their share in the Israeli labor market soon surpassed that of Palestinian labor force from the occupied territories, working in Israel for over two decades; and they significantly impacted on the structure and composition of Israel’s labor market (Kemp & Raijman, 2000, 2008; Rosenhack, 1999). But, it also exposes aspects of the social life in Israel, and new social categories of non-citizens emerged from new ethnic groups. Additionally, questions concerning the Jewish nature of the state started to arise. These aspects have implications on the polarization between the citizens and the immigrants. The fear from the stranger and the different, combined with the fear from the impact on the Jewish culture, might sharpen stereotype attitudes toward foreign workers (Kemp & Raijman, 2000, 2008; Rosenhack, 1999).

Thus, the issue of foreign workers in Israel has taken center stage in public discourse with regard to the threat to Israeli society created by their presence, especially, accompanied by economic and cultural tensions (Stephan & Stephan, 1996; Hugo, 2001).

Research findings revealed a radicalization of stereotypical attitudes in reaction to the presence of foreign workers in Israel. When foreign workers first arrived in Israel the initial public attitude toward them was positive. Most agreed to employ them and regarded them as a factor that freed them from dependence on Palestinian laborers (Bar-Tzuri, 1996). However, later studies (Shachar, 2000; Schwarzwald & Sabu-Manor, 2005; Raijman & Semyonov, 2004) pointed out that the majority of Israelis oppose granting equal rights to foreigners and support their deportation. A high percentage of Israelis prefer not to live near them and the absolute majority is unwilling to enter into familial relations with them. The definition “foreign workers” reflects the marginal status of those placed outside of Israel’s cultural and social boundaries.

Many female foreign workers came to Israel in order to work as live-in domestic and as Au Pairs. Most live in their employers’ homes, look after their employer’s children and perform housekeeping tasks throughout the day. Their practical contribution allows Israeli women enter the work force and develop their own careers. While the majority of the Israeli women employers belong to the upper-middle class, the foreign workers are migrants from poor countries who leave their own children in the charge of grandparents, sisters and sisters-
in law. It seems that the meeting between the women is one of “madam” and “housemaid”. On the surface it would seem that this meeting does not represent any threat to Israeli women with respect to vying for resources. Furthermore, the daily meeting with the foreign worker presents the opportunity to moderate stereotypical views.

As mentioned before, the purpose of the study was to examine the differences between Israeli women employers and non-employers foreign workers. It was assumed that the attitude toward foreign workers among Israeli women non-employers would be more conservative and stereotypical than those of Israeli women employers and that they would express less willingness to form social contact with them. This assumption is based on previous findings show that contact with the other and with foreigners reduces ethnic prejudices (Wagner, van -Dick, Pettigrew & Christ, 2003; Schwarzwald & Tur-Kaspa, 1997).

It was also assumed that foreign workers would hold less stereotypical attitudes and express more willingness for social contact with Israeli women employers.

As mentioned, according to the findings of Shechory (2005) about asymmetry stereotypical attitudes between two groups, it maybe, that the female foreign workers, that belong to the weak group would adopt the stereotype attitudes that Israeli women hold on them, and have a lower esteem of themselves than they would have on the Israeli women. Therefore they would prefer to be socially closer to Israeli women than to their own reference group.

**METHOD**

**Sample**

The sample consisted of 168 women: 55 foreign workers, 55 Israeli women employers and 58 Israeli women non-employers. Age for the total sample ranged from 20 to 58 years, M=37.99 (SD=9.17), with no group difference.

Most foreign workers were from East Asia (N=43, 78.2%) or Russia (N=9, 16.4%), Foreign workers were in Israel up to 17 years, with a mean of 4.11 years (SD=3.65). Foreign workers had less children on average (M=2.03, SD=0.81) than employing Israeli women (M=3.28, SD=1.80) or non-employing Israeli women (M=3.00, SD=1.11) (F (2,128) =10.05, p<.001, η²=.14).

Education of the Israeli women was higher than that of the foreign workers (χ²(2)=22.14, p<.001). While most of the Israeli women had higher education (N=30, 54.5% of employing women, N=30, 51.7% of non-employing women) or high school education (N=18, 32.7% of employing women, N=25, 43.1% of non-employing women), most foreign workers had either high school education (N=20, 36.4%) or elementary education (N=22, 40.0%).

35 (63.6%) of the foreign workers were employed as a nanny to children, up to 72 months (M=11.77, SD=15.07). 38 (69.1%) of the employing Israeli women employed a nanny to children, up to 48 months (M=21.67, SD=10.44).
Measurement

Stereotypes assessment questionnaire: Ybarra and Stephan (1994) compiled a stereotypes assessment questionnaire that included 20 pairs of contrasting traits related to stereotypes (e.g., clever-stupid, ambitious-non-ambitious, polite-rude) (See also Shechory, 2005; Schwarzwald, & Tur-Kaspa, 1997). The women were asked to rate the members of each ethnic group regarding these stereotypical characteristics, on a semantic differential scale of 7 points. Participants filled out this list twice – regarding Israeli natives and foreign workers.

Bogardus’ (1925, 1959, 1968) Social Distance Measurement was used to examine participants' willingness to have social contact in varying seven types of social relationships: living in the same neighborhood, living in the same building, working in the same organization, being friends with, sharing a room with, being a close friend with, and being married to. For example, the participant was asked: "Do you agree to have a sex offender/victim live in your neighborhood?" (For more details see result sub-section). Participants in the three study groups were asked to mark the types of social relationships they were willing to have with foreign workers and with Israeli natives. Social distance was calculated according to the number of types of social relationships the participant was willing to have with a member of the specified group. Thus, the higher the score, the lower the social distance.

Procedure

The data was collected over a period of a year. Interviewers met with foreign workers who worked in their neighbor’s homes. Foreign workers who were no Hebrew speakers were given a copy of the questionnaire in English.

Later questionnaires were distributed to the employers of the same foreign workers. Women who were not employers of foreign workers were chosen on the basis of personal acquaintance with the interviewers.

RESULTS

The first hypothesis examined was that Israeli women non-employers held more conservative and stereotypical views of foreign workers than Israeli women employers. An examination of the most common stereotypes (scored 1, 2 or 6, 7 on the semantic differential scale by over 60% of the participants of a group) revealed some clear trends.

Foreign workers evaluated Israelis as sociable (67.7%) and hard working (61.3%), while their evaluation of themselves included ambitious (74.3%), sociable (71.5%), clean (68.5%), clever (65.7%), modest (62.9%), and pretty (60.0%).

Israeli women employers evaluated Israelis as hard working (79.0%), quiet (73.7%), respectful (68.5%), polite (68.4%), non-aggressive (62.1%), and obedient (62.1%), while their evaluation of foreign workers included respectful (82.1%), hard working (68.9%), and polite (62.0%). Israeli women non-employers evaluated Israelis as hard working (90.0%), modest (67.5%), respectful (67.5%), noisy (65.0%), polite (62.5%), shut off to others (62.5%), and
non-aggressive (60.0%), while their evaluation of foreign workers included respectful (64.3%) only.

As shown in table 1, Israeli women non-employers evaluated Israelis as more hard working than did the foreign workers, and Israeli women employers evaluated Israelis as less aggressive than did the foreign workers. Foreign workers evaluated Israelis as more educated, modern, ambitious, and open to others, yet impolite, disrespectful and liars, than did the Israeli women themselves.

Table 1. Stereotypes regarding Israelis by group(N=168)

<table>
<thead>
<tr>
<th></th>
<th>Foreign Workers N=55( group 1)</th>
<th>Employing Israeli Women N=55( group 2)</th>
<th>Non-employing Israeli Women N=58( group 3)</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>M</td>
<td>Sd</td>
<td>M</td>
<td>Sd</td>
</tr>
<tr>
<td>Lazy-hard working</td>
<td>5.35</td>
<td>2.07</td>
<td>6.13</td>
<td>1.36</td>
</tr>
<tr>
<td>Social-non-social</td>
<td>2.77</td>
<td>1.86</td>
<td>3.84</td>
<td>1.95</td>
</tr>
<tr>
<td>Aggressive –non agressive</td>
<td>4.23</td>
<td>2.20</td>
<td>5.57</td>
<td>1.61</td>
</tr>
<tr>
<td>Unfair-fair</td>
<td>5.26</td>
<td>1.29</td>
<td>5.32</td>
<td>1.66</td>
</tr>
<tr>
<td>Obedient- disobedient</td>
<td>3.74</td>
<td>1.98</td>
<td>3.00</td>
<td>2.22</td>
</tr>
<tr>
<td>Clever-unclever</td>
<td>3.42</td>
<td>1.84</td>
<td>3.42</td>
<td>1.35</td>
</tr>
<tr>
<td>Ignorant-educated</td>
<td>4.74</td>
<td>2.03</td>
<td>3.53</td>
<td>1.47</td>
</tr>
<tr>
<td>Clean-dirty</td>
<td>2.94</td>
<td>1.95</td>
<td>3.05</td>
<td>1.71</td>
</tr>
<tr>
<td>Polite-impolite</td>
<td>3.77</td>
<td>1.87</td>
<td>2.55</td>
<td>1.83</td>
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<tr>
<td>Primitive-modern</td>
<td>4.81</td>
<td>1.72</td>
<td>2.97</td>
<td>1.55</td>
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<tr>
<td>Dishonest- honest</td>
<td>5.26</td>
<td>1.50</td>
<td>5.43</td>
<td>1.26</td>
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<tr>
<td>Arrogant-modest</td>
<td>4.94</td>
<td>1.71</td>
<td>5.18</td>
<td>1.66</td>
</tr>
<tr>
<td>Not ambitious- ambitious</td>
<td>5.29</td>
<td>1.77</td>
<td>3.76</td>
<td>1.75</td>
</tr>
<tr>
<td>Noisy-quiet</td>
<td>4.61</td>
<td>2.16</td>
<td>5.84</td>
<td>1.20</td>
</tr>
<tr>
<td>Selfish-unselfish</td>
<td>4.87</td>
<td>1.93</td>
<td>5.27</td>
<td>1.84</td>
</tr>
<tr>
<td>Pretty-ugly</td>
<td>2.87</td>
<td>1.52</td>
<td>3.45</td>
<td>1.72</td>
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<tr>
<td>Indulgent-stubborn</td>
<td>3.48</td>
<td>1.46</td>
<td>3.13</td>
<td>1.79</td>
</tr>
<tr>
<td>Truthful-liar</td>
<td>3.87</td>
<td>1.73</td>
<td>3.00</td>
<td>1.69</td>
</tr>
<tr>
<td>shut off-open</td>
<td>3.32</td>
<td>1.49</td>
<td>2.50</td>
<td>1.52</td>
</tr>
<tr>
<td>Respectful-disrespectful</td>
<td>3.77</td>
<td>2.14</td>
<td>2.16</td>
<td>1.50</td>
</tr>
</tbody>
</table>

*p<.05, **p<.01, ***p<.001 Note. The first characteristic scores 1, the second scores 7.

As shown in table 2, foreign workers were evaluated by Israeli women employers as more polite, honest and modest than they evaluated themselves. Foreign workers were evaluated by both Israeli women employers and non-employers as less ambitious and more respectful than they evaluated themselves. Foreign workers were evaluated by employing Israeli women as more quiet than they evaluated themselves and as more quiet than they were evaluated by Israeli women non-employers.
Table 2. Stereotypes regarding foreign workers by group (N=168)

<table>
<thead>
<tr>
<th></th>
<th>Foreign Workers</th>
<th>Employing Israeli Women</th>
<th>Non-employed Israeli Women</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N=55 (Group 1)</td>
<td>N=55 (Group 2)</td>
<td>N=55 (Group 3)</td>
<td></td>
</tr>
<tr>
<td>Lazy-hard working</td>
<td>4.71</td>
<td>5.48</td>
<td>5.11</td>
<td>5.11</td>
</tr>
<tr>
<td>Social-non-social</td>
<td>2.63</td>
<td>2.66</td>
<td>2.71</td>
<td>2.71</td>
</tr>
<tr>
<td>Aggressive --non aggressive</td>
<td>4.14</td>
<td>5.28</td>
<td>4.56</td>
<td>4.56</td>
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<tr>
<td>Unfair-fair</td>
<td>4.31</td>
<td>5.03</td>
<td>4.71</td>
<td>4.71</td>
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<tr>
<td>Obedient-disobedient</td>
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<td>3.32</td>
<td>3.32</td>
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<tr>
<td>Clever-unclever</td>
<td>2.60</td>
<td>3.46</td>
<td>3.07</td>
<td>3.07</td>
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<tr>
<td>Ignorant-educated</td>
<td>5.00</td>
<td>4.21</td>
<td>4.64</td>
<td>4.64</td>
</tr>
<tr>
<td>Clean-dirty</td>
<td>2.46</td>
<td>2.59</td>
<td>3.00</td>
<td>3.00</td>
</tr>
<tr>
<td>Polite-impolite</td>
<td>3.94</td>
<td>2.62</td>
<td>3.32</td>
<td>3.32</td>
</tr>
<tr>
<td>Primitive-modern</td>
<td>4.91</td>
<td>3.86</td>
<td>4.57</td>
<td>4.57</td>
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<tr>
<td>Dishonest-honest</td>
<td>3.86</td>
<td>5.17</td>
<td>4.79</td>
<td>4.79</td>
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<tr>
<td>Arrogant-modest</td>
<td>4.09</td>
<td>5.24</td>
<td>4.32</td>
<td>4.32</td>
</tr>
<tr>
<td>Not ambitious-ambitious</td>
<td>6.11</td>
<td>4.52</td>
<td>5.07</td>
<td>5.07</td>
</tr>
<tr>
<td>Noisy-quiet</td>
<td>3.20</td>
<td>5.07</td>
<td>3.89</td>
<td>3.89</td>
</tr>
<tr>
<td>Selfish-unselfish</td>
<td>4.17</td>
<td>5.07</td>
<td>4.75</td>
<td>4.75</td>
</tr>
<tr>
<td>Pretty-ugly</td>
<td>2.86</td>
<td>3.28</td>
<td>3.36</td>
<td>3.36</td>
</tr>
<tr>
<td>Indulgent-stubborn</td>
<td>4.50</td>
<td>3.93</td>
<td>4.11</td>
<td>4.11</td>
</tr>
<tr>
<td>Truthful-liar</td>
<td>3.37</td>
<td>3.07</td>
<td>3.44</td>
<td>3.44</td>
</tr>
<tr>
<td>shut off-open</td>
<td>4.34</td>
<td>3.93</td>
<td>3.82</td>
<td>3.82</td>
</tr>
<tr>
<td>Respectful-disrespectful</td>
<td>3.69</td>
<td>1.75</td>
<td>2.29</td>
<td>2.29</td>
</tr>
</tbody>
</table>

*p<.05, **p<.01, ***p<.001 Note. The first characteristic scores 1, the second scores 7.

Factor analysis of the stereotypes toward Israelis revealed four factors explaining 64.02% of the variance (with varimax rotation, number of item in parenthesis):

Factor analysis of the stereotypes toward foreign workers revealed two factors explaining 58.12% of the variance (with varimax rotation, number of item in parenthesis):

In order to compare between stereotypes toward Israelis and toward foreign workers an attempt was made to equate them. It may be observed that the first two factors regarding Israelis resemble the first factor regarding foreign workers and the last two factors regarding Israelis resemble the second factor regarding foreign workers. Indeed, the first two factors regarding Israelis correlated at r=.35 (p<.001), and Cronbach α of their combined items was .86. The last two factors regarding Israelis correlated at r=.44 (p<.001), and Cronbach α of their combined items was .81.

Thus, two factors were composed regarding stereotypes toward both Israelis and foreign workers: The first is behavioral, and its scale ranges from misbehave (1) to well behave (7), (lazy, aggressive, unfair, disobedient, impolite, dishonest, arrogant, noisy, selfish, stubborn, liar, disrespectful to hard working, non aggressive, fair, obedient, polite, honest, modest, quiet, unselfish, indulgent, truthful, respectful).
**Table 3. Factor analysis of the stereotypes toward Israelis**

<table>
<thead>
<tr>
<th></th>
<th>Factor 1</th>
<th>Factor 2</th>
<th>Factor 3</th>
<th>Factor 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lazy-hard working</td>
<td>-.21</td>
<td>.63</td>
<td>-.36</td>
<td>.14</td>
</tr>
<tr>
<td>Social-non-social</td>
<td>.01</td>
<td>-.06</td>
<td>.05</td>
<td>.84</td>
</tr>
<tr>
<td>Aggressive –non aggressive</td>
<td>-.48</td>
<td>.43</td>
<td>-.03</td>
<td>-.13</td>
</tr>
<tr>
<td>Unfair-fair</td>
<td>-.05</td>
<td>.69</td>
<td>-.21</td>
<td>-.20</td>
</tr>
<tr>
<td>Obedient- disobedient</td>
<td>.76</td>
<td>-.05</td>
<td>.05</td>
<td>.20</td>
</tr>
<tr>
<td>Clever-unclever</td>
<td>.05</td>
<td>.02</td>
<td>-.40</td>
<td>.61</td>
</tr>
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<td>Ignorant-educated</td>
<td>-.02</td>
<td>-.11</td>
<td>.82</td>
<td>-.18</td>
</tr>
<tr>
<td>Clean-dirty</td>
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<td>.15</td>
<td>-.30</td>
<td>.61</td>
</tr>
<tr>
<td>Polite-impolite</td>
<td>.92</td>
<td>-.13</td>
<td>.02</td>
<td>.03</td>
</tr>
<tr>
<td>Primitive-modern</td>
<td>.08</td>
<td>-.11</td>
<td>.85</td>
<td>-.16</td>
</tr>
<tr>
<td>dishonest- honest</td>
<td>-.15</td>
<td>.72</td>
<td>.25</td>
<td>.09</td>
</tr>
<tr>
<td>Arrogant-modest</td>
<td>.01</td>
<td>.69</td>
<td>-.18</td>
<td>-.14</td>
</tr>
<tr>
<td>Not ambitious-ambitious</td>
<td>.01</td>
<td>-.14</td>
<td>.75</td>
<td>-.11</td>
</tr>
<tr>
<td>Noisy-quiet</td>
<td>-.15</td>
<td>.73</td>
<td>-.26</td>
<td>.29</td>
</tr>
<tr>
<td>Selfish-unselfish</td>
<td>.04</td>
<td>.89</td>
<td>.03</td>
<td>.01</td>
</tr>
<tr>
<td>Pretty-ugly</td>
<td>.04</td>
<td>-.05</td>
<td>-.38</td>
<td>.62</td>
</tr>
<tr>
<td>Indulgent-stubborn</td>
<td>.51</td>
<td>-.45</td>
<td>-.04</td>
<td>-.39</td>
</tr>
<tr>
<td>Truthful-liar</td>
<td>.83</td>
<td>-.21</td>
<td>-.02</td>
<td>.02</td>
</tr>
<tr>
<td>shut off-open</td>
<td>.47</td>
<td>.21</td>
<td>.27</td>
<td>-.28</td>
</tr>
<tr>
<td>Respectful-disrespectful</td>
<td>.90</td>
<td>-.02</td>
<td>-.05</td>
<td>.04</td>
</tr>
<tr>
<td>Eigenvalue</td>
<td>5.04</td>
<td>3.77</td>
<td>2.56</td>
<td>1.43</td>
</tr>
<tr>
<td>% explained variance</td>
<td>25.21</td>
<td>18.87</td>
<td>12.79</td>
<td>7.15</td>
</tr>
<tr>
<td>Cronbach α</td>
<td>.85</td>
<td>.85</td>
<td>.83</td>
<td>.77</td>
</tr>
</tbody>
</table>

**Table 4. Factor analysis of the stereotypes toward foreign workers**

<table>
<thead>
<tr>
<th></th>
<th>Factor 1</th>
<th>Factor 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lazy-hard working</td>
<td>.76</td>
<td>.01</td>
</tr>
<tr>
<td>Social-non-social</td>
<td>-.25</td>
<td>.56</td>
</tr>
<tr>
<td>Aggressive –non aggressive</td>
<td>.79</td>
<td>-.08</td>
</tr>
<tr>
<td>Unfair-fair</td>
<td>.61</td>
<td>-.34</td>
</tr>
<tr>
<td>Obedient- disobedient</td>
<td>-.82</td>
<td>-.11</td>
</tr>
<tr>
<td>Clever-unclever</td>
<td>-.26</td>
<td>.66</td>
</tr>
<tr>
<td>Ignorant-educated</td>
<td>-.12</td>
<td>-.87</td>
</tr>
<tr>
<td>Clean-dirty</td>
<td>-.14</td>
<td>.72</td>
</tr>
<tr>
<td>Polite-impolite</td>
<td>-.87</td>
<td>.06</td>
</tr>
<tr>
<td>Primitive-modern</td>
<td>-.06</td>
<td>-.76</td>
</tr>
<tr>
<td>dishonest- honest</td>
<td>.78</td>
<td>-.23</td>
</tr>
<tr>
<td>Arrogant-modest</td>
<td>.79</td>
<td>.25</td>
</tr>
<tr>
<td>Not ambitious-ambitious</td>
<td>-.19</td>
<td>-.70</td>
</tr>
<tr>
<td>Noisy-quiet</td>
<td>.67</td>
<td>.50</td>
</tr>
<tr>
<td>Selfish-unselfish</td>
<td>.81</td>
<td>-.03</td>
</tr>
<tr>
<td>Pretty-ugly</td>
<td>-.02</td>
<td>.78</td>
</tr>
<tr>
<td>Indulgent-stubborn</td>
<td>-.52</td>
<td>-.03</td>
</tr>
<tr>
<td>Truthful-liar</td>
<td>-.78</td>
<td>.20</td>
</tr>
<tr>
<td>shut off-open</td>
<td>.05</td>
<td>-.65</td>
</tr>
<tr>
<td>Respectful-disrespectful</td>
<td>-.71</td>
<td>.17</td>
</tr>
<tr>
<td>Eigenvalue</td>
<td>6.98</td>
<td>4.65</td>
</tr>
<tr>
<td>% explained variance</td>
<td>34.89</td>
<td>23.23</td>
</tr>
<tr>
<td>Cronbach α</td>
<td>.93</td>
<td>.87</td>
</tr>
</tbody>
</table>
The second factor is intellectual-social and its scale ranges from uneducated / non social (1) to educated / social (7), (non-social, unclever, ignorant, dirty, primitive, not ambitious, ugly to social, clever, educated, clean, modern, ambitious, pretty). (item # 19 - shut off-open – was excluded due to inconsistent loadings).

Group differences in stereotypes toward Israelis and foreign workers were analyzed with two MANOVAs (due to scattered missing data), shown in table 5.

Table 5. Means and standard deviations of stereotypes toward Israelis and foreign workers by group

<table>
<thead>
<tr>
<th></th>
<th>Foreign workers M (SD)</th>
<th>Employing Israeli women M (SD)</th>
<th>Non-Employing Israeli women M (SD)</th>
<th>F(2,106) (η²) Stereotypes toward Israelis (N=109)</th>
<th>F(2,87) (η²) Stereotypes toward foreign workers (N=90)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Misbehave – well behave</td>
<td>4.66 (1.16)</td>
<td>5.39 (1.04)</td>
<td>5.31 (1.08)</td>
<td>4.56* (.08)</td>
<td>3.42* (.07)</td>
</tr>
<tr>
<td>Uneducated / non social - educated / social</td>
<td>4.98 (1.26)</td>
<td>4.07 (0.95)</td>
<td>3.79 (1.35)</td>
<td>9.13*** (.15)</td>
<td></td>
</tr>
</tbody>
</table>

*p<.05, **p<.01, ***p<.001.

Employing and non-employing Israeli women thought of Israelis as better behaved than did the foreign workers. Foreign workers thought of Israelis as more educated and sociable than the Israeli women.

Employing Israeli women regarded foreign workers as better behaved than did the foreign workers themselves. Foreign workers regarded themselves as more educated and social than the Israeli women employers.

Length of stay in Israel for the foreign workers was significantly related with their stereotypes regarding Israelis’ education / social conduct (r=-.41, p<.05) so that the longer they were in Israel the less they perceived Israelis as more educated and sociable.

The second hypothesis examined was that the level of willingness to establish social closeness is higher among Israeli women employers than among Israeli women non-employers.

In order to examine differences in willingness for closeness among Israeli women and foreign workers Bogardus’ scale was used. The scale includes seven hierarchical types of social contact (the lowest social relationship is willingness to live in the same neighborhood; the highest social relationship is willingness to marry). Participants expressed more willingness for emotional closeness (spending time together and friendship, for example) than for physical closeness (living in the same building or in the same room) as shown in Table 6.
It should be noted that Israeli women employers had a somewhat higher tendency to have a relationship with foreign workers than Israeli women non-employers. Social distance by group (foreign workers, Israeli women employers, and Israeli women non-employers) and type of evaluated group (Israeli natives and foreign workers) was analyzed with a 3x2 repeated measures MANOVA of (table 5).

The analysis was significant for the difference between the type of evaluated group (toward Israeli natives vs. toward foreign workers) - F(1,165)=139.82, p<.001, $\eta^2=.46$, so that, in general, social distance was significantly higher toward foreign workers than toward Israeli natives. The interaction of group (foreign workers, Israeli employers, and Israeli non-employers) by type of evaluated group was significant as well (F(2,165)=23.06, p<.001, $\eta^2=.22$). Analysis of the interaction revealed that while social distance among foreign workers toward Israeli natives vs. toward foreign workers did not differ significantly (F(1,165)=1.93, n.s., $\eta^2=.01$), social distance among both Israeli employers and non-employers was higher toward foreign workers than toward Israeli natives (F(1,165)=71.67, p<.001, $\eta^2=.30$, and F(1,165)=115.15, p<.001, $\eta^2=.41$, respectively).
Table 7. Means and standard deviations of social distance by group and type of evaluated group (N=168)

<table>
<thead>
<tr>
<th>Social distance:</th>
<th>Foreign workers N=55(M(SD))</th>
<th>Employing Israeli women N=55(M(SD))</th>
<th>Non-employing Israeli women N=58(M(SD))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toward Israeli natives</td>
<td>5.40 (1.53)</td>
<td>6.44 (1.17)</td>
<td>6.31 (1.51)</td>
</tr>
<tr>
<td>Toward foreign workers</td>
<td>4.95 (2.05)</td>
<td>3.66 (2.13)</td>
<td>2.89 (2.27)</td>
</tr>
</tbody>
</table>

Table 8. Correlations between social distance and stereotypes by group

<table>
<thead>
<tr>
<th>Stereotypes toward Israelis</th>
<th>Stereotypes toward foreign workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Misbehave – well behave</td>
<td>Uneducated / unsocial - educated / social</td>
</tr>
<tr>
<td>Social distance to Israelis</td>
<td>.22</td>
</tr>
<tr>
<td>Social distance to foreign workers</td>
<td>-.18</td>
</tr>
<tr>
<td>Employing Israeli women</td>
<td></td>
</tr>
<tr>
<td>Social distance to Israelis</td>
<td>.38*</td>
</tr>
<tr>
<td>Social distance to foreign workers</td>
<td>-.32</td>
</tr>
<tr>
<td>Non-employing Israeli women</td>
<td></td>
</tr>
<tr>
<td>Social distance to Israelis</td>
<td>.08</td>
</tr>
<tr>
<td>Social distance to foreign workers</td>
<td>-.45**</td>
</tr>
</tbody>
</table>

*p<.05, **p<.01, ***p<.001.

Further, Israeli women employers and non-employers did not differ in their social distance toward either Israeli natives or foreign workers (p>.05), yet both groups reported less social distance to Israeli natives than foreign workers (p<.001), as well more social distance to foreign workers than the foreign workers themselves (p<.01 for employing women, and p<.001 for non-employing women).

Length of stay in Israel for foreign workers, was unrelated with social distance toward Israelis ( r=.18, n.s.).

The third hypothesis was that stereotypical attitudes influence the social distance between different social groups. Correlations between social distance and stereotypes, presented in Table 8, show: Foreign workers - The greater the social distance to their own reference group – the foreign workers, the more they perceive them as educated and social. Israeli women employers - the greater the social distance to Israelis the more they perceive them as misbehaved. The greater the social distance to foreign workers the more they perceive them as well behaved. Israeli women non-employers - the greater the social distance to foreign workers the more they perceive Israelis and foreign workers as well behaved.
DISCUSSION

The present study examined the relationship between stereotypical attitudes and the social distance of female foreign workers towards Israeli employers and non-employers women, and vice versa.

With regard to stereotypes, it was found that employing and non-employing Israeli women thought of Israelis as better behaved than did the foreign workers, while among foreign workers, the longer they were in Israel, the less they perceived Israelis as being educated and sociable.

The explanation for the stereotypical attitudes of Israeli women in relation to foreign workers may be based on ethnocentricity, defined by Ponterotto, and Pederson (1993) as a pronounced preference for the culture to which the individual belongs and disdain for the worldviews and values of the other culture. According to this approach the Israeli women perceive their culture as being superior and therefore feel disdain for the other culture in which women are forced to leave their families in order to support themselves doing menial work in distant countries; while the Israeli women are in another place with regard to their employment opportunities and the social prestige they can aspire to and achieve.

It may be that as opposed to studies that claim that contact and connection between groups reduce prejudices and stereotypes (Paolini, Hewstone, Cairne, & Voci, 2004), in the present study, the extreme social gap that exists between Israeli women and female foreign workers does not allow for the kind of personal interaction between the employee and her employer that would reduce stereotypical attitudes.

As we know most foreign workers migrate from poor countries in order to perform tasks that affluent women are not willing to do (Ehrereich & Hochschild, 2003). It should be noted that in Israel women employ foreign workers to perform household tasks, and most employers belong to the upper middle class.

Contrary to the comprehensive threat theory, the Israeli women don't see the female foreign workers as a threat in the labor market, because they don't compete on the same roles and their stratification paths are different. But, there is fear of the strange and different and of the impact on the Israeli culture following the admission of foreign cultures. Therefore the definition of the meeting between women in the two groups put forward by Ehrereich and Hochschild (2003) matches that of the meeting between foreign workers and Israeli women.

With regard to social distance, as opposed to the hypothesis, no differences were found between employers and non-employers in the willingness for social closeness with foreign workers. All the Israeli women, both employers and non-employers, show less willingness for social closeness with foreign workers than with Israeli women. Although the social distance between Israeli women employers and foreign workers is slightly shorter that the social distance between non-employers and foreign workers, it is higher than the social distance towards the source group.

These findings contradict the assumptions of the integrated theory of prejudice (Stephan, Ybarra, & Bachman, 1999) with regard to the formation of stereotypes and prejudices against the background of conflicts between different social groups vying for limited resources. Study findings indicate that stereotypes and willingness for social closeness exist between groups that do not compete with each other – employers, non-employers and foreign workers. It may be that from the outset the conditions that would encourage rivalry over limited resources are
absent in this case because, as previously mentioned and as noted by Ehrereich, and Hochschild (2003) the meeting is between a “madam and her housemaid”. Another explanation is related to the fact that the foreign workers come to Israel for a specified time for the purpose of working, earning money and returning to their own countries, and therefore they have no interest in integrating into the local society and do not regard Israeli society as a normative reference group. Hence the social distance remains as it was when they first arrived in Israel. This finding is in line with hypotheses proposed by the social dominancy theory (Sidanius, 1994), according to which each individual has a basic need to preserve, or to improve, the relative status of his group in the social hierarchy structure.

Beyond the differences in stereotypical attitudes between different groups of people, study findings also pointed to negative self perceptions among the foreign workers. It may be that foreign workers adopted a negative self image that was compatible with the stereotype of cultural backwardness. Our findings show that foreign workers saw themselves as less intelligent and less educated compared to Israeli women. It is possible that the low self esteem of the foreign workers is based on the fact that they are disconnected to their families, contrary to their Israeli employers, and they are unable to fulfill their role as mothers, while their employees are free to choose whether to take on their role as mothers or pay other women to take their place.

This result is also compatible with previous findings with regard to ethnic groups that were perceived as inferior to the dominant group which indicated that they tended to adopt the views of the majority group and evaluated themselves in a negative way (Munford, 1994; Pyant, & Yanico, 1991; Shechory, 2005). Regarding the connection between stereotypical attitudes and willingness for social closeness it was found that Israeli employers exposed to contact with foreign workers and those that are non-employers expressed similar stereotypical attitudes toward foreign workers. From this we can conclude that the nature of the contact between the groups does not necessarily determine stereotyping and social distance. The meeting of Israeli women employers and foreign workers takes place inside the homes of the Israeli employers where they meet each other, and therefore the issue at hand no longer relates to attitudes and social distance toward a group the individuals concerned have no familiar knowledge of, but rather to specific women who have names.

Living side by side is what shapes stereotypical attitudes and social distance. In this instance physical proximity in fact radicalizes attitudes among both the employers and the foreign workers. The lengthy duration of the foreign workers’ stay in Israel enables them to accumulate social capital such as knowledge of Israeli society (Rosenhek, 1999), and thereby to change the stereotypes they came to Israel with from their countries of origin. Similarly, Israel women also accumulate information on foreign workers, whether through direct contact or, as in the case of non-employers of foreign workers, through exposure to their presence in Israeli society.

The research raises a question: Does employment emigration change the basic assumptions of the State of Israel, which is an emigration state established on the "Melting Pot" concept? The presence of female foreign workers from various nationalities, in Israel, is opposed to the Zionist ideology and affects the polarization between them and the local women citizens.

The significance of this research is that it takes a look at the women employers' and employees' world, an undiscovered world, while trying to understand whether hatred to foreigners will evolve in Israel the way it evolved in Western Europe.
Limitations of the study: In the present study we encountered numerous difficulties in interviewing the two groups of foreign workers, legal and illegal. As expected, illegal foreign workers were suspicious and refused to cooperate, while some of the legal foreign workers speak neither Hebrew nor English. We were therefore compelled to collect data from foreign workers with whom we were acquainted, with whom we could communicate, and they referred us to their friends. Therefore the study was not conducted on a representative sample of the population.

Study findings indicated a need for continued studies that may be conducted on a mixed population of men and women in order to examine whether differences exist between Israeli men and women in stereotyping and social distance compared to male and female foreign workers. Furthermore, it is possible to expand the group of male and female foreign workers based on different countries of origin.

REFERENCES


Chapter 3

Openings and Obstacles for Migrant Care Workers: Filipino Au Pairs and Nurses in Norway

Marie Louise Seeberg and Ragnhild Sollund

Abstract

People from poor countries leave their families in order to work within care giving in rich countries. We direct the attention toward Filipina/o nurses and au pairs in Norway. This country represents an interesting case because of its strong public welfare apparatus, where care giving plays a central role. The major legal way to enter Norway as a domestic worker is through the au pair regulations. The au pair role is not an ordinary work role. The au pair is supposed to be “part of the family”, does not receive a salary but “pocket money”, and the goal is “cultural exchange”, not work. We discuss whether au pair regulations provide a substitute for regular domestic help and whether the migrants’ position as au pairs in private homes, outside the regulations of the labour market, makes them particularly vulnerable to exploitation. Nurses constitute another large group of predominantly female care worker migrants to Norway. Nurses mainly enter the country through “needed specialists” visas. However, our research indicates that because nurse newcomers are vulnerable to economic and labour exploitation, some nurses have found the au pair regulations a more attractive option for immigration to Norway. We explore links between the two immigrant categories such as the motivation and incentive for migration, and their experiences as migrants. The chapter is based on qualitative data, including interviews with nurses and au pairs, families who employ au pairs, recruitment agencies, trade union representatives, and representatives of public authorities in Norway.

Care Workers: From the Philippines to Norway

Nurse Janice left her job in a Philippine hospital to come to Norway as a bona fide au pair. As an au pair, she had a monthly allowance of 500 €, whereas a nurse in Norway earns from about 3100 € monthly. In this chapter, we explore the contextual logic of Janice’s decision, the pros and cons of migrating to Norway as an au pair or as a job-seeking nurse.
We focus on the migration of nurses and au pairs from the Philippines to Norway. The deep divide between rich and poor countries forms the backdrop of this migration, along with an “increasing demand for health care support in the industrialised countries. At the same time the rising prosperity amongst certain groups in faster-developing countries also increased the demand for foreign domestic help” (Kurian, 2004, p. 3). The Philippines has a strong “culture of emigration” (Choy, 2003). It is the world’s largest exporter of nurses and also known for its exportation of domestic workers (Pyle, 2006).

We are concerned with the interconnections between formal structures regulating migration, and individual responses and adaptations. Structures enable and constrain agency, and visa regulations form powerful structures to which individual migrants must relate. Visa regulations may serve different purposes, regardless of their intended functions.

The policies of Norway and the Philippines pull in opposite directions. Norway facilitates immigration of au pairs but makes immigration of nurses difficult; the Philippines encourage emigration of nurses and prohibits emigration of au pairs.

Questions we address are: Which visa strategies are available to migrants? What are the consequences of different strategies, for example in terms of de-skilling or re-skilling? Do visa regulations work as intended? Do host families and au pairs regard the au pair’s role as that of a domestic worker and does the au pairs’ position in private homes and outside labor market regulations make them particularly vulnerable to exploitation?

**METHODOLOGY**

We conducted a qualitative study on global care workers in Norway. As part of this study, in 2007 and 2008 we interviewed ten nurses (eight women and two men) and twenty au pairs (all women) from the Philippines, some of whom we interviewed twice. We also interviewed resource persons in the Philippine community in Norway, as well as ten families who employ au pairs, immigration and authorization bureaucrats, and representatives of recruitment agencies and labor unions. Interviews were recorded and transcribed; each lasted from one to three hours. The interviews along with policy documents, literature studies and relevant media coverage provide the empirical basis for this chapter.

The interviews cover and invite discussion of a range of topics. In this chapter, we concentrate on three cases which we find to be especially suited to inform the discussion of our present concern: how individuals experience and respond to structures regulating migration and how these regulations may be bended.

**BACKGROUND: PHILIPPINE CARE WORKERS IN NORWAY**

Aside from their Philippine identity, their basic financial incentives for migration, and the choice of Norway as their country of immigration, nurses and au pairs may at first glance seem to have little in common. After all, nurses are skilled middle-class professionals,

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1 See the Philippine Overseas Administration http://www.poea.gov.ph/html/FAQ.html. The ban was put through the Department of Foreign Affairs Circular Note Number 981289 dated 20 April 1998. (See http://www.norway.ph/info/dkinfo/work/work.htm)
whereas being an au pair requires no formal education, apparently gives no career opportunities, and is limited to people under the age of thirty.

This conventional distinction between nurses and au pairs is overly simple and needs to be explored and refined. Also, as several authors point out (Kofman, Raghuram, Phizacklea, & Sales, 2000; Parreñas, 2001; Zimmerman, Litt, & Bose, 2006), women are significantly de-skilled in the gendered processes of labor migration, in that they are deprived of the opportunity to use their skills. Immigrant care workers are vulnerable for reasons connected to their legal status and visa type, and because of the nature of their work and lack of knowledge of their rights as workers.

Nurses

Many Filipino/as choose to study nursing because they want to emigrate (Coonan, 2008), and 85% of all employed Filipino nurses work abroad (Aiken, Buchan, Sochalski, Nichols, & Powell, 2004), in all 250,000 nurses (Pyle, 2006). This massive nurse emigration is part of a long-term government policy aimed at boosting the country’s economy through emigrant remittances. Filipino nurses have come to Norway since the 1970s and today number approximately 1,000, mostly but not exclusively women.

Norway’s recruitment of nurses into its expanding public health sector has not kept up with demand for several decades (Melby, 1990) and recruitment from abroad has become one, albeit controversial, solution. Qualified nurses with job contracts may enter Norway on specialist visas. Without contracts, they may enter as job seekers on a three-month visa. According to Statistics Norway, 4516 persons of foreign nationality were employed as nurses, midwives, or health visitors in 2007 (SSB, 2008), not including the many nurses hired through recruitment agencies, or those who had already acquired Norwegian citizenship.

In 2000, Norwegian legal reforms allowed private job recruitment, and private employment agencies soon began to recruit nurses. This reform coincided with an initiative to establish a bilateral agreement to recruit nurses from the Philippines directly into employment in Norwegian hospitals. The two events were soon followed by a sharp increase in the number of Filipino nurses applying for Norwegian authorization as nurses (SAFH, 2002). However, the agreement was never implemented. Shortly after its failure, immigration of nurses on specialist visas from the Philippines to Norway sharply decreased. Filipino nurses who had applied for Norwegian authorization hoping to join the bilateral programme now had to enter Norway with the help of private agencies or personal contacts. This situation preceded a steep increase in recruitment of Filipino au pairs to Norway. Our data show that this increase coincides with the establishment of an agency that specifically recruited nurses to au pair positions. Working as an au pair provided the possibility of preparing for a job as a nurse while already in Norway.

2 Source UDI “Førstegangsløyve gitt til borgarar av Filippinane som faglært og au pair.” [Initial permit issued to Philippine citizens, professionals and au pairs]
Au Pairs


Norway does not issue visas for the category “domestic workers”. For applicants from outside the Schengen countries, the legal way to enter Norway as a domestic worker is through the au pair regulations. Yet the compulsory au pair contract, issued by the Norwegian Directorate of Immigration (UDI), explicitly states that the au pair is to be treated as a “member of the host family” (cf. also Anderson, 2000; UDI, 2007).

The au pair regulations are ideally:

“…a work scheme whereby young people can learn a new language and become better acquainted with Norway and Norwegian society by living with a Norwegian family. In return for this, the au pair provides services such as light housework and child minding for the host family. The objective of the au pair scheme is cultural exchange (UDI, 2007).

The contract terms emphasize that the au pair should not be (only) a nanny, or (only) a domestic helper. The au pair category is inherently ambiguous. Insofar as being an au pair entails being a domestic worker, the au pair is hardly “au pair” (lit. “on an equal level”) with her host family.

Recruitment of au pairs to Norway is steeply rising; Filipino/as have become by far the largest group: from 62 registered Norwegian au pair visas issued to Philippine citizens in 2000, or 10 % of all au pair visas, in 2007 the number was 1586, or 59 % of all au pair visas. A person may work for maximum two years as an au pair in Norway; each work permit depends on a specific contract with one host family. If the contract is breached, the au pair must apply for a new work permit connected to a new family. Let us take a closer look at nurse Janice’s chosen entry mode, the au pair program. What does it mean to come to Norway as an au pair?

DOMESTIC WORKER OR AU PAIR?

The thin line between what the au pair is supposed to do and what she must not do is a time limit of 30 hours’ domestic/care work weekly. Janice and her sister Jennifer entered Norway on au pair visas and were still au pairs when we met them. Both were educated women in their 20s; while Janice was a nurse, Jennifer held a Master’s degree in mathematics. Janice knew that Jennifer, who had been in Norway about 18 months, was working far more than thirty hours weekly:

Janice: “If the au pair is not talking then the host will abuse her.” Jennifer: “She is like that, I am just obeying, and they [the employer] take advantage, because with me – complete

obedience, she is...” Janice: “I told the host that I am very professional, I will follow the rules there, in the contract.”

Here, Janice emphasizes that she, unlike Jennifer, will not accept exploitation. The variation in individual experiences was striking. Several women who entered Norway under the au pair regulations did not feel exploited as domestic workers, despite working far more than the legal 30 hours week. Au pairs who worked only 30 hours were happy and appreciated the good relationship with their host families and all the leisure time. They told us that they earned far more than they had in the Philippines or as domestic workers in Hong Kong and Singapore. Consequently, they had succeeded as migrants (Sollund, 2004).

If the au pair’s obligations as described in the au pair contract are unclear, so is her role as a “family member”. According to the European Agreement on au pair placement:

“Persons placed as ‘au pair’ belong neither to the student category, nor to the worker category but to a special category which has features of both” (COE, 1969).

What this ‘special category’ consists of is hard to establish. The student role was not in evidence among the Filipina au pairs we met. Their role was invariably as that of the domestic worker, and most referred to their host family only as their employers. As employees, many with experiences as hard working domestics in Singapore or Hong Kong, they did not contest their employers’ demands. They often worked far more than was expected, not because they were asked to, but to avoid potential criticism.

Most host families’ perceptions of the au pair’s obligations, and their own motivations for having an au pair, run counter to the official goal of cultural exchange. Nine of the ten interviewed families described their reasons for having an au pair as pure necessity, related to the time bind, as the norm for both women and men is to work full-time. Often they had not found a place in a kindergarten after maternal leave, and neither parent could or would interrupt their careers. Even after getting a place in a kindergarten, they continued to employ au pairs, realizing how much easier this made their lives. Some families had employed several au pairs, and said they depended on the au pair’s help. One woman said that one reason for choosing to have her fourth child was the possibility of having an au pair.

The families’ need for domestic help was reflected in the working hours of their au pairs. Describing how many hours her au pair worked, one woman said:

“It [the contract] says thirty hours per week, and then two days off, but how can that work out? It’s impossible.”

Another woman said:

“In practice – no one follows those rules. When are you supposed to spend those hours? You need help in the morning rush, and then there’s the housework, and then it’s busy in the afternoon and at night, and that will be more than 6 hours, right? So it’s ridiculous.”

Asked how many hours daily she believed her au pair worked, she said:

“On average – 8–10 hours.”
To understand why an au pair accepts this from her employer, one must consider not only her vulnerability due to language problems, her minority status, her lack of knowledge of the rules and laws in the country she is in and – especially to begin with – her social insecurity and relative isolation. The live-in arrangements themselves imply permanent availability. The au pair does not go to work. She is at work, 24 hours a day (cf. Anderson, 2000, p. 106).

Like the nurses, all the Filipina au pairs had migrated for economic reasons. Some had come directly from the Philippines, evading the Philippine ban on au pair emigration by paying a coach to get them through emigration. Most held university degrees, reflecting the emphasis on education in the Philippines and confirming that most Filipinas migrating for domestic or child care work are considered middle class in the Philippines (Ehrenreich & Hochschild, 2003; Parreñas, 2001). Despite this, they said it was hard to get a job corresponding to their educational skills in the Philippines, and even if they did, the pay was poor and inadequate.

Nurse Janice said that to work as an au pair would be to “go down” because of an au pair’s tasks and position compared to those of a skilled nurse (cf. Parreñas, 2001). In this work relationship, there were clearly different social positions, deriving from the domestic work relationship itself: “Significantly, domestic work is deeply embedded in status relationships, some of them overt, but others less so” (Anderson, 2002, p. 104). A domestic worker’s role is traditionally and actually a servant’s role (Anderson, 2000; Parreñas, 2001, 2006; Raijman, Schammah-Gesser, & Kemp, 2003; Saunders, 1981).

The work itself and the social position of the live-in domestic worker, along with the fuzzy definitions of the au pair’s role result in a risk of exploitation, and for several, feelings of social degradation. That au pairs have only, if any, friends and relatives to turn to if exploited and abused makes the situation worse. Au pairs lack protection from Norwegian and Philippine authorities. They are unlikely to go to the police as long as their legal status in Norway depends on their relationship to their employer/host family, and unlikely to go to their embassy as long as au pair emigration is banned by Philippine authorities.

From the reality of being an au pair in Norway, let us turn to the alternative Janice did not choose: the officially correct way to enter Norway as a Filipino/a nurse.

**NURSE WITH JOB SEEKER’S VISA**

To enter Norway on a specialist visa, one needs a contract, which is difficult to obtain long-distance. Most Filipino/a nurses obtain a job seeker’s visa, valid for a 90-day stay. However, coming to Norway as a nurse on a job seeker’s visa can be difficult. Our interview with Pacifico, a male nurse, shows this clearly. Pacifico used a recruitment agency to facilitate his transfer from the Philippines to Norway. He had failed to find a paid job as a nurse in the Philippines; his migration goal was to earn enough to support his wife and children, who were still in the Philippines. Eventually, he hoped they would be able to join him in Norway. He found that although the recruitment agency had helped him overcome many practical problems involved in the migration process, there were many difficulties left for him to solve himself, and he was beginning to suspect that some problems derived from using the agency:
P: Very soon, my wife will have to send me money. It is very hard for me. (...) What I am scared of is, what I don’t know, is if I am allowed to work somewhere else too when I have [Practice Placement]4 here. I am scared that if it is not allowed and I do it and they find out, they will send me out. And then everything will be worse than it was before I tried to come here. (...) I need to take the [obligatory] course too before I get authorization to work as a nurse here but I can’t see when I’ll be able to pay for that.

ML: So are you thinking of borrowing money now to cover your expenses?
P: I already did borrow money.
ML: So you’ll need to pay that back too.
P: Yes, and as it is, I can’t.

By the end of his job seeker’s trimester, Pacifico must secure full-time work as a nurse or auxiliary nurse to be able to obtain a specialist worker’s visa. However, finding a full-time job within this period proved impossible. He managed to find a “practice placement” as an auxiliary nurse in a nursing home. Such trainees may work only under the supervision of regular nurses and auxiliary nurses and receive a monthly allowance of 600€, with no board or housing. This arrangement does not fulfill the requirements for a specialist visa, but somehow, Pacifico managed to obtain a temporary specialist visa.

Pacifico had attended an agency-run Norwegian course in the Philippines, and when we met him four months after his arrival in Norway, he still attended Norwegian classes run by the same agency. We interviewed him in English. He was not at ease speaking Norwegian and he was unable to transmit complex and detailed information in Norwegian. Norwegian is very different from Filipino languages and our informants reported that this made it very difficult to learn.

A wide range of social and emotional factors may affect language acquisition (Berry & Williams, 2004; Onwuegbuzie, Bailey, & Daley, 2000). Pacifico was under considerable stress. He was a new immigrant; he had only a very basic understanding of Norwegian, practically no income, and a visa based on an income he did not have. He needed to send remittances to his family, but he could not do so until he had learned Norwegian. He could not concentrate properly on learning Norwegian due to problems he could apparently only solve by learning it.

Pacifico’s problems were complex and it was hard to pinpoint one reason for his precarious situation. At the time of our interview, he was inclined towards suspecting that the recruitment agency had made his situation worse. We cannot determine if this was so, not knowing the details, which he was reluctant to provide. He did not know whom to trust. It seems clear that the nature of his entry visa makes a big difference. A three-month job seeker visa does not give much time for a Filipino nurse to convert his competence into Norwegian employability.

For a Filipino nurse to become employable in Norway depends on personal qualifications, the nature of the job, and on the Norwegian labor market. Some knowledge of the Norwegian language is necessary, as is authorization to work either as a nurse or as an auxiliary nurse. The Office for Authorization of Health Personnel, SAFH, issues authorizations. Many nurse informants, including Pacifico, had applied to SAFH before migrating and received an answer specifying individual requirements. In most cases, again...

4 A trainee position, not intended to replace regular employees, for newcomers on the labour market. Administered by the Labor and Welfare Administration (NAV).
including Pacifico, SAFH had also issued authorization as an auxiliary nurse, pending fulfillment of the requirements for nurse authorization. Having authorization to work as an auxiliary nurse does not necessarily mean that one is employable as such. It is the employers’ responsibility to check applicants’ linguistic and other competence prior to employment.

We return now to Janice’s decision and her explanations.

**Nurse or Au Pair?**

Janice, who had just arrived and who had worked as a registered nurse in the Philippines, said:

“My plan is to become a nurse here in Norway, not just to be an au pair (...) I cannot go to any nursing home or hospital [as a nurse] if I cannot learn the language, you have to learn first. I have to exhaust first all the free – because (...) the Norwegian course is free, because it is an advantage, so I will work as an au pair first, then learn the culture of the Norwegian, then go to a home for the elderly.”

Janice was referring to her host family’s obligation to pay for her Norwegian course. Had she applied for a specialist visa or a job seeker visa and come to Norway as a nurse, *she* would have had to pay for her language training, but as an au pair, she had, as she said “an advantage”. On the down side were the lower income and the drop in social status associated with being an au pair rather than a nurse:

Janice: “I am a nurse, but why would I pay to go to Norway as an au pair, it is like being on a high level and going down.”

Janice had several reasons for coming as an au pair rather than as a job-seeking nurse, however:

“You know a job seeker is only a job seeker. But what if the job seeker cannot find a job, then you can [only] go back to the Philippines.”

A job seeker visa would have given her a three-month period to find work as an auxiliary nurse or a nurse in Norway. Pacifico had such a visa. As his case demonstrated, this option causes an extremely stressful situation and the risk of failing. Failing means returning to the Philippines where everything would be worse than it had been pre-migration. Janice’s beginning her stay in Norway as a bona fide au pair, in contrast, meant having up to two years of free language tuition, and time to learn the culture, build a network of friends for emotional support, information and job contacts, etc. Jennifer and Janice together explained how Janice eventually chose this strategy that Janice shared with several other informants.

Janice: “So I said, Jennifer, I am going to Norway”.

Jennifer: “And I said, ‘What will you do there?’ and she said, ‘I will be an au pair’, and I said, (...) ‘You will be like a housekeeper’ [and she said] ‘yes, and that is for one year’ (...) So she has one year to find a job. And that’s what she does. While she is working as an au pair she will contact many hospitals”.
Janice: “It is impractical for me to go here and get a job [directly]. What if I cannot find one, what will I do?”
Jennifer: “We do not have time, it is very difficult.”

Prior to Janice’s emigration, Jennifer and Janice had “asked around” for information about various options, thereby making use of the Norway-based Filipino networks that Jennifer was already part of, having arrived in Norway 1 ½ year before Janice. Friends, other Filipino nurses or au pairs, family and ritual or classificatory kin are central in transmitting migration information and advice. Our informants reported that they would rather get their information from such informal networks than from agencies, and if considering using an agency, they would always “ask around” first – consult their informal networks – to assess the agency’s reputation.

CONCLUSION:
VISAS VS. EXPERIENCED REALITY

Pacifico, with his job seeker visa, had followed the procedure actually recommended on the Directorate of Immigration’s web page. Despite having chosen what appears to be the evident and most legitimate option, since his visa corresponded with his migration motive, he faced severe problems. Jennifer, with her Master’s degree from the Philippines and experience as a teacher, had not applied for a specialist visa or a job seeker visa. She had been unaware of these options. Like her sister, nurse Janice, she said that an au pair visa was the easiest way.

One may view both sisters as de-skilled, like most other au pairs: as long as they were working as au pairs, they could not use their formal qualifications. However, as both are applying to have their qualifications acknowledged in Norway, this de-skilling will likely be temporary. Janice stands a better chance than Jennifer does, since the nurse profession is relatively easily adaptable to the Norwegian labor market.

We found that visa types to a limited degree inform us about personal skills and migration motives. The two immigrant categories, nurse and au pair, overlap when it comes to skills, motivations and incentives for migration, as well as their experiences as migrants. Our findings show that the au pair regulations have served to facilitate the immigration of Filipina/o nurses and domestic helpers to Norway.

Visa types based on job-seeking, family reunification, and au pair contracts all allow nurse migration to Norway. Nurses may use the au pair visa to enter Norway in an orderly fashion in the absence of an organized structure for the recruitment of Filipino nurses to Norway, while for domestic workers the au pair program is the only option, in the absence of domestic worker visas.

The au pair arrangement may thus provide a step-stone to more permanent migration and social mobility. The de-skilling experienced by the educated au pairs who were not nurses was more lasting than for the nurses, due to Norway’s need for nurses. Several au pairs informants with higher education other than nursing proceeded to au pair or domestic worker positions in other countries after their stay in Norway. Rather than using cultural exchange as a pretext for labor immigration, labor migrants should be allowed to come as such under
orderly and predictable conditions, receive a decent salary and be protected by Norwegian authorities, for example through an ombudsman. Currently however, Filipina au pairs in Norway are on their own. They may win or they may lose.

REFERENCES


Chapter 4

WHO PAYS THE PRICE? THE CASE OF THE OVERSEAS FILIPINO WORKERS' EXPERIENCE IN HONG KONG

Cecile Torda Lowe

ABSTRACT

Studies on migrant workers highlight the difficult conditions they face. The challenges that confront them have global resonance as they raise fundamental issues of identity, belonging and survival. They live in the margins of societies hostile to their presence and governments indifferent to their plight. This chapter is about the experiences of women migrant workers working in low status, low-skilled and low-paid jobs. It discusses and explores the effects of their marginalization from their perspectives and the strategies they employ to survive the challenges. It focuses on the experiences of the Filipino domestic workers (FDWs) in Hong Kong through their narratives shared, recorded and observed through two years of the author’s ethnographic study. Survival – at individual and social levels – emerges as a recurrent theme. To appreciate what this means to them, listening to their stories may make us understand more about their daily struggles and the effects these have on their lives. Their fragmented narratives take us through their journey and the price they pay in their search for a better life.

INTRODUCTION

The news stories below provide a snapshot of the disparate representations of overseas Filipino workers (OFWs). Item 1 was headline news in the business page of the Philippine Daily Enquirer, a national daily broadsheet. This shows how vital migrant labor is to the Philippine economy. The Philippines is 3rd biggest source of medical doctors, after India and the United Kingdom. Item 2, was a grim news story of deaths and suicides buried in the inside page of the same paper.
Item 1: Money sent home by overseas Filipinos through banks jumped 16% to $US1.3 billion in February ... on increased deployment of higher skilled workers.... Philippines received... $US17 billion dollars in remittances in 2007, equivalent to 13% of gross domestic product... This made the country the world’s fourth biggest recipient of remittances after India, China and Mexico ($25 billion). (Dumlao, 2008, p.B1)

Item 2: A Filipino woman was found dead in waters off Tung Chung town in Hong Kong...Hong Kong police recovered the body of migrant worker, Vicky Flores, 32, of Batangas... “Flores’ death follows a recent string of deaths of Filipino workers abroad, most recently that of two separate suicides of two Filipino workers also in Hong Kong, a Filipino food service worker who was dismembered in Japan, and that of a Filipino mother and her child who were killed by her Japanese husband in Tokyo” (Quismundo, 2008, p. A7).

Item 3: Philippines demands BBC apology over TV skit...Edgardo B. Espiritu (Philippine ambassador to UK-CL) demanded an apology for a skit in the Harry and Paul show in which a posh southern character tries to get his “pet northerner” to mate with his Filipino housemaid (Pidd, 2008, p. 9).

Espiritu protested that:

The stereotyping of Filipino women as domestic workers and sex playthings is not only egregiously insulting to the Filipino community in the UK it is also very malicious and is a blatant display of racial prejudice (ibid.).

The different treatment between Item 1 and 2 is interesting. Migrant remittances remain big news; workers’ deaths and suicides get cursory media attention. Item 3 appeared in The Guardian, a United Kingdom (UK) newspaper. It prompted the Philippine ambassador to complain to the British Broadcasting Corporation Trust.

Another news in the same paper reported that the Philippines ranked 6th of 130 countries on women’s pay, work opportunities, political power, health and education in a World Economic Forum study (Batty, 2008). Filipino women play significant roles in their country; however, it is the caricature stereotypes that define them abroad as exemplified in the BBC skit.

THE RESEARCH

The author spent over two years as participant observer among groups of FDWs in Hong Kong. She spent most Sundays with them, joining their activities. Sunday is the regular weekly day-off for most. The groups represented a broad section of Philippine regions. Primary data included field notes and diaries; records of interviews and focus group discussions. Secondary data included the analyses of previous academic researches involving FDWs and local media reports. Media articles analyzed were restricted to those appearing in The South China Morning Post, Hong Kong’s most widely circulated English daily. Cultural and linguistic familiarity facilitated access to groups, the author herself a Filipina, and a fluent speaker of three major Philippine languages.
**Migrant Labour: International Context**

The literature describes migrant jobs as 3-D: dirty, demeaning, dangerous and employment conditions as exploitative. The International Labour Conference (ILC, 2004) report highlights their working conditions as abusive, exploitative and may be characterized by forced labor, low wages, poor working environment, a virtual absence of social protection, the denial of freedom of association... discrimination and xenophobia as well as social exclusion”.

The Human Rights Watch report (HRW, 2006) issue lists the “criminal abuses” consisting of psychological, physical and sexual violence, psychological abuse, physical abuse, food deprivation, sexual harassment and assault, long hours and heavy workloads, restrictions on freedom of movement, inadequate living conditions and others.

In Europe, migrant workers are protected through legislations like the European Social Charter. However, this does not protect them from widespread local hostility and prejudice. Political and media discourses are inflammatory and xenophobic. The UK media, for instance, generally portray migrant workers as welfare dependents, a drain on the economy.

Two key ILO conventions aimed to provide basic protection for migrant workers fell short in application. Forty-one states ratified the first convention granting migrant workers basic rights; only 18 states ratified the second providing improved benefits to migrants and their families. Groenendijk (1999) noted most nations objected to providing parity of treatment with their national workers, residency rights and occupational mobility.

**Expatriates and Migrants: The Unequal Divide**

Global labor mobility is multi-directional: between and among developed and developing nations. But there are key distinctions. Workers from developed economies, predominantly white westerners, are called “expatriates” and work in professional and high-skilled jobs. Those from developing nations are referred to as “migrant workers” and concentrated in low-status and low-skilled occupations irrespective of their qualifications. Expatriates have better legal protection; enjoy superior privileges and integrate more easily with receiving communities. Migrant workers are disenfranchised on many levels with devastating consequences. Expatriates have rights to permanent settlement and citizenship; migrant workers have to deal with social exclusion on many levels. These disparities are doubly pronounced for women migrant workers.

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1 The Social Charter is one mechanism that sets out certain minimum safeguards to migrant workers and their families. It secures migrants’ social and economic rights. It is the counterpart of the European Convention on Human Rights that secures their civil and political rights.

2 These refer to the 1949 Migration for Employment Convention (no.97) and the 1975 Migrant Workers (Supplementary Provisions) Convention (no. 143), in Groenendijk, 1999.

3 This refers to the 1949 Migration for Employment Convention (no.97), giving basic migrant workers’ rights, in Groenendijk, 1999.

4 This refers to the 1975 Migrant Workers (Supplementary Provisions) Convention (no. 143), giving improved benefits to migrant workers and their families, in Groenendijk, 1999.
Women Migrants: Contributions and Vulnerabilities

The Nairobi Women’s Conference in 1985 highlighted the issues that affect women migrants globally, acknowledging that the problems they faced required serious attention by world-governing bodies “beyond the International Labour Organisation mandate” (WCC, 1986, p.4). It noted that despite becoming more numerically dominant, women migrant workers remained largely invisible consigned below the radar of public awareness despite their significant economic contributions.

Host and source nations benefit equally. In Hong Kong, the growth of FDWs coincided with two major developments. One involved the dramatic shift in occupation for women from unskilled to semi-skilled, skilled and professional jobs; another was the rise in their educational attainment. On the economy, figures at the time of study in 2000 suggest that Hong Kong local businesses generated over HK$450 million a month from foreign domestic workers as consumers of local products and services (Lowe, 2000).

The Philippine Context: Philippine Overseas Workers

History facilitated Filipinos’ early access to global labour (Abella, 1992). Early migrants were mostly men (Arcinas, 1987; Cariño, 1992). However, global demand for nurses, domestic and care workers and entertainers shifted the gender profile. The Philippine population grew from 36 million in the 1960s to 76 million in 2000, far outstripping the country’s development. Every year saw thousands of graduates seeking jobs creating labour surplus; pushing women and men to seek work abroad. Hong Kong, with its geographical proximity, benefited from this exodus of Filipina migrant workers.

The Filipina Domestic Workers (FDWs) in Hong Kong: a Brief Overview

The Filipina domestic workers (FDWs) comprise the biggest group of foreign domestic workers population in Hong Kong. They are mostly young, the majority being 20-34 years old (see Lowe, 2000). They are well-educated compared to the general foreign domestic workers’ population (French, 1986). An AMWC (1991) study found that 4% previously worked as domestic workers; 43% were unemployed prior to Hong Kong; the majority worked as teachers, nurses and administrators, high-status but low-paid professional jobs. Ninety percent have between 1-5 dependent children.

Most FDWs live in their employers’ homes, which creates vital vulnerabilities. Their highly regulated contract is silent on work duties and work-hours. Employers exploit this vacuum and make them do “non-domestic” jobs they have not been trained for, e.g. caring for

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5 French (1986) noted that in 1961, 25% of females in Hong Kong had had no schooling, but by 1981 this has fallen to 14%. The percentage of women receiving secondary and college education rose from 5% and 0.6% respectively in 1961, to 16% and 2% in 1981.” This development coincided with the mass migration of Filipina domestic workers to Hong Kong.

6 Abella (1992) maintained that Filipinos’ ability to speak English as a legacy from the American occupation of the Philippines has been a distinct advantage in Filipino workers’ overseas migration.

7 Data obtained from http://census.gov.ph/data/pressrelease/2002/pr02178tx.html
newborn babies, the elderly and the infirm; tutoring school-age children (see Lowe, 2000). They can be sacked when children perform poorly in school. They do jobs considered illegal by the government, e.g. working in their employers’ factories, shops and offices; cleaning employers’ parents and relatives’ house.

Work-hours are extremely long, 14-17 hours/day, six days a week. Social ridicule and public racist abuse are common (ibid.). The government offers no protection claiming racism does not exist in Hong Kong, contrary to reputable studies.

**Domestic Work: The 3-D Job**

Domestic work is dangerous. It can scar for life, literally, as one worker found. Her hands, ironed by her employer as punishment for accidentally burning a camisole, were permanently damaged (Chow, 2000). She won her case; the employer was jailed for 18 months which was widely reported in the media. The Hong Kong Employers Overseas Domestic Helpers Association condemned the sentence as too harsh; claimed this was an isolated incident.

The *South China Morning Post* (SCMP, 2000), took a similar view with an editorial suggesting: “their [FDWs’] officials can take the view that a bad job here is better than unemployment back home, so workers should not complain…” (ibid.). Both responses typify local attitudes to the FDWs.

Domestic work is dirty, literally. The personal narratives below illustrate the point:

1a: The mother of my employer believed I should work hard for my wages. To make sure I did, everyday, when she used the toilet she would demand I cleaned it at once. I would find faeces scattered all over the walls. I feel like vomiting each time and just put me off eating my meals. I lost a lot of weight.

1b: I was standing next in line to a Chinese woman who was next in the queue to another Filipina talking on the customer phone at a Wellcome store. The Filipina was taking a long time on the phone and the Chinese was visibly annoyed. Suddenly, the Chinese commented loudly to no one in particular: ‘You ban mui, go home and clean the toilet’. [author’s emphasis].

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8 These jobs are considered illegal in domestic workers’ contracts. If caught, domestic workers can be penalised by deportation, rather than their employers. Employers can also be penalised by fines but in reality, this rarely happens. The onus to disprove violation lays heavily against the domestic worker, see Lowe, 2000.

9 In the AMWC survey in 1991, (see Lowe, 2000) 72.4% indicated that they regularly worked from 14-17 hours per day, six days a week. Although the contract entitles them to one day off a week, many of them do not get the full 24 hours. It is also common that employers wake their helpers any hours of the night to do simple tasks such as getting them a glass of water for instance.

10 There are no race discrimination laws in Hong Kong. The government asserts that it does not exist. In 1997 a government consultation project attracted submissions from 70 bodies, including academics, ethnic minority groups, human rights activists and consulates-general that claimed widespread racial discrimination. Christine Loh, then a legislative councillor, wrote in a letters-to-the editor, that ‘discrimination on the grounds of race is pervasive in Hong Kong, although the government has refused to acknowledged it is a serious problem’ and that government efforts to stymie proposals to prevent it is ‘intellectually dishonest’ (in Lowe, 2000).

11 This researcher uncovered similar brutal practices by employers; subsequent studies support this, thus belie the claim of it being an “isolated incident”. Also see Lowe, 2000 for more discussion.

12 Sources of all primary data quoted in this paper are from the writer’s extensive filed notes. Most of those that appear here also appear in Lowe, 2000 (the author’s doctoral thesis), in longer narratives.
The narrator of 1b recalled that the Filipinas in the queue were angered by the provocative remark but responded with collective silence. She said they were used to such public insults. The “ban mui”\textsuperscript{13} reference was a familiar insult used as a pejorative label (Jaschok, 1988) by the Chinese.

Domestic work is demeaning. Nimfa\textsuperscript{14} articulates the stigma.

2a: I wanted to be a CPA (certified public accountant); but ended up a cpa (certified public atsay – maid)”, Nimfa declared in self-mockery... The first year was the hardest adjustment, psychologically. You never really forget that. Even now, after twelve years in Hong Kong, I can never really get used to the word pangmuy[ban mui] Vicky, a head teacher for many years, has similar feelings:

2b: I used to be a big ‘T’, teacher; now I’m a small ‘t’ tsimay [a Filipino pejorative term for maid-CL]. I arrived in Hong Kong in October 1992. I hid for one year. I did not associate with people from my hometown. I could not accept the fall from my social status... I was so ashamed. I thought ‘what did I have a master’s degree for if I only end up working like this in Hong Kong... I felt enormous shame especially when they [other Filipinas] started sharing the degrading things they had to go through everyday.

The stigma spills over to the social spaces they are allowed to occupy: where they eat and sleep. To be made to eat on a kitchen sink is a common story and provokes deep shame. Mila’s reaction is typical.

2c: My first day was a shock. She [the employer] said I would eat separately in the kitchen sink. I was prepared to eat last after the rest of the family but not this... I was stunned. I pitied myself so much; I felt being treated like a dog...I wanted to terminate my contract...\textsuperscript{15}

In the Philippines, dogs are usually fed left-over food outside the house. This comparison signals the depth of displacement. Being made to eat in a kitchen sink evokes similar shame. The sink is a place to clean things; to wash dirty dishes, not for eating. Where they sleep is another source of indignity. Respondents have shown me pictures where they sleep, e.g., a small windowless cupboard; a sheet of plywood on top of a bath tub; under a dining table and under a stair. These places communicate unambiguously their place in Hong Kong’s social hierarchy.

Public derision has many forms. They describe how they feel:

\textsuperscript{13} Literally, ‘Ban’ refers to the last syllable in the Cantonese word for “Philippines” and ‘Mui’ is derived from the Chinese social tradition of ‘mui tsai’, literally meaning ‘little girl.’ Mui tsai refers to an old Chinese social institution where young Chinese girls from poor families are sold, bought or given away to rich Chinese families as indentured servants or to be brought up as concubines (Jaschok, 1988). “Philippine girl” appears innocuous but as a social signifier, in the local Hong Kong context, it is a euphemism for slave and/or prostitute in Lowe, 2000.

\textsuperscript{14} She was one of the many regular respondents during the period of research. All names in this paper are pseudonyms to protect the respondents’ identities.

\textsuperscript{15} When a domestic worker terminates her contract she is not allowed to enter into another contract unless she can prove instances of excessive abuse or danger to her life. The consequence is deportation. If she wants to return, re-starts applying again, a very long and expensive process. For this reason, a worker is not generally prepared to initiate termination of her contract unless as a last resort.
They look at you as if you’re not a human being. 
You feel like an animal—like a dog or a cat, being fed in a corner. 
You are shunned like someone with a communicable disease.\textsuperscript{16}

The impact to their sense of dignity is immense. Wilkinson (2005, in Toynbee, 2005) presents compelling research evidence that social status and respect are accurate predictors of life longevity, health and happiness. His global study shows that two-thirds of the reasons for heart disease are poverty, low social status and the lack of control over one’s life, descriptions that aptly fit the situation of the FDWs in Hong Kong. Survival is an issue and survival skills are imperative for their well-being.

Central and Survival: Strength in Solidarity

Central is Hong Kong’s premier business district: manicured, tidy, elegant. On Sundays, it is transformed into a miniature Philippines as thousands of FDWs claim the place their own. Groups stake their territories. Local Chinese hate these gatherings. In letters-to-editor, they describe these public gatherings variously as “eyesore”, “mess,” “public obstruction,” “war zone,” “uncivilised,” etc. (see Lowe, 2000). To the Filipinas, however, Central on Sundays is a home away from home. The consistent themes are that of belonging and survival, articulated below:

Being in Central on Sundays makes you feel as if you’re in the Philippines because there are so many Filipinos.

If there was no Central, many Filipinas would commit suicide; many would go crazy; they’d definitely go mad. I will.

Six days a week all you see is Chinese; all you hear is Chinese. At least there is one day in a week when we can talk to our compatriots.

My employer forbids me to go to Central because there are many Filipinos there. She tells me I’ll learn bad things. But what I learn there is that if I have problems, I can share them with others.

Even if I’m sick, I go to Central. It’s just like it’s my medicine. It makes me feel good.

Central provides networks of vital support, a strategy for collective social survival. It is a “reception” place for new migrants where experienced compatriots “induct” them to the realities of a domestic worker’s life. It is a place for celebrations even when they find little to celebrate. The atmosphere is festive whatever worries beset them. Central is a place for shared grief. It is both a physical space and a metaphorical place providing the social validation they crave. It unites the disparate threads of the multi-layered stories of their lives like a non-stop national conversation renewed every Sunday providing sense and meaning to counter their alienation. Central validates their humanity and energises them to live another

\textsuperscript{16} This is a common reaction when local Chinese don’t want to sit near them in buses and trains; or share spaces with them in public parks or picnic grounds; both very common experiences.
Faith and Religion

Attending mass and being involved in church activities are important Sunday rituals. Having little control of their own lives, they turn to religion for certainties. When they feel most vulnerable, faith becomes a source of strength. Fe left her job after months of abusive treatment. Her employer’s threats: “I will send you back. I will make sure you will never get another job in Hong Kong again” and the spectre of deportation made her very frightened. Prayers sustained her. When she found another employer despite a highly damaging reference from the previous one, she declared: “With God’s help, I found another employer.”

When Ellen arrived in Hong Kong expecting to be met at the airport by a prospective employer as arranged previously but who never showed up, it was her worst nightmare. She knew no one and had nowhere to go. A compatriot took pity and offered to take her “home.” The Hong Kong branch of her agency later traced the employer and found out that she went to the airport but changed her mind when she saw she was “too old” (she was 38). She sued the employer; the case dragged on for months leaving her penniless, in debt and living through the kindnesses of friends. Eventually, she won her case and found an employer. She declaimed: “God did not abandon me.”

Adora’s father and mother died a month apart a week after she returned to Hong Kong from her yearly holiday. As the eldest daughter she felt disconsolate; her employer did not allow her to go home again, or she risked dismissal. In her anguish, religion became her solace. She believed that in the afterlife she would see them again.

Perla was distressed when she learned her 11-year old son was very ill and she could not go home. She prayed to God to heal him. When he got well, there was no doubt in her mind that God heard her prayers.

To many FDWs, faith and religion are the bedrock source of strength and certainty in a life they have little power to control. The idea of a benevolent and loving God is one constant they rely on to help them in their misery and provide light in their bleak lives.

Humour and Laughter

The use of humour like self-mockery is a familiar strategy in neutralising shame (see 2a and 2b above). It masks deep disappointment as in Lulu’s case:

I studied Foreign Service in college because I wanted to be a diplomat and go abroad... I ended up working as a domestic helper for a foreign family in a foreign country. Anyway, as a DH (domestic helper) in Hong Kong, you need more than just the skills of a diplomat to last in your job.

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17 It is standard practice for employers to get reference from previous employers. In this case, the police actually insisted to the new employer that he read a copy of the report which he later related to the respondent in question.
Serious problems like hunger even find their funny expression as in *Fe’s* account below. Deprived of food for months and forbidden to cook her own food, she found her own solution:

If you want to know the best tasting biscuits in Hong Kong, I will tell you. I’m an expert there. For three months in my first year here, I survived on biscuits.

Public humiliations that make them look stupid are recounted with hilarity as in *Jing’s* story:

She (female employer) knew I’ve already worked in Hong Kong for 6 and 1/2 years... We were together in a bus. She said in a loud voice: “Do you see that - pointing to the red stop button? When you want to stop, you press it the bus will stop.” One of the Filipinas in the bus asked her “She’s new in Hong Kong, ma’am? She said: “No, 6 years” and turned to me for confirmation. I said: “six and a half years, ma’am” with emphasis on the number of years. The Filipina raised her eyebrow and turned to me. I did the same. We both suppressed our laughter.

Black humour is constant in the re-telling of their bleakest experiences. The more depressing the tale the louder they laugh. Laughter peels away the awkwardness of sharing distressful experiences.

### Direct Resistance

Relations of power embedded in the employer-domestic worker relationship inhibit direct resistance. But some are prepared to risk their jobs and challenge their employers in ways they can. Below are some examples.

3a: She’d [the employer] always buy me date-expired food which I refused to eat. She’d get very mad. I told her “Ma’am, your husband is a doctor. Why don’t you ask him if it is healthy to eat already expired food? She found my behaviour insolent and terminated my contract.

3b: At first, she imposed an 8:00 pm curfew and said it was for my own good. I made it a point to come home past 9:00 pm. She’d get mad but I reasoned out: but ma’am day-off is 24 hours... From then on, she rescinded my curfew. After that, I’d go home often by 8:00 pm.

3c: She always wants me to do so many things at once. Each time she calls, she wants me to go rushing to her but I refuse to do that and it makes her very angry. One time she banged the main door because I ignored her call. I also banged the kitchen door... she threw a cooking pan on the wall; I did the same... ready to quit. Instead, she started to treat me better.

The FDWs often pay a high price for directly resisting – termination. In rare cases as 3b and c above, it can produce unexpected results.
Indirect Resistance

Constable (1997) views the FDWs as largely docile even those who are “politically active or class conscious” (ibid.). The docility is contrived. Many put up with the abuses for a long time. Silence is a common form of indirect resistance. When their employers shout at them, they deal with it by “letting it in one ear, out the other”. Minimum verbal response is another strategy. When these fail, they resort to “written communication”, as in the example below:

My niece cooks nearly the same food everyday. Everyday her employer tells her: ‘You put sugar; you put salt; you put soy sauce’. After a while, she got sick of hearing these inane instructions day-by-day. One day, she took a piece of paper and wrote in big letters: ‘I put sugar; I put salt; I put soy sauce.’ She taped this on the refrigerator door for maximum visibility. When her employer saw the note, she got very angry and asked her to explain why she did that. She replied: “Ma’am to remind myself, so you don’t have to do it all the time.”

The tactic worked according to the narrator as the employer stopped the “annoying practice”. Disobedience is another form as the following demonstrates:

She wanted me to cut my long hair short. Three times in one week, she sent me out to have it cut. Each time I went out but came back with hair uncut. She asked why I didn’t cut my hair. I told her “ma’am I don’t have the money and it’s expensive”. In truth I really wanted my hair short. But I resented her dictating what to do with my hair, so I just disobeyed her. In the end she gave up.

Resisting Self-Pity

Allowing self-pity is for them giving others license to humiliate them more. Resisting it is a form of defiance, thus a self-validation act. The following is one of many examples:

My advice to my friends who complain that they are not given enough food: “If they give you only little food, buy your own. Make sure it’s better and more delicious than the ones they eat. If they count their fruits, buy yourself more and better quality ones than they have. Show them that they just cannot put you down”.

Reclaiming homeland identity is another form, as the following narrative illustrates:

When I was new, I’d dress up when I went out on my day out. She (employer) would comment: “how come you look so rich?” I’d say: “well I used to be a teacher, you know”. She said: “oh, really?” I said: “did you not read my documents?”

Reasserting their self-worth is a familiar strategy in their armoury for dealing with personal putdowns. It may seem childish to outsiders but to these women, it helps retain their dignity.

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This is a common employer practice where they count the number of say bananas or apples before they leave home, then count them again when they come home. If any is missing they blame their helpers and ask them to replace the missing fruit.
Using Logic to Argue a Case

This is often resorted to by articulate workers. As domestic workers they know that others credit them with little intelligence. Their silence is often taken as proof of this and employers are surprised to confront assertive workers. The accounts below illustrate this.

4a: She [employer] said: “Give me your passport, I will keep it.” You borrow money and you give it to the bank”. I said: “No ma’am, this is my personal property. According to the laws of Hong Kong, only I can keep it.” She was stunned. For one year, I just said ‘yes, ma’am’ to everything. When I came here, my friends and relatives advised me that if I wanted to keep my job I should never answer back. But after a year I got sick of being treated as if I didn’t have a brain. After that incident, I noticed that they treated me with a bit more respect.

4b: In my termination letter, my previous employer wrote: “She makes trouble in the house.” When I went to the Immigration [office] to process my visa, the officer told me: “Your employer gave you bad release. According to her, you make trouble for everyone in the house.” I said: “No sir, I did not come to Hong Kong to make trouble. I came to work. My husband still needs my help. We have 8 children.” “Eight children!” “Yes, sir, that’s why I had to put up with everything but popo [employer’s mother], makes trouble for me. If I make trouble for them how come they let me stay with them for 1 and 1/2 years?” I was able to convince him [immigration officer]; he allowed me to process my visa here.

4c: I met this Filipina at the Immigration Department. She was processing her visa because she was also terminated like me. Her release paper said: “Does not know how to work.” In the interview, the officer told her: “Your employer said you don’t know how to work.” She got very upset, she told the officer: “Will you look at these hands, sir? Can you say with these hands, just looking at them, if I don’t know how to work? I worked from 6:00 a.m. to past 1:00 a.m. nearly everyday.” The officer asked: “how can you work that long everyday? How can you prove it?” She said: “I will prove to you, sir. I will describe to you my duties everyday. At 6:00 in the morning I will start boiling the water...” – she went on to tell him all the duties she did, accounting for each hour. She concluded, “every night at 1:00 a.m. I take out the garbage. I am the only one in the block who does that every night.” The officer believed her story; he extended her visa.

The above are only some of the practical means of resisting their domination which scholars belittle for their lack of any impact on their condition. But these enable daily survival and thus they matter.

CONCLUSION

Through the narratives, we get a glimpse of the challenges faced by the FDWs. To survive, they employ ways and means available them that others find inconsequential. Academic researchers differentiate between “strategies of resistance,” coping and accommodation (Lamphere, 1987 in Constable 1997; Constable, 1997) and the effectiveness

19 My respondents claim it is a common practice for employers to keep their passport to prevent them escaping.
of these in changing “their structural positions as domestic workers” (Constable, 1997). This position implicitly belittles actions they consider as simply “coping” or “accommodation”. To these writers, only “resistance” matters as it can bring real change to their condition though acknowledging that even resistance itself is insufficient to make a difference. It is easy to discount, even mock, the practical strategies that the FDWs deploy to confront the daily challenges of their situation from a position of privilege. Constable (1997) claims that mocking their employers behind their back when they gather together may make them feel better but such actions are “meaningless” in the long run because these do not lead to changes in the objective conditions of their situation. Dismissively, she wrote:

The game is the same: work hard, earn money, remit it home...despite the important improvements that domestic workers’ organisations have helped bring about, the overall structural position of domestic workers remains relatively unchanged. They still work overseas at jobs that Hong Kong locals have rejected ... in essence struggling for the right to continue to do menial work under exploitative conditions.

It is easy for privileged outsiders to discount their efforts. But what is wrong with devising ways to make their life bearable? For them the issue is daily survival. The long term is today. They will not wait for the world to restructure itself to make life better for them. They will continue to sell their labour for a pittance because they do not have the luxury of choice and must bear the social and emotional costs in ways they know how, with the resources they have. One lesson this researcher has learned in the years of listening to their stories is that working and living in conditions that they do under the circumstances that they have takes enormous forbearance, grit and determination. That they do so day-to-day is a testament to their remarkable resilience. They are sustained in no small measure by their hope for a better life for themselves and their families. Global society can do no less than to support them and bring their plight central to global attention. As Vasquez (1992) pointed out, “the reality of over a million [Filipino] contract workers abroad must be the beginning and end of evaluation”.

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Chapter 5

WORK IMMIGRANTS AS PATIENTS IN GERMAN FORENSIC PSYCHIATRY AND PSYCHOTHERAPY

Klaus Hoffmann, Tilman Kluttig and Thomas Ross

ABSTRACT

The chapter focuses on the epidemiological bases of migration to Germany and reflects the special position of migrants in the German judicial and health care systems. In institutional terms, this affects above all sentences in the German penal system, both in the prison and in the psychiatric services. Political, economic, and psychiatric aspects of care related to these clients are addressed. We deliberately do not focus on the international literature on migration in general, on the well-known problems of some migrants adjusting to the host country, or the situation of migrants in the prisons and psychiatric facilities of other countries. These matters are dealt with in other chapters. Our aim is rather to present the background to clinical treatment of one of the most difficult migrant groups’ altogether, viz. forensic psychiatric patients, and to discuss the challenges that accompany the work with such patients.

MIGRANTS TO GERMANY: DEFINITION

In 2005 the definition of persons with a migration background was standardised throughout Germany (Bundesministerium des Inneren [Federal Ministry of the Interior], 2006). According to this definition, migrants are: 1. Foreigners: A distinction is made between persons who migrated into the country (foreigners of the first generation) and those born in Germany (foreigners of the second and third generation), as well as 2. Germans with a migration background. Here the distinction is between Germans who entered the country from outside (German migrants who have not been naturalised; naturalised foreigners) and non-migrant Germans (naturalised non-migrant foreigners; non-naturalised children of migrant foreigners; children of migrant or born-in-Germany naturalised foreign parents who were born in Germany; children with a migration background on one side only, i.e. where only one parent is a migrant or a naturalised citizen born in Germany or a foreigner).
WORK IMMIGRANTS: EPIDEMIOLOGICAL BASES OF WORK IMMIGRATION

In the year 2007, 15.4 million persons with a migration background were living in Germany. This corresponds to 18.7% of the total population. 7.9 million of them hold German passports. Individuals with a migration background less often live alone than do persons residing in Germany who do not have a migration background (11.8% as against 19.7%); the classical family with parents and children is more prevalent among migrants (56.2% compared with 34.1% (Statistisches Bundesamt, 2008, p. 7). In contrast, married couples without children, one-parent families, or alternative life styles are much less frequent with them. Education continues to be a distinctive factor setting off persons with a migration background from the rest of the population; 12.6% have no general school leaving certificate and 46.0% no occupational qualification. In contrast, the corresponding figures in individuals without a migration background are 1.5% resp. 19.1% (Bundesministerium des Inneren [Federal Ministry of the Interior], 2008, p. 8).

THE SPECIAL CASE OF REPATRIATES OF GERMAN ORIGIN AND THEIR DEPENDANTS

A group that has been receiving considerable attention for some years now in German epidemiological and criminological migration research are the repatriates of German origin. They are German nationals according to Article 116 of the German Constitution. Most of them immigrated from the states of the former Soviet Union or from other (mostly Eastern European) countries like Poland and Romania together with their family members who do not possess German nationality. Between 1990 and 2000, almost 2.5 million persons came to Germany as part of the repatriate immigration wave, most of them in the year 1990 (total n=397,073). Since 1994 (n=222,591), their immigration has been falling significantly each year. In 2000 it lay at 95,615— for the first time below 100,000 since 1988; in 2006 there were still 7,747 such migrants including dependants (Bundesministerium des Inneren [Federal Ministry of the Interior], 2008, p. 50).

The repatriates in the first waves were generally regarded as young, industrious, modest, and motivated. As a rule their integration was successful. The main obstacles to integration in the last ten years have been language deficits and problems in schooling and occupational training. Although a language test has been part of the acceptance procedure since 1996, it often happens that “Russo-German” individuals emigrate together with several Russian dependants (Bannenberg & Bals, 2006).

Repatriates of German origin live as Germans among Germans, but nonetheless in a foreign country. Their hopes entertained prior to emigration and the reality in Germany including high unemployment and frequent scepticism toward migrants, often clash disastrously against each other (Eyselein, 2005). For many, it might be easier to live as foreigners in a truly foreign country than as foreigners in their own country. However, their integration has been materially simplified. A special law includes them directly under all benefits of social and pension insurance and, at least in recent years, other integration programmes have been launched to help them. The repatriates of German origin have become
a privileged minority in comparison with other migrants. At the same time, their situation has been psychologically difficult because the power of ethnic and national bonding was overestimated. The repatriates are noticeably less welcome in the native German population than were the displaced groups after World War II. Statistics on need for support, poor social behaviour, and criminal offences speak for themselves, but they also harbour the danger that victims appear to be offenders, that widespread prejudice is further fuelled, and that the public loses sight of the fact that the integration of repatriates on the whole has thus far proceeded without any significant social disturbance (Bade & Oltmer, 1999).

**FREQUENCY OF CRIMINAL OFFENCES AMONG MIGRANTS IN GERMANY**

**Foreigners**

The share of non-Germans in the crime data recorded by the Police Criminal Statistics of the Federal Republic of Germany (PKS) is disproportionately high. The PKS registers illegal acts dealt with by the police including drug offences handled by the customs authorities. The areas of minor offences, state security, and traffic are excluded here. In comparing the actual criminality of the non-German population, it must be borne in mind that foreigners classed as suspects who are in Germany illegally or only for a short time (i.e. foreign tourists) are not included in the population statistics, whereas they are counted as suspects by the PKS. Since crime rates are always given as a proportion of crime among a certain group of individuals relative to the total population, there is a systematic overestimation of crime figures among migrants. Taking this into consideration, with a documented foreigner share of under 10%, 21.4% of all suspects in Germany in 2007 did not possess German nationality. For a similar share of population in 1984, this proportion was only 16.6%; it did rise, however, to 33.6% in 1993 (Bundesministerium des Inneren [Federal Ministry of the Interior], 2008, p. 9).

The high proportion of suspects without German nationality in cases of offences against foreigners and applicants for political asylum as well as of forged documents is related to illegal entry and status of residence. Insofar as recorded as suspects, applicants for political asylum and illegal residents stand out as shoplifters and violators of the laws on foreigners. In addition to minor offences and violations of the laws on foreigners, tourists and others are more often apprehended for suspicion of drug trade and grand larceny (Bundesministerium des Inneren [Federal Ministry of the Interior], 2006, p. 411). Individuals without German nationality who have lived in Germany for a long time and are occupationally integrated play a rather modest role in criminal occurrences in the country (Bundesministerium des Inneren [Federal Ministry of the Interior], 2008, p. 9). Overall, the proportion of migrant suspects without German passports in relation to all suspects has diminished continuously since 1994.

**Repatriates of German origin**

There are still no reliable country-wide criminality statistics on the repatriates of German origin. In 2006 in Baden-Württemberg 18.6% of the German suspects for violent crime under
age 21 were immigrants; for all crimes the corresponding rate was 11.6% (Landeskriminalamt [State Office of Criminal Investigation] Baden-Württemberg, 2007, p.6). In 2001 18.7% of the prisoners in the Baden-Württemberg penal system for young offenders were Russian-speaking foreigners. Most of them came to Germany between ages eleven and sixteen (Walter, 2003). But since the proportion of the repatriates of German origin and their dependants in these age groups is over 15% of the total population, there is no significant statistical accumulation of violent crimes in this group.

In contrast to the crime rates reported above, the rate of severe addiction is higher in young repatriates of German origin than in other Germans (Der Drogenbeauftragte der Bundesregierung [The drug commissioner of the Federal Government], 2008). A lack of awareness about available therapies and inexperience in dealing with heroin, e.g. high dosages combined with alcohol consumption, are very likely essential causes of the large number of drug casualties in this group. Meanwhile great efforts have been made in the area of prevention. In particular, the trend of early deaths due to overdose among very young heroin-addicted repatriates has been stopped. The number of such casualties fell from 142 in 2001 to 132 in 2006, and finally to 121 in 2007 (Der Drogenbeauftragte der Bundesregierung [The drug commissioner of the Federal Government], 2008, p. 79).

Migrants as Patients in the Penal System under Special Measures: Investigations in the Federal Republic of Germany

In the 1980s, 4% of the patients in the Westphalia Psychiatric Centre at Lippstadt-Eickelborn (Schumann, 1987) as well as in the Weissenau Psychiatric Centre (Missenhardt, 1990) were foreigners. For the same time period, a proportion of foreigners of 5% in Hessen were registered (Dessecker, 1997). In Hessen, as of 1 January 1993, 245 forensic patients were identified; of these, 9% came from “foreign cultural groups” (Jöckel & Müller-Isberner, 1996). In a 2004 study on a specific date in the Bavarian forensic clinics, a proportion of foreigners of around 15% were observed. Repatriates of German origin were not included, but their dependants were in so far as they were not German nationals (Hausner, Wittmann, & Cording, 2006, p. 70). Likewise in 2004, a study was carried out in the 12 psychiatric-psychotherapeutic and psychosomatic hospitals and divisions of the working group on psychiatry and migration of the Federal Directors’ Conference. In the forensic divisions, 27.2% of the patients had a migration background (Koch, Hartmann, & Schouler-Ocak, 2007).

Our own investigation (Hoffmann, 2006) included all of the 865 patients who had been admitted to the three forensic divisions in the South German region of Baden between 1 January 1990 and 31 December 1999. The proportion of foreigners among the forensic patients admitted in this period amounted to 17.1%. Thus, they were clearly over-represented as compared to the general population (12.2% in the federal state of Baden-Württemberg in 2000), but just as clearly below the proportion of prisoners in the penal system (26.9% on average in Baden-Württemberg in these ten years). Similarly, the share of repatriates of German origin lay above the proportion of this group in the general population (6.2% as compared to 3—4%) and clearly below the previous findings in the penal system of 10% (Walter, 2003). Thus, the proportion of foreign nationals and repatriates of German origin
under special measures is higher than in general psychiatry, but lower than in the penal system.

Similarly as in the PKS, foreigners admitted under special measures committed significantly more violent offences and drug offences. At the same time, they committed fewer sexual offences against children, thefts, frauds, and arson. This pattern of offences, in relation to the high proportion of foreign psychotic patients, points to serious shortcomings in psychosocial care. Foreign psychotic patients more seldom utilise the in- and out-patient psychosocial support system. At the same time, it is precisely those seriously psychotic patients who more frequently offend (Nedopil, 2007). In foreigners, patients with numerous offences involving physical assault are among those who have to be taken under special measures.

As far as psychiatric disorders were concerned, foreign patients under special measures were mainly diagnosed with psychoses (56.1%). This is a substantially higher figure than the one that was found among German patients (29.5%). The reverse holds for personality disorders, mental retardation, and alcohol dependency. The smaller proportion of personality disorders among foreigners and repatriates of German origin may be due to differences in assessments. Foreigners with an illegal drug background are more readily expelled. For these groups, the diagnoses mentioned above may be made less frequently despite relevant indications. Alternatively, such diagnoses may more rarely lead to expulsion.

Language competence enhances access to work and culture and is essential for psychosocial integration in the new country (Hoffmann, 2007a). In a study carried out at the Lower Saxony State Hospital at Osnabrück between 1993 and 1996, findings indicated that language competence was related to the length of in-patient psychiatric treatment (Riecken, 1999). Repatriates of German origin with good knowledge of German came significantly later for in-patient psychiatric treatment and stayed for a significantly shorter time than repatriates with poor or even no knowledge of the German language. Among a total of 90 individuals, all of them were migrants from the former Soviet Union. Ross, Malanin, Pokorny and Pfäfflin (2004) reported a 60% prevalence of personality disorders in a subgroup of 60 prisoners, compared to 17% in 30 non-criminal subjects. The quality of language knowledge played a decisive role in the subjectively experienced stress burden, i.e., subjects with poor knowledge of the German language experienced more stress than those who knew German well. A further study by the same authors, however, showed that non-migrant Germans who still lived in the former Soviet Union displayed just as high a rate of personality disorders as the non-criminal repatriates in Germany (20%) (Ross, Malanin, & Pfäfflin, 2006).

**Forensic Treatment of Migrants**

As a rule, patients admitted for treatment under special measures due to legal incapacity (§ 20 German penal code) are not expelled, since because of a serious mental illness they are not punished. Admission on the basis of limited incapacity (§ 21 German penal code), however, provides no protection against expulsion, since both forensic incarceration and punishment are involved.

If, in the course of their treatment, foreign forensic patients wish to return to their home countries, they must apply for permission by themselves. The judicial authorities then clarify whether similar treatment is available in their country of origin. In one of our own cases, this
clarification led to the patient’s decision to stay and be rehabilitated in Germany, since forensic treatment in his home country offered no open rehabilitation.

**Special Treatment Problems with Migrants**

We focus on five main categories of treatment problems related to a forensic patient's migrant status, i.e. (1) prejudice on behalf of non-migrant patients toward the migrants and vice versa, (2) (maladaptive) counter-transference phenomena of the treatment staff, (3) traumatisation specific to the migration process, (4) poor language skills and translation, and (5) pending expulsion.

1. **Prejudice**

   Cultural differences are a part of everyday life on a forensic ward. Native-born citizens, repatriates of German origin, and foreigners live closely together as patients and as co-workers under special measures, encounter each other in occupational therapy, at meals—where culturally and religiously based special diets stick out—and in group therapy. Ethnocentric identifications and prejudices often collide. Time and again, anti-foreign sentiments lead to offences which result in forensic admissions in the first place. Societal relations of power and prejudices are reflected in multicultural groups, and it is important to cope with them in forensic psychotherapy. The current unemployment problem in Germany renders psychosocial rehabilitation more difficult, and it entices native German patients into anti-foreign behaviour, verbal and otherwise. Internalised national stereotypes show up in relationships between staff and patients and in role distributions between the sexes. For example, foreign patients sometimes use their culture as an excuse not to do house keeping duties; certain foreign men will not accept women co-workers (Hoffmann, 2007b).

2. **Counter-Transference**

   Heinrich Racker (2002) found it useful to subdivide the analyst's counter-transference reactions into concordant and complementary. Concordant counter-transference reactions involve a situation in which the analyst identifies with a self-representation within the patient. Complementary counter-transference implies that the analyst has identified with a projected internal object representation of the patient. Racker viewed this as consistent with the projective identification model in which the analyst's own conflicts are activated by the patient's projections. Employing a somewhat broader understanding of the original meaning for adaptation to treatment purposes of forensic patients, this concept implies that therapists and care personnel should allow themselves to have feelings of sympathy, and to identify with the patients as well as with the patients’ victims, partners, and dependants.

   In trans-cultural forensic psychotherapy this also means coming to terms with ethnocentrism and the reaction toward it by therapists and care personnel. In the treatment of migrant patients it helps to include staff members with the same cultural background. For example, staff members from Italy and the former Yugoslavia as well as repatriates of German origin are active in many forensic divisions and are able to provide linguistic and cultural translation services (Stolpmann, 2001). Learning to “contain” hostile projections and
a strict rule against anti-foreign statements may generate a more workable multicultural divisional atmosphere and promote tolerance for cultural idiosyncrasies in everyday life.

3. Traumatisation through Migration

There is ample knowledge about the psychological burden the migration process may cause (cf. the overviews of Bhugra, 2007; 2004a,b). While it is obvious that even migrants with no prior psychiatric history experience distress related to the migration process, the situation for forensic psychiatric in-patients is even worse. In addition to their psychiatric disorder(s), these patients often lack basic everyday living skills, and they have thus little chances to successfully live up to the challenges a new environment confronts them with. A continuous experience of failure may at least in some cases bring about deterioration of a person's general health status, i.e. when failure serves as a trigger for re-traumatisation. This is especially the case for forensic psychiatric patients who have generally little personal (coping) resources for challenging life circumstances. There is little published data about this contention, but clinical experience clearly points to the fact that traumatisation and re-traumatisation through the migration process must be taken into account for the treatment of migrants in forensic psychiatric care.

4. Language Skills: Translation

Although the use of interpreters is often necessary in making assessments, we do not agree with other authors (e.g. Röder, 1995) as to their usage in psychotherapies, above all group psychotherapies. Using translation services on a regular basis counteracts the adaptation process to daily life in Germany. This is important to note, since the perspective after discharge of practically all repatriates of German origin and most foreign patients consists of a life in Germany (71.9% in our collective; Hoffmann, 2006). Therefore, many forensic divisions including the Division of Forensic Psychiatry and Psychotherapy at the Reichenau Psychiatric Centre employ teachers who offer help in improving competence in the German language (Hoffmann, 2007b).

5. Pending Expulsion

The expulsion rate of foreign patients in our collective was 28.1% (Hoffmann, 2006). This figure underlines the need for individual counselling about the laws concerning foreigners as well as a close cooperation with the judicial authorities and other authorities dealing with foreigners. This is often very expensive because it includes establishing contact and exchange with foreign psychiatric facilities and authorities. It is noteworthy, however, that although expulsion following serious offences can often not be avoided, it does happen at times that patients learn to accept the inevitable and work out a new start with new opportunities.

CONCLUSIONS AND RECOMMENDATIONS

The substantially higher proportion of foreigners and repatriates of German origin among these patients as compared with the figures in general psychiatry calls for specific responses
in a more ample measure. The psychotherapeutic working through of migrant-specific traumatisation as well as school and language training programmes belong to these responses.

Addicted repatriates of German origin are increasingly being treated and counselled through special programmes (Der Drogenbeauftragte der Bundesregierung [The drug commissioner of the Federal Government], 2008). These programmes have only recently been introduced and outcome data have not yet been published. We do expect, however, that these programmes, particularly in the group of the addictions, can reduce the number of forensic admissions.

Overall, an intensifying of the trans-cultural psychiatric and psychosomatic care corresponding to the Sonnenberger Guidelines issued in 2001 by the German Society for Psychiatry, Psychotherapy and Neurology (Deutsche Gesellschaft für Psychiatrie, Psychotherapie und Nervenheilkunde: DGPPN) is needed (Machleidt, 2002). These guidelines generally point out that the psychiatric, psychotherapeutic and psychosomatic care for migrants should become more sensitive for cultural characteristics and peculiarities. Establishing multicultural teams working in these fields is considered important. The same goes for counselling agencies and outpatient psychiatric services. Teaching techniques for psychiatric problems should be made available in different languages. Finally, the improvement of general care structures will also have positive effects on the situation of incarcerated migrants and those in forensic psychiatric care.

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Chapter 6

“I KNOW NOTHING ABOUT AFRICA”:
CHILDREN OF UNDOCUMENTED SUB-SAHARAN
AFRICAN LABOR MIGRANTS IN ISRAEL,
BETWEEN INTEGRATION AND DEPORTATION

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ABSTRACT

Sub-Saharan African labor migrants began their arrival to Israel in the early 1990s. Though some of them lived in the country for many years, a lack of a civic horizon brought many Africans to regard their stay as temporary. This attitude was manifested for example in sending their children back home when reaching school age. Since the late 1990s, with the introduction of massive deportations, some Africans chose instead to keep their children in Israel as part of their emerging struggle for residency rights. The state of Israel on its part has so far (2009) avoided applying its deportation regulations in the case of children, although it also failed to develop a comprehensive policy on work migrants' children. In the lack thereof, policy formation has been an ongoing process involving the migrants themselves, official state representatives and human right organizations. A significant part of the chapter is dedicated to examining African migrant children’s inclusion in the Israeli education system as a way of assessing state handling of these children as well as their integration into Israeli society. Our findings indicate that, due to the ambiguity generated by the unpredictability of state decisions, many Africans in Israel have wrongly cast their children’s lot as well as their own, an act which raises questions regarding integration in cases of uncertain citizenship status. The research is based on analysis of written sources (academic and other) and qualitative data gathered in Israel and Africa. Though focusing on African migrant laborers in Israel, our study touches on broader dilemmas migrant parents face worldwide.
INTRODUCTION

In 1991 the State of Israel added its name to the United Nations Convention on the Rights of the Child (UNCRC, 1989), which came into effect the previous year. The convention regulates, among other aspects of children’s wellbeing, their right for free education (articles 28-29), healthcare (articles 23-25) and freedom from arbitrary arrest (article 37). The convention asserts that a child’s legal status must never come in the way of obtaining those basic rights, and children’s best interests are to be regarded as a “primary consideration” in all actions concerning them (articles 2-3).

It was not long after the document was signed that the state’s commitment to these principles met with a serious challenge, in the form of the question of treatment of an emerging group of both documented and undocumented migrant laborers’ children. Some of these children were born in the country, whereas others were brought to it with their parents or were reunited with them at a later stage. For the most part, these children went to Israeli schools, spoke Hebrew, participated in Israeli culture, and regarded the country as their homeland.

In the early 2000s, the State of Israel launched a large-scale deportation campaign targeting undocumented migrants and their families. The campaign irreversibly and indiscriminately affected all non-documented migrant laborers. In the case of the African migrant community, it reduced its size to about a dwindling tenth of what it was only a few years earlier, delivering a serious blow to the Africans’ intricate network of social institutions. Concurrently, a growing awareness within the Israeli public and political discourse of the difficulties experienced by the migrant community led to an unprecedented series of ad-hoc resolutions which paved the way for eventual attainment of citizenship for a small number of migrant children and their immediate families. This development in policy, which culminated in the 2005-2006 resolutions, brought to the fore the question of “cultural exile”, a key term ascribed by the Israeli parliament to children whose rootedness in the country is so profound that their deportation is tantamount to an exile to a foreign land.

Research relating to the US and other Western countries has shown that, for migrants’ children, integration and belonging are closely related to and contingent on two main factors, namely: the host country’s policy towards them and the views of the migrant parents’ themselves and their desire to settle in that country (Falicov, 2005, 2007; Obeng, 2007; Suárez-Orozco and Suárez-Orozco, 2001). In Israel, for many years, government stand on its non-Jewish migrant children reflected a policy of minimal involvement in their lives (Rosenhek, 1999). In the lack thereof, there was much confusion among the migrants and especially the undocumented ones as to whether to raise their children in Israel or not. A steady threat to children’s prospects for remaining in the country was constantly in the air. For those who chose to integrate, integration has been a double-edged sword – a gateway to a permanent residence permit and a promise of eventual citizenship to a small minority, yet a source of affliction for the majority who did not fit state-imposed criteria or were deported before these came into effect in 2005-2006.

The article examines both governmental policy and migrants’ actions and reactions from the early 1990s up until the mid 2000s. It confronts the country’s formal conditions for legal admission, as well as the informal conditions for cultural integration, with the de facto precariousness of circumstances for the undocumented migrants’ children. Though focusing
on African migrant laborers in Israel, our study touches on the broader dilemmas migrant parents face worldwide such as parental attitude towards children’s integration, between its encouragement in consolidation of their presence and the concern about the loss of children’s connection to their heritage. Another question, arising most powerfully from interviews conducted with African children especially upon their deportation to Africa, touches on the advised limits of integration in cases of uncertain citizenship status in light of the unpredictability of state decisions.

A significant part of the article is dedicated to examining African migrant children’s inclusion by the Israeli education system as a way of assessing state handling of these children as well as their integration into Israeli society. Special attention is given to the complex ways in which the official education system became a central arena for grappling with questions of identity and belonging. For all these aims, we employ a combined methodology, relying on documents and scholarly analysis on the one hand, and on ethnographic material and interviews on the other hand.

Though recognizing the significance in discussing all migrant laborers and their children, this paper concentrates on the sub-Saharan African migrant community. This decision was made not only due to the fact that this community has been at the center of our research in the past ten years but also because, over the years, the African migrant community has seen the highest percentage of families in comparison to other groups of non-documented migrant laborers in Israel, making it an ideal subject for a study on migrant children.

**SUB-SAHARAN AFRICAN LABOR MIGRANTS IN ISRAEL**

Sub-Saharan African labor migrants began their arrival in Israel in the early 1990s as part of a wave of international migrant workers which started in the late 1980s. As a result of the first Palestinian uprising (*intifada*) and the defensive closures that followed, the government licensed manpower agencies to import migrant laborers to replace Palestinian workers, who until that time had formed the bulk of the workforce in agriculture and construction. The first such workers to arrive were predominantly from Turkey and Thailand, followed by China and Romania. Alongside these licensed workers, persons without valid working visas also began entering the country; among these were thousands of Africans.

Driven from their countries by economic hardships, the African labor migrants came mainly from Nigeria and Ghana, with smaller numbers from other Sub-Saharan African countries. Most of them overstayed their pilgrim or tourist visas. Due to a lack of documentation owing to the illegality of their presence, there are no official figures of African labor migrants residing in Israel at any given time; however, it is estimated that by the end of the 1990s, between 14,000 and 20,000 Africans were living in Israel.\(^1\)

Upon arrival in Israel, African migrants were absorbed by kin or fellow countrymen who had made the journey before them. Most of them soon found menial work in the service sector in and around Tel Aviv, working six days a week, 12 hours a day. Some worked in light industry or small construction companies. A few established their own businesses such

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\(^1\) These figures are based on official records published yearly by the Israeli Central Bureau of Statistics and the Ministry of Commerce and Industry as well as on personal communications with members of the African Workers Union, the General Federation of Trade in Israel, African church leaders and other NGOs.
Their exclusion from mainstream society, particularly noticeable and yet not unique to Israel (Adogame, 2001, 2005; Van Dijk, 1997, 2002, 2003), brought the African migrants to establish their own living spaces. Economically successful and educated by comparison to other groups of work migrants in Israel, the Africans showed much innovativeness in creating what Willen (2007) termed “inhabitable spaces of welcome”. These were based on a wide range of associations: national, ethnic, religious, economic, labor unions, sports clubs, and women’s organizations.

It has been argued that the greater the cultural differences between the migrant and local communities, the more contentious relations between them will be (Pettigrew et al., 1998). In the case in question, the African migrants’ insular life indicated not only cultural and religious differences vis-à-vis Israeli society but also the imposition of temporality on migrant laborers in Israel. Due to the country’s self definition as “a Jewish democratic state” and its respective “Ethnic Priority Immigration” policy (Gil & Dahan, 2006) framed in the Jewish-exclusivist Law of Return (1950), Israel offers a singular case in which permanent residency or citizenship are hardly ever granted to non-Jewish migrants. The country’s sensitivity to any demographic challenge on its Jewish majority and its fear of claim-making precedents within the context of the Israeli-Arab conflict, leads even to the ruling out of permits in cases of family unification and of children born in Israel to non-citizens (Gil & Dahan, 2006). The judicial system, on its part, shows reluctance to enter direct confrontation with state policy, a tendency which manifests itself in a variety of ways, such as the delaying of pioneering verdicts. At the same time however, a consideration for the international discourse on human rights, which already began affecting decisions involving migrant workers and their children, has increasingly come to prominence (Sitbon, 2006).

Aware of these facts from before their arrival, African work migrants in Israel, at least in the first decade of arrival, made no overt claims for recognition in the form of long-term permits. The state on its part treated them merely as temporary workers and not as prospective citizens, and hence as outsiders - culturally, socially, and politically. In the case of undocumented migrants, they were and still are denied of the bare minimum of housing and social benefits, although their children are entitled to state education and medical care.

“If I’m with a Baby I Will Not be Arrested”: African Migrants Facing Deportation

In the middle of 2002, the Prime Minister at the time, Ariel Sharon, initiated an expensive mass deportation campaign that targeted unauthorized residents. The act of deportation was to be implemented by the Immigration Administration, which was established that year as a division within the Israeli Police. In the media and in government discourse, the campaign was represented partly as a pro-active response to rising unemployment and partly as a strategy for safeguarding the country’s Jewish majority. Some of the deportation techniques were marked by brutality. Public protest against the deportation, organized by human rights organizations, were only successful in diminishing the levels of violence implemented in the deportation processes, however they did not manage to prevent it nor were they able to
undermine the campaign's underlying principles (Hotline for Migrant Workers, 2005, 2007; Kemp & Rajman, 2003).

This massive deportation, which included about 17,000 Africans has not only radically reduced the number of transnational migrants in the country but also destroyed the rich community infrastructures that had sprung up in Israel in the years that passed. By the end of 2008, the estimated number of sub-Saharan Africans in Israel was between 2,000 and 3,000. This number consisted mostly of single mothers with children, whose deportation was temporarily halted due to the lobbying efforts of human rights organizations, as well as several hundred others, mainly from Liberia, Sierra Leone and Congo, who obtained refugee status through the UNHCR (Hotline for Migrant Workers, 2008).

It should be noted that, despite their successful space formation throughout the 1990s, until the early 2000s most Africans have shown an internalization of their eventual return to their home countries. Their hard-earned money was often sent back to their families, while significant sums were saved in plan for economic ventures back home (Sabar, 2008). Though the percentage of families amongst the African labor migrants was the highest in comparison to other non-documented migrant laborers in Israel, they largely perceived themselves as temporary residents within the host country (Kemp, 2004; MESILA, 2002, 2003; Sabar, 2004). Not only did the African migrants opt to leave their children in their home countries but, aware of the lack of prospects for establishing themselves in the host country and wishing their children to grow within their own culture, they sent their Israel-born children to their home countries once they have reached school age (Sabar, 2004, 2009).

But this practice moderated in the late 1990s and beginning of the 2000s parallel to the intensified deportation on the one hand and the initial discussions regarding migrant children’s rights on the other hand. As a political move for asserting the rights which the Africans, through their elongated residency periods increasingly felt they have rightly gained, they opted to keep their children with them in Israel. One may argue that the great number of new and reunited African families, and the sense of settling down which normally accompanies family formation, hastened the emergence of a feeling of rootedness in the host country and has fuelled the eventual transition to keeping the children in the host country with all that it implies.

Though the State of Israel was determined to deport undocumented migrants, including whole families, in practice, due to lack of suitable detention facilities, as well as fearing negative press both locally and internationally, it refrained from arresting children and single guardian parents. Realizing this, African parents began using their children as protective shields against arrest and deportation. With mounting pressure, new strategies were invented by individual families. some African couples split and divided the children amongst them, claiming to be single guardians. Others, who had no children of their own “borrowed” children from families that had more than one child, presented themselves as single guardians. As no formal registration of migrant labor mothers’ new born babies was enforced

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2 Since 2005, about 14,000 Africans, mainly from Eritrea and Sudan, have entered Israel through its lax border with Egypt, seeking political asylum. This paper does not deal with them but rather focuses only on those Sub-Saharan Africans who have entered the country in the 1990s and escaped the massive deportations. For a detailed comparison between these two significantly differently African diasporas see: Sabar, Galia (forthcoming) "Israel and the ‘Holy Land’: The Religio-Political Discourse of Rights among African Migrant Labourers and African Asylum Seekers, 1990-2008, Journal of African Diaspora.
by the state, these strategies were rather easy to implement. One of the leading clerics of the 
Ghanaian community said to us that “everywhere I go I take with me a baby… he is my 
visa… If I’m with a baby I will not be arrested” (Pastor Ampadu³, Tel Aviv, 2003).

“Look at Her, She is 100% Israeli… How Can I Take Her [Back] to 
Nigeria?”: The Struggle for Residence Permit between Hope and Despair

Perhaps in recognition of their children’s potential role in the struggle against 
deportation, African parents often emphasized their children’s Israeli identities. They 
commonly referred to their children’s fluent Hebrew, Israeli names and knowledge of 
Jewish/national festivals as a manifestation of this localized identity:

Look at her, she is 100% Israeli, her name is Adina… She was born in Tel Aviv eight 
years ago… she goes to a school in Tel Aviv, she speaks fluent Hebrew and can hardly talk 
with my parents in our own Ibo language… she is now getting ready for Shavuot (Pentecost) 
celebration with the basket and fruits… she has a part in the school play… how can I take her 
[back] to Nigeria, the kids there will beat her up… they are so violent… If you ask Adina 
what is she, she will say she is an Israeli… she is a good girl, a good student… she thinks that 
if she will be so good then I will not be deported as her father has already been deported 
(Mery*, Tel Aviv, 2004).

In various interviews, both parents and children spoke in clear terms about their deep 
cultural alienation from their African homeland. Galit Tupor, a teenage daughter of migrant 
workers from Ghana, who was born and raised in Israel, has put the question most poignantly: 
“Why send me to Africa… I know nothing about it”. In a long and detailed newspaper 
interview, Galit related to the arrest of her father by the deportation police and her family’s 
imminent deportation. As part of the reporter’s attempt to show the devastating affect 
deportation may have on migrant children, he published along with the interview a letter 
which Galit wrote to the court judge presiding over her father’s case:

My name is Galit and I’m 10 years old… You took my dad. Please release him. I’m sad, I 
have no one to talk to… my dad is my best friend… he is sick now. If you send him to Ghana 
he might die as there are no good doctors there. I see it on television how people in Africa 
suffer and die… please, don’t destroy my life… Why send me to Africa… I know nothing 
about it (Maariv, 26.12.2003).⁴

Galit, who was born and raised in Israel, regarded herself as an Israeli girl with African 
parents. Galit was a distinct student in her local elementary school in Tel Aviv, an active girl- 
scout with a busy social schedule. She took part in all Jewish-Israeli related activities in her 
school: on Memorial Day she stood in silence while the prayer for the dead (Kadish) was 
recited; she celebrated the Passover special dinner with her classmates and did not mix meat 
with dairy because “it is not Kosher”, as she put it. She followed the local soap operas and 
knew the life histories of Israeli celebrities. Ghana, on the other hand, she regarded as a far

³ Names marked with an asterisk are pseudonyms. However, a few of our interviewees specifically asked their 
names to appear in the research. This was respected, though only their first name was used.
and unwelcoming place: “I was never there and I don’t want to be there… it scares me… people there speak in a funny and strange language, full of music and funny mimics… mom and dad speak like that… with me they speak English”. When asked about her parents’ homeland she said: “In Ghana there are witches, snakes and wild animals. Who would want to live there?” The arrest of her father and the threat of deportation have shaken at once the foundations of her life which have undermined her bond with the only homeland she ever knew or had.

Studies on modern transnational migration worldwide have shown that in most western countries there is a differentiation between state policy towards adult migrants and towards their children (Castles & Miller, 2003; Freeman, 1992). Policy towards children can be seen on a continuum, on one end of which are countries such as France, the Netherlands and England which base their policy on the treatment of migrant children as prospective citizens, while on the other end countries such as Belgium and Switzerland regard them as but temporary residents who will eventually return to their parents’ country of origin. These perspectives influence countries’ efforts to promote these children’s cultural integration (Martiniello, 2001; Suárez-Orozco, 1991). Other countries’ policies are somewhere in between these two poles. Within this wide spectrum, which in many ways reflects a discourse about inclusion versus exclusion, laws and practices relating to socio-educational programs are being constructed. These in turn can be seen as a reflection of an ongoing negotiation between the state and the migrants themselves (Anderson, 1991; Braun & Würflinger, 2001; Gross, 2005; Klopp, 2002).

On this continuum, Israel, due to its strict adherence to Ethnic Priority Immigration, can be considered closest to countries such as Belgium and Switzerland. However unlike these other countries, Israel relates only to Jewish immigration and in regard to all others its decision making is marked by a lack of comprehensive policy. Aware that any legal precedents might serve demands for further rights, as demonstrated by cases in other Western states, or be manipulated in other ways such as by Palestinians, the country’s approach to its non-Jewish migrants has been framed by ignoring as well as ignorance (Rosenhek, 1999).

This can be demonstrated by a meeting of the Parliamentary Committee Concerning the Problem of Migrant Workers, which was held at the Israeli Parliament in December 2003, in the midst of the deportation campaign. Analysis of the meeting’s protocols clearly shows that no clear policy regarding migrant laborers’ children has existed. The chair, MP Ran Cohen, who was considered one of the most active parliamentarian advocators of human rights of marginalized groups, was himself ignorant of the official status of these children. He and all other members of the committee did not know, for example, that a child born in Israel to non-citizens is neither entitled to a birth certificate nor to an ID number. Instead, parents leave the maternity ward with a document entitled “living being certificate”. Clearly shocked, Cohen asked: “Don’t they receive a citizen’s status? What? Are they like ducks born in Israel?… what is this ‘living being certificate?’” Cohen concluded the meeting saying to all members present: “You must agree with me that none of us would have wanted to receive this kind of certificate; they should get some sort of identity certificate… no demographic threat to the Jewish state is at stake” (Parliamentary Committee Concerning the Problem of Migrant Workers, 16.12.2003).

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4 The letter was originally written in Hebrew.
A few months later, views similar to those of Cohen were voiced by MP Rabbi Michael Malkior, in conclusion of a meeting on the topic by the Committee for Children’s Rights which he directed:

The Jewish people… should be especially sensitive to what it means to be a foreigner, and it does not matter whether those people arrived here legally or not. We often learn that these families escaped harsh living conditions, and we have to treat them humanely. The country’s Jewishness will not be damaged by giving a legal status to about 2,000 migrant laborers’ children and their parents (Committee for Children’s Rights, 24.2.2004).

Views such as those expressed by MPs Cohen and Malkior called for a reconsideration of the limits of one of the state’s founding ethno-religious elements. However, within parliament, such views met with fierce objection from predominantly right wing MPs and ministers, notably party leaders Binyamin Netanyahu and Eli Yishai. Their objections were on financial and demographic grounds, arguing that such permits are contradictory to government policy of reducing the number of foreign workers (Haaretz, 26.6.2005). Their arguments, however, often ignored the state’s commitment to the welfare of children regardless of their parents’ legal status as appear in articles 2-3 of the abovementioned UN Convention on the Rights of the Child.

Relating to similar debates in other Western countries it has been argued that for migrant children, a lack of legal status is linked with high risks of poverty and poor health, and that legality could have greater bearing on improvement in these areas than length of period living in the country (Kanaiaupuni, 2000). In Israel, such and other arguments were vehemently raised following the 2003 appeal by four Young adults who were brought up in Israel as children of migrant laborers, and who plead the court to grant them permanent permits. This request triggered a serious political debate on the subject. The Ministers of Interior, Avraham Poraz (2003-2004) and Paz-Piness (2005), were both sympathetic to the idea of granting permits in certain cases. However, due to the sensitivity of the matter, it was brought before the parliament which took two years before passing its decision. In June 2005 it was finally declared that a residence permit may be issued to children of migrant laborers, their parents and their siblings, provided that by the end of the year they reach the age of 10, and that they “were born in Israel… study in Israel or finished their education… Speak the Hebrew language, and their deportation will involve a ‘cultural exile’ to a country with which they have no cultural affinity” (Summary of Government’s Meeting, 26.6.05).

An outcry pertaining primarily to the condition of birth within Israel, and the recognition that the number of applicants was significantly lower than anticipated by prior assessments, brought the decision to a reform in 2006, dropping the birth clause and lowering the age of entitlement. In a declared intention of preventing Palestinian families from claiming a legal status in Israel, both the 2005 decision and its reform maintained a condition by which both parents must have entered the country legally (Gil & Dahan, 2006). In order not to upset Israeli migration policy and laws concerning residency or citizenship, the decisions were presented as ad-hoc humanitarian gestures, whose one-time application does not qualify them as state laws (Haaretz, 27.6.2005).

In church services, following the promulgation of the new decision, Africans expressed their excitement by crying “hallelujah, praise the Lord!” Though commenting that for the
many deported families this decision came too late, the Africans in Israel now intensified their efforts to prove their attachments to Israel, mainly through their children.

“After All… They Don’t Live on a Different Planet”: The Struggle over Identity within the Israeli Education System

As mentioned, studies on modern transnational migration worldwide have shown that state policy – or lack thereof – affects migrant children’s modes of integration, well being and identity formation processes. In particular, state policies concerning education programs and curricula have a significant power to determine these processes (Anderson, 1991; Braun & Würflinger, 2001; Gross, 2005; Klopp, 2002). Hence, analysis of the ways in which migrants use the education system on the one hand and official state policies in this realm on the other hand are essential. Moreover, such analysis can also be seen as reflecting overt and covert discourses about inclusion and seclusion.

As also mentioned, Israel’s attitude towards its migrant workers was largely marked by both a rejection on religious-demographic grounds as well as by lack of any comprehensive policy (Rosenhek, 1999). One of the results of this was a vacuum in the treatment of hundreds of thousands of workers and their families, a vacuum which was filled by social initiatives on the part of the migrants themselves as well as by the work of caring individuals – teachers, social workers, medical personnel and administrative clerks – and by municipal authorities in whose boundaries the migrants have lived.

For example, many of the services in Tel Aviv provided on the municipal level, including those of education, were facilitated by a specially established department called MESILA: Aid and Information Center for the Foreign Community. The founder and first director of MESILA, Edna Alter-Dambo, stressed the city’s basic commitment and responsibility to all children living within its jurisdiction, including those “who live in unbearable sanitary conditions, suffering from mal-nutrition and inadequate educational and care-taking facilities”. In an official publication, MESILA clearly stated that the terrible conditions in which these children grow “will, doubtlessly, affect their development as well as their future” (MESILA, 2000). According to MESILA, about 20% of the children in Tel Aviv were born to migrant laborers (MESILA, 2000, 2007). “We should not relate or consider their parents’ legal status. A child is a child… how can we remain indifferent to the horrific conditions in their self-managed kindergartens?… after all they are the children of Tel Aviv... they don’t live on a different planet” (Alter-Dambo, 1999). The city’s initiatives for catering for the migrant community attracted criticism from the Ministry of Interior, which accused the mayor of Tel Aviv of encouraging the influx of non-Jewish migrants to the country.

One of the first and major missions of MESILA was to register the local privately owned babysitting facilities. These small, informal nurseries were already established by the first Africans in the early 1990s. Within a few years, dozens of such home-based nurseries have emerged. 5-15 children were often kept with age ranging from several weeks to 5-6 years old. The lack of official status and substantial external supervision for these negatively termed “pirate kindergartens” even brought about accusations of “real concern” for the lives of the children (Haaretz, 17.3.2009). Beyond registering these nurseries and providing them with basic equipment, MESILA offered training to the women in charge and upgraded conditions
there. Yet in spite of major improvements, many African children were still kept long hours, day in day out, in terrible conditions.

The abilities of the Africans to raise their children within the protective zones of their own community ended once they reached the school age of six. As mentioned, in the first years of their stay in Israel, most parents opted to send their children back home once they have “graduated” from nursery. Against the agony of separation there were economic considerations, the belief that children should be raised within their own tradition, and fear of the unknown faith awaiting those who are to grow status-less in Israel. In 1999, assessments indicate that there were between 1,500 and 2,000 children of migrant laborers in Israel. From among them, 400 were born to African parents, 50-60 of which were over the age of 6, belonging to a minority who refused to send their children home and insisted instead on sending them to local schools in Israel, mainly in and around the southern neighborhoods of Tel Aviv. In 2003, in the midst of the deportation campaign, the total number of children of migrant laborers reached 3,000, including 200-300 Africans, from which less then 30 were over 6 years old (MESILA, 1999, 2000, 2001, 2002, 2003, 2004; Yahalom, 2002).

With the intensification of the deportation, the question of whether to send the children home or to bring them up in Israel has become evermore crucial for African parents, as echoed in the following testimony. Soon after the deportation of her husband back to Ghana, Lisa*, a mother of two, intimated her apprehensions as for whether or not to send her children back home. Her older son Atto has reached school age and Lisa*, in her modest and gentle way, spoke of the decision to register him to the first grade in an Israeli school in Tel Aviv despite the increasing danger of deportation:

We did not know what to do with Atto… to register him to school or to send him back home…. every day we thought this is our last month in Israel and soon we are going back… eventually we decided to send him to school here. We were making jokes about the fact that he will be the one who will help us with the police as he will understand Hebrew … but we were also afraid what will he do when we go back to Ghana. How will he manage if he will only speak Hebrew?

Atto is in 1st grade now. He is a happy boy… he likes school. … I told him that if he will be a good student they might let us stay… I’m lucky that he has no problems… kids in Israel are smart but spoiled and I don’t want him to be like that… I worry all the time about the future, what will happen after we go back… All the time I keep asking myself if what I did was the right thing? (Lisa*, Tel Aviv, 2001).

Lisa was part of a growing wave of African parents who have opted to keep their children in Israel. Her short testimony clearly exposes some of the dilemmas she and others faced concerning their stay in the country, their children’s education, identity and fate. In many ways her decision to send her son to a local Israeli school can be seen as part of this ongoing negotiation between migrants and state via the education system.

As the state ignored for many years the existence of non-Jewish migrant children, local municipalities, mainly Tel Aviv, had to develop their own ways of handling these children within their local schools. An example of that can be found in Bialik School in Southern Tel Aviv, which for many years has been the main school absorbing migrant children. In Bialik, the management and teachers had to invent their own methods and find creative solutions to the daily problems they faced concerning the migrant children’s unique needs. Little
information, assistance or guidance was offered to them either from the ministry or from educational experts (Bar Shalom & Haiman, 2003; Yahalom, 2002, 2003).

Academic research on migration throughout the world and labor migration in particular often indicates the importance that migrants attribute to gaining access to and succeeding in school (Gibson, 2009; Hernandez, Denton & Macarthy, 2009; Hortas, 2009; Olneck, 2001; Zehr, 2009). According to the Law of Compulsory Education (1949), the State of Israel is obliged to supply free education for all children aged 3 and above who reside within its borders for over three consecutive months, regardless of their legal status. However, in the case of work migrants, there has often been a gap between state laws and binding international conventions on the one hand and their implementation on the other hand (Yanay & Borowski, 1998). This lack of parity in application turned into a public debate. A main argument against equal educational services to the migrant community was that supplying them with free, high level education will induce them not only to remain in the country but also to bring in their children from their home countries.

The quandary experienced by many migrant parents regarding the right type of schooling for their children has won but little academic attention (Hortas, 2009; Zehr, 2009). In Israel, once there appeared to be some prospect for remaining in the country, the overwhelming majority of labor migrants opted to send their children to local public Hebrew speaking schools. If Hebrew education was clearly a hindrance in case of returning to their home-countries, it was also acknowledged as a gateway to integration, a proof of becoming Israeli. It is interesting to note that, despite their relative affluence, only a handful of labor migrants sent their children to private Christian schools, where classes are held in English or in French.

Once they have begun participation in the educational system, many migrant children indeed opted for a quick integration into Israeli society, learning Hebrew, for example, as fast as they could. By investing much energy in trying to integrate and even assimilate into the dominant culture, they hoped to overcome the feelings of temporality and detachment from the dominant culture which they experienced in their private homes. One of the teachers in Bialik School analyzed the children’s daily dilemmas and their solutions saying:

They are more Israeli than Israelis. They know about the Jewish holidays more than most of the Jewish students in their classes. They want to prove they are Israelis, they don’t want to be asked about their homes since for them home is here… This is clearly the case with the African children… I think that because they look so different than all other Israelis, it is more important for them to speak Hebrew, dress like Israelis and emphasize the Israeli parts in their identity (R. S., Bialik School, Tel Aviv, 2001).

The schools themselves, following the pioneering example of Bialik School, tried to show respect towards the children’s dual cultural affiliation and religious difference by developing an educational ideology which would encourage these students, whose prospects for establishing their lives in the country were uncertain at best, to retain their parents’ cultural identity while familiarizing themselves with Jewish-Israeli culture. However, in some schools where the number of migrant children was small, the Jewish-Israeli identity was clearly the dominating one, leaving practically no space for any other anchors of identity (Bar-Shalom, 2004; Bar-Shalom & Haiman, 2003).
By Way of Conclusion – “I Am Not Really Ghanaian… for Me It Is a Bad Place”: Bewildered Identities

As illegal residents in the country, for many years the Africans led much of their life as a detached community with limited links and bridges to the Israeli society and culture. However once the new regulations that granted residency status to some of their Israeli born or raised children were adopted in 2005-2006, the changes in behavioral patterns were enhanced. This had conflicting results. Sending their children to an Israeli school confronted parents with fresh challenges on their tightly-knit community, and required allocating a share in the children’s schooling to the melting pot of Israeliness. As a result of school integration, which involved mingling with children who speak a different language and share a different religion and social costumes, tensions and even alienation from the family’s own tradition often surfaced:

I’m an Israeli, not a Ghanaian. My mother is a Ghanaian, my father is a Ghanaian. I’m not. I don’t speak Twi… I hardly understand when they talk to me in Twi… when I see pictures from Ghana I don’t understand how people live there… it all seems to me so different, it is so dirty… If I go there I will probably die from the stench… I grew up in Israel and I want to go to the army and then to be a teacher (Jenifer*, 12 years old, Tel Aviv, 2002).

While the assimilation described by Jenifer* is common among migrant workers’ children in Israel, the first generation of migrants, who tend to be less well integrated and less versed, for instance, in the Hebrew language, attempts to somehow curb the trend of alienation from the ancestral tradition. Research among African migrants in Europe and North America reveals that most African parents invest both in integrating their children into the host culture as well as in bonding them with their home country (Arthur, 1991; Attah-Poku, 1996a, 1996b; Uyanga, 1981). Similarly in Israel, many African migrant are taken by their parents to national and ethnic celebrations, learn their parents’ language and all in all maintain a level of knowledge of and engagement with their family’s traditions. Thus Solomon, a pastor who hoped gaining a formal residence permit for himself and his children, intimated in an interview that “once the kids will get papers we can take them home, to visit… my biggest fear is that they will come to Ghana and not understand what is going on… people will talk to them and they will be unable to respond… they don’t know the people, they don’t know the county… they are even a bit afraid of Ghana… I know it and it is very difficult for me.”(Pastor Solomon, Tel Aviv, 2005).

A year after this interview with Pastor Solomon was conducted and three years after the much debated interview with Galit Toper was published, Galia conducted field research in Ghana, interviewing adults and children who were deported from Israel. Both Galit and Pastor Solomon, despite differences in age, status and life experience, foresaw what many African children were soon to experience for themselves – that a forced deportation can sentence a child to social and cultural exile in the homeland of their parents.

From the data gathered in Ghana it was clear that the younger children aged 2-7 were able to manage in their new homes, but the teenagers were confused, depressed and detached. The latter may be demonstrated by our interviews with Gideon*, 11 years old, and his sister Debra*, who was 19. The aggressive deportation campaign of the early 2000s was too much for their parents, who after 16 years of illegal residence in Israel decided to move back to
Ghana. Indicative of the disorderliness of policymaking at the time, their parents were not informed that, had only they stayed in Israel for a few more months, Gideon and Debra would become eligible to a residence permit.

Both Gideon and Debra were unhappy with what the State of Israel decided was their “home”. Gideon, who was born in Israel, showed clear signs of depression and spoke of deep cultural animosity: “I want to go back home [to Israel]. I want to study there, live there… if I have to stay here, I will die. I want to die… I have no life here” (Gideon*, Kumasi, 2006).

His sister Debra was born in Ghana but was taken as a baby to Israel where she was brought up:

I am not really Ghanaian… I don’t know anything here… I don’t want to know either… I want to leave here the first moment I have… they [people my age] tell me that I am not Ghanaian, that I am a foreigner, Israeli… they tell me – go back to Israel, you are different… for me this [moving to Ghana] is not like coming back, because I was never really here… for me it is a new, bad place… for me, going back means going to Israel… There’s my home (Debra*, Kumasi, 2006).

As our data suggests, in Israel, for the most part, African migrants’ children have shown remarkable desire to integrate and belong to Israeli society, to be “more Israeli than the Israelis”, not least through active participation in the public Hebrew speaking educational system. Moreover, as our interviews with the deported children have shown, and in light of the anxiety and uncertainty experienced by those who remain, we argue that the lack of a clearly defined governmental policy on the issue of permits has been a source of agony for many. Studies have shown that children of parents who feel their stay in a country to be temporary tend to know more about their parents’ culture although they are not necessarily detached from the culture of their host country (Castles, 1992; Espenshade, 1996; Leif & Chitose, 1994; Porter & Bach, 1985; Sabar Ben Yehoshua, 1996). However, in the case of the African migrants’ children in Israel, by deporting the mass population while concurrently formulating criteria for admission of legal and permanent residence permits, the country was sending ambiguous and mixed signals, due to which many have wrongly cast their children’s lots as well as their own, an act which sometimes had costly ramifications on their prospects for future wellbeing.

Today (2009), when the country is facing thousands of new African migrants, mainly refugees and asylum seekers from Sudan, Eritrea and other countries, it is all the more essential to have a clear policy towards non-Jewish migrants in general and towards their children in particular. Our research clearly shows that the reluctance of the State of Israel to formulate clear policies regarding its non-Jewish migrants and their children touches on the state’s basic ethno-religious foundations. The migrants’ pleas are perceived by the state as a challenge to its definition as the homeland of the Jewish people and therefore are rejected or ignored. However, within this “non-policy policy”, regulations are formed through long and complex processes of daily negotiations between the migrants themselves, official state representatives and human right organizations. Within this fluid reality, the African migrants’ children’s identities are formed with complex links to Israeli culture and to their parental homeland. These complexities are manifested both within the Israeli arena and, even more strongly, upon return to what is officially considered to be their “home”.
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SECTION 2.
POLICY AND LEGISLATION – TRYING TO COPE
CAST ME NOT OFF IN THE TIME OF OLD AGE
(PSALMS 71:9) OCCUPATIONAL PENSION FOR
MIGRANT WORKERS

Hani Ofek-Ghendler

ABSTRACT

The pension system constitutes a set of pillars and payments in order to guarantee a stream of income that enables the individual to maintain a certain standard of living in his/her senior years. Is it appropriate for occupational pension systems to include migrant workers, or is there justification for their exclusion? The chapter gives some policy considerations which support the view of inclusion of migrant workers in an occupational pension plan. The existing pension insurance models for migrant workers - application of the pension arrangement for local workers to migrant workers and the lump sum model - do not safeguard the migrant worker’s need for economic security. The chances of multi-state standardization of the occupational pension systems among states that are not part of the regional government are almost nil. The author’s argument is that occupational pension arrangements should also be devised for migrant workers through bilateral agreements between the country from which the worker migrated and the country to which the worker migrated for the purpose of employment.

INTRODUCTION

Worker migration constitutes a challenge for social security systems and for pension systems in particular. In recent years this challenge has intensified due to two global social factors: the mass migration of workers seeking employment and income in countries in which they are not citizens or residents and a demographic revolution resulting from the accelerated aging of the world’s population. According to the International Labor Organization it was estimated that in 2000 around 175 million (3% of the world’s population) worked outside their countries of origin. In recent years the migrant worker population has grown by six million people annually, a rate that is greater than the worldwide population growth rate (ILO,
2004). It is estimated that by 2050 the world’s senior population will number 1.8 billion people – around 20% of the global population, compared to a senior population of 200 million in 1950, which constituted only about 8% of the global population (Bloom & Canning, 2004). These two factors jointly lead to the conclusion that the proportion of migrant workers in the general aging population is expected to grow steadily in the coming years. This steady growth rate will bring into acute focus the following question: How can the economic and social dignity of the migrant worker population be ensured upon aging and retirement from the workforce?

The pension system constitutes a set of pillars and payments in order to guarantee a stream of income that enables the individual to maintain a certain standard of living in his/her senior years. The pension system may be roughly divided into three complementary pillars (World Bank, 1994). The first pillar comprises a pension paid by the State in order to guarantee a minimal income level (hereinunder: “statutory pension”). The second pillar includes pension schemes connected to labor relations that are aimed at reducing the risk of a drop in the standard of living the worker was accustomed to during his/her years of employment following retirement (hereinunder: “occupational pension” or “supplementary pension”). The third pillar includes pension schemes voluntarily initiated by the individual in order to provide himself/herself with a supplementary income in his/her senior years. A mutual affinity exists between the three pillars of the pension system. The need for the second and third pillars arises when the first pillar provides a relatively flimsy layer of protection for pensioners, and vice versa. This study will focus on occupational pension arrangements for migrant workers.

Migrant workers are not entitled to statutory pension in the destination country as this type of pension is allocated on the basis of residency. They may be entitled to statutory pension from their countries of origin conditional to fulfilling the provisions of the law in those countries. Fulfilling provisions of the law is not a simple matter, especially if a minimal accumulative period is required (International Social Security Association, 1993). Bilateral agreements between countries of origin and destination countries may overcome some of these complex issues, but such agreements usually only cover about twenty percent of the migrant worker population. This fact stresses the importance of the inclusion of migrant workers in occupational pension systems.

The author’s argument is that occupational pension arrangements should also be devised for migrant workers through bilateral agreements between the country from which the worker migrated (hereinunder: country of origin) and the country to which the worker migrated for the purpose of employment (hereinunder: country of destination). In order to support this argument the author will present policy considerations and discuss the ethical aspect with regard to guaranteeing the migrant worker’s economic security and dignity.

**Policy Considerations**

Retirement from the labor force endangers the worker’s economic security and dignity due to a significant reduction of his/her stream of income. Theoretically a rational worker is supposed to cope with the said risk by means of long term savings schemes, but this is not always the case. Pressing current needs override vague and mist-shrouded one that pertain to the distant future. The repression of economic risk is not rational and as such it creates a
market malfunction that justifies public intervention (Holzman & Richard, 2005). The occupational pension system is required to cope with the market malfunction described above by deferring payment of a portion of the worker’s wage. Pension payments are in fact “deferred wages”. Eligibility for receiving these payments is determined during and due to the individual’s working life and therefore constitutes a wage benefit. Linkage to the worker’s wage is significant when the employee deducts amounts from the worker’s monthly wage to pay into accumulative pension funds (such as DC or DB), but it also exists – even if only theoretically as a way of preventing wage increases – with regard to PAYG pension arrangements (see descriptions below). Payment is expected to be made (by the relevant institutions) only when the worker retires from the labor force, which is why it constitutes a deferred wage. However, occupational pension is not merely a long-term savings plan for the worker. Occupational pension is differentiated from long-term saving instruments in the market in that it also contains a social-security component. Although the scope and strength of the social security component changes in accordance with the principles of the pension method, as explained below, the very existence of this component links occupational pensions to the social security system. This system is founded on the principles of social solidarity and the state’s responsibility towards the local population. The extent of the social solidarity that exists in various pension systems may be measured against the built-in risks in every occupational pension system (The Israel Democracy Institute, 2006). All pension systems contain built-in demographic risks, economic risks, political risks, institutional risks and individual risks (International Labour Office, 2004). The claim that risk distribution between the individual and the collective derives from the extent of social solidarity may be illustrated by an analysis of three risks, as follows: first - yield risks in long-term savings. The amount of capital accumulated in pension funds is affected not only by amounts paid into them, but also by fund investments and the yields on these investments in the capital markets. Poor investments or a downturn in financial market activities create yield risks; second - actuarial risks. Actuarial balance between the pension fund’s income and its liabilities requires controlled compatibility of its members’ rights to existing changes in life expectancy, retirement age, extent of participation in the workforce, etc. Lack of such compatibility results in deficits that make it more difficult for the pension system to meet its obligations towards workers upon their retirement from the workforce. Third - operational risks. An innocent business judgment error, negligence or fraud and theft are some of the operational risks. Different pension plans are differentiated by the distribution of risks between the collective and the individual system (The Israel Democracy Institute, 2006). We can say that the distinction between them is the result of an ethical-ideological choice with regard to the core nature of the pension system: are pensions a social system based on social solidarity, or are they a type of personal insurance (Peleg, 1989)? In the Pay-as-You-Go (PAYG) method insurance premiums paid by current workers finance pension payments to current pensioners (hereinunder: PAYG). This system is based on intergenerational transfers of pension payments. The social solidarity component in this method is considerable and therefore the collective constitutes a protective shield that guards individuals against risks. Defined Benefit pension systems ensure the insuree’s rights in advance, which are to an extent, but not fully and directly, linked to his/her contributions to the pension system (hereinunder: DB). A pure DB plan is based on intra-generational redistributions. It also includes a social solidarity component (due to intra-generational redistributions), which is nevertheless relatively lower than in the system described above (as payments do not trickle down to the next generation,
while on the other hand the linkage is stronger between individual monthly contributions to the pension system and pension payments upon retirement). In this system the majority of actuarial and yield related risks fall on the pension funds. Therefore this system constitutes a collective shield for the individual, even if this protective shield is thinner than the one provided by PAYG pension plans. In Defined Contribution pension systems the amount paid by the insuree is defined in advance. The insured member receives the amounts contributed by him through his/her employer with interest and less management expenses paid to the insurance fund. The payment amount depends, inter alia, on returns on the funds investments (hereinunder: DC). In this pension system the individual takes upon himself a large portion of investment and actuarial risks. In fact this system is in essence closer to a personal savings plan and, compared to social security, the social solidarity element is low. Even so, DC-type pension systems include a social security dimension which derives from the fact that the moment the amount of insuree’s monthly pension payments are determined (for his/her retirement and commensurate with the amounts accumulated in the fund), he is entitled to receive them until the end of his/her life regardless of the number of years that pass from the time of his/her retirement and the time of his/her death.

Is it appropriate for occupational pension systems to include migrant workers, or is there justification for their exclusion? The point of departure is that migrant workers are also exposed to the risk of harm to his/her financial and social dignity due to reduced income following retirement from the workforce. The market failure, the result of shortsightedness, is even more acute among migrant workers. Splitting the number of years in which the migrant worker worked between the number of countries he worked in does not detract from the need to maintain the standard of living migrant workers become accustomed to during their years of employment in foreign countries, and it doesn’t add economic wisdom. Therefore the migrant workers’ need for social security after their retirement exists and requires their inclusion in the occupational pension system. Despite the existence of this need, the extent of its provision depends on political, social and economic processes that determine the extent of exclusion in and inclusion from the social security system in general, and with regard to migrant workers in particular. Due to the close association between the growth of welfare states and the consolidation of nation states, access to social security rights is usually formulated in terms of national collective membership (Rosenhek, 2001). The nature of the social approach, in and of itself, raises serious questions: Is citizenship necessary, in which case solidarity is sustained by identity (Marshall, 1950)? Is residency the appropriate approach, in which case solidarity is of a territorial nature (Saksin, 2000)? How long does the affiliation need to be maintained, and until when? For example, residency in Israel must be established for entitlement to statutory pension. The Supreme Court in Israel ruled that residency is required not only for making monthly payments to the National Insurance Institute, but also for receipt of monthly pension payments. This means that a resident of Israel who decides to emigrate to another country after retirement age is not entitled to receive statutory pension payments from the state. (Halamish v. National Insurance Institute of Israel, 2000; Izen v. National Insurance Institute of Israel, 2004). Despite criticism of this ruling (Golan & Doron, 2007), it demonstrates the deep-seated and long-standing acceptance of this approach in Israeli law. The attachment of migrant workers to society is seen as weak, unstable and transient. Therefore some claim that there is no justification for including them in the various mechanisms of a social security nature that are based on mutual guarantees (International Labour Office, 2000). The prevalent claim is that there is no justification for a
stay of a short duration to constitute a basis for a long-term obligation that would be realized in the distant future; when it is assumed that the migrant worker will not remain in the country for an extensive period. Indeed, many countries – including Taiwan (Labor Pension Act, 2006), Azerbaijan (Azerbaijan Report 2007), New Zealand (KiwiSaver Act, 2006) – exclude migrant workers from the occupational pension system. In several countries (such as Denmark) the exclusion entails the creation of a tax incentive for continued contributions to pension funds in the migrant worker’s country of origin (Tax and Pension Plans, 2008). The author disagrees with this approach both on a factual and a normative level. Factually, it would be a mistake to assume that the stay of a migrant worker is necessarily short. The stay of many migrant workers continues for many years. On a normative level an examination of the extent of the migrant worker’s attachment to society should include an examination from the point of view of the migrant worker community and not from the point of view of a specific migrant worker. Focus on the individual loses the whole picture, which reveals that the presence of a migrant worker community in the destination country is permanent, indicating that the need for the service they are providing in that country is also permanent. The turnover of individual migrant workers does not detract from their permanent collective presence. It is this permanent presence of the migrant worker community that forms the basis of the state’s obligation to create regulation in the present that will guarantee the social security of the migrant worker population in the long term. And finally, the mechanism of including migrant workers in the social security system – and the concrete design of occupational pension arrangements for them – may be devised to reflect the transient stay of the migrant workers. For example, due to this impermanence it would be both appropriate and legitimate for the state’s preference to include migrant workers in DC based pension systems in which the social solidarity component is relatively lower than in other systems. Inclusion in this system would be financed by the worker and by the employer. It should be stressed here that there is no justification for exempting the employer from paying his/her portion into a pension insurance fund due to the impermanent status of the migrant worker. The employer’s obligation to temporary migrant workers should be identical to his/her obligation to temporary local workers. The concept of deferred payment is intended to benefit the worker and therefore the employer is not entitled to claim an exemption for such payment.

In addition to the ethical considerations with regard to the inclusion of migrant workers in occupational pension schemes, the author would like to add that such inclusion also serves the practicable interests of the destination country. Firstly, the gap between employment costs – including the gap derived from pension insurance costs – creates unfair competition between migrant and local workers. This competition threatens the destination country’s ability to enforce adherence to a norm that is meant to promote labor market fairness, even to improve it, also with regard to its own inhabitants. Secondly, arranging the pension rights of migrant workers is an important tool in the application of the country’s immigration policy (Vonk, 2001). Granting pension rights removes the negative incentive for migration that arises from the fear harming pension rights. Furthermore, it provides a positive incentive for workers to migrate in a legal manner and especially prevents the use of borrowed identities. This will ensure that pension payments are ultimately made to the worker himself. Finally, a comparison between employment conditions for migrant workers and those for local workers reduces the incentive to employ a migrant worker instead of a local one.

The inclusion of migrant workers in an occupational pension plan - even if only in a DC-type plan – imposes regulatory responsibility on the state. The state as regulator is supposed
to create a legal infrastructure to minimize the above mentioned risks and to cope with the unique risks that derive from the temporary nature of the migrant worker’s stay in the destination country. Furthermore, the state is bound to establish a supervisory body that would ensure the proper application of the legal infrastructure. Moreover, according to the provisions of Israeli tort law, non-compliance with regulatory obligations in a reasonable manner constitutes a valid cause for a compensation claim against the state as regulator (Shtil v. Mekurut, 2007). The state is therefore bound to fulfill its regulatory function in accordance with the complexity and sensitive nature of the material. Failing to do this, the state may find itself liable for compensation to migrant workers who paid into occupational pension systems for years, only to find themselves with nothing upon retirement. The author will deal below with the question of what the state’s responsibility as regulator should be, but first the author would like to present the relevant Israeli law.

THE LEGAL SYSTEM IN ISRAEL

Since 2008 pension insurance has become compulsory for most workers in Israel by virtue of an extension order. Until then this pension pillar was a voluntary matter that was determined in collective and individual employment agreements. Today, following comprehensive reforms that began in the 1990s, DC pension systems are the only ones open to new members (Peleg 2004). Since the social-security component in this type of pension arrangement is low, it can be said that the reforms adopted constitute an additional reflection of the erosion of insurance-based principles with regard to the local population (Doron, 2006).

The law in Israel distinguishes between migrant workers according to country of origin. Section 1(11) of the Foreign Workers Law 1991 (hereinunder: Foreign Workers Law) authorizes the Minister of Labor and Welfare to establish a fund for migrant workers or to open a special bank account into which employers are to deposit a monthly sum of up to NIS 700 (approx. USD 150) for the migrant worker. The exact amount to be deposited is to be determined in the regulations. At the same time the employer is entitled to deduct up to a third of the deposited amount from the migrant worker’s wage. The law also stipulates that the migrant worker will be entitled to receive the amounts deposited in the special bank account plus accumulated interest on these amounts on the day of but not later than three months after his/her departure from Israel. In this way the amounts accumulated in the bank account also serves as a positive incentive for the migrant worker to leave Israel upon the termination of his/her work permit. The application of this arrangement is conditioned upon the enactment of the regulations, a process that has yet to be completed, and to date this arrangement has not been applied. On 16.3.08 – upon the issue of an extension order with regard to compulsory pensions in Israel – the Ministry of Industry, Trade and Labor publicly announced that in the interim period until the enactment of the regulations and the fund is established “it is recommended that employers of migrant workers deposit the amounts to be contributed by them for migrant worker pensions, with regard to matters prescribed in the extension orders and in collective agreements, in a separate bank account that bears accumulated interest and linkage”. It was also specified that “when the special bank account is opened in accordance with the Foreign Workers Law, as aforementioned, notification shall be given to the
employers of migrant workers to transfer the allocated amounts to the said special account” (Ministry of Industry, Trade and Labor, 2008). Upon the completion of the regulations enactment procedure the above arrangement is expected to enjoy normative supremacy and exclusivity. Section 1(11) (g) of the Foreign Workers Law stipulates that even if a collective agreement or an extension order regarding social welfare payments determines that the employer or the employee is required to pay into a pension fund, the arrangement pursuant to the Foreign Workers Law shall apply and that “the provisions of the collective agreement or of the extension order in this matter shall not apply”. This provision is intended as a remedy for the characteristic inconsistencies in the Israeli legal system. Even so, this provision contains two basic disadvantages: firstly, it negates the validity of alternative arrangements without considering them on their merits. This criticism becomes more relevant when the lump-sum compensation model itself deserves criticism; secondly, this provision essentially weakens democratic mechanisms due to the preference given to the arrangement determined by the legislator over the arrangement designed by the parties to labor relations. Finally, section 6(c) of the Foreign Workers Law stipulates that this law does not apply to Palestinian workers whose place of employment is in Israel, to whom Sections 61a to 61e of the Employment Service Law, 1959 apply. According to the provisions of this law the Employment Service is responsible for collecting ancillary wage payments – including pension fund payments – from the employer and transferring them into a pension fund. It may therefore be said that Palestinian workers employed legally in Israel are entitled to pension insurance similar to that for Israeli workers. In this way the law discriminates in favor of Palestinians when compared to other migrant workers: they benefit from compulsory allocation payments into pension funds in their favor and upon retirement they are eligible for regular monthly pension payments (and not for a lump-sum payment). Finally, the state is significantly involved in upholding their obligations toward them.

CRITICAL ANALYSIS OF EXISTING PENSION INSURANCE MODELS FOR MIGRANT WORKERS

Measures for evaluation of Pension Insurance Models for Migrant Workers

(a) Extent of safeguarding the worker’s economic security – the goal is to achieve a high replacement rate – i.e. to narrow the gap between the pensioner’s income from the social security system and his/her earnings prior to retirement. The replacement rate is influenced by a diverse range of factors that include: the scope and quality of the preconditions for the creation of pension rights, especially during the qualification period; the extent of guaranteed income in relation to the worker’s overall income; the method used for inflationary updates of pension amounts; differences between the age of retirement as defined in the country of origin compared to the definitions in the different countries in which the worker accumulated pension rights; the extent of the worker’s ability to realize his/her savings prior to retirement; the extent of the sanctions imposed for early exit from the system, when such an exit is common among migrant workers due to a frequent turnover of countries. This turnover derives from migration laws in the countries of destination; the degree of flexibility that allows for maintaining continuity of pension rights when transferring to other pension
schemes; the management fee rate collected by the pension fund; and the extent of
government supervision over the pension fund. These examples do not represent the entire
range of factors that influence the effectiveness of pension insurance, but rather a brief
presentation of some of them in order to illustrate the complexity of this measure.

(b) Ease of performance – since they involve deferred payments, all pensions schemes
include a huge built-in gap on the time line between the point at which the pension rights are
created and the point at which they are realized. This distance in and of itself creates
performance difficulties. The performance challenge is intensified with regard to migrant
workers as the physical distance between the migrant worker’s location when his/her pension
rights are created and his/her location when they are realized crosses national borders and
necessarily entails cultural and legal differences. An additional factor lies in the fact that the
migrant worker divides his/her working years between several countries. This requires a level
of coordination between the countries in which he/she worked over the years that may be
difficult to achieve.

EVALUATION OF EXISTING MODELS

Application of the Pension Arrangement that Applies to Local Workers

Theoretically, the application of the pension arrangement for local workers to migrant
workers fulfills the principle of equality between them and local workers. This has been the
case in Finland, for example, since the enactment in 2007 of the Employees Pensions Act
(TyEL) as well as in Israel by virtue of a general extension order. The effectiveness of
applying the local agreement depends on the extent of the portability of the pension rights.
Attaching a migrant worker to a local pension system in which accumulated rights are not
portable does not provide the migrant worker with effective protection. This is because he/she
would be required to spend decades in a foreign country without effective means of control of
and follow-up on the money accumulated in his/her name until such time as he/she is able to
redeem it. In this regard the author would like to point out that migrant workers, especially
those from developing countries, belong to weakened sectors of society that do not have the
tools necessary for ensuring they benefit from all the rights they are entitled to during the
period of their employment (Elbashan, 2005). All the more so when they lack the tools,
ability and expertise required for overseeing the realization of rights accumulated in the
distant past in a place that is physically, culturally and linguistically remote. Furthermore,
pension systems, especially DB pension systems, are usually devised as a good solution for
long-term members. Anyone in the country for short periods of two to three years does not
usually meet the minimum requirements. A comprehensive study conducted by the EU shows
that in most countries the occupational pension system does not meet the specific needs of
migrant workers whose presence in the system is temporary (Hewitt Associates, 2007). A
similar conclusion was reached in an earlier study conducted by Elaine Whiteford with regard
to the occupational pension system in Germany, Holland and England (Whiteford, 1996).

The findings in Whiteford’s study indicated that occupational pension systems – and DB
pension systems in particular – do not meet the needs of women with parental responsibilities
or of migrant workers. The degree of a pension system’s flexibility is measured by several
criteria: the length of the qualification period as a condition for eligibility – for example, in Germany the qualification period was determined as ten years. The implications were that migrant workers who worked for shorter periods, and there were many such cases, did not meet the conditions of eligibility; the result of early departure from the pension system with regard to updating pension benefits – for example, in Germany and Holland there is no directive that requires the pension system to update the fund from the time of the migrant worker’s departure from the pension system to the time of his/her retirement from the labor market. The outcome is that the fund’s value is liable to drop sharply during this period, and under inflationary conditions it is liable become a symbolic sum only; the transferability of accumulated pension rights to a new system in the event of early departure from the pension system – for example, German law does not allow for such portability while the law in Holland and England does provide such allowance, subject to certain restrictions. Finally, attaching migrant workers from developing countries to pension plans, including DC pension plans, which were specifically designed for residents of developed countries, is problematic. This is because the conditions of such pension plans – especially with regard to fixing retirement age and eligibility age for receipt of pension payments – were determined according to expected life spans in the developed country. Life expectancy in developing countries is lower than that in developed countries (United Nations, 2007). Pension systems in developed countries are not sensitive to life expectancy disparities in different countries, as they are geared towards the local populations. Nevertheless, ignoring life expectancy differences constitutes an inherent distortion and injustice on a global level as, with their low life expectancy, workers from developing countries “subsidize” workers in developed countries, whose life expectancy is higher.

The portability of pension rights from one country to another, in accordance with such a move by the migrant worker, may constitute a fair solution with regard to his/her social welfare needs. Nevertheless, due to its complex nature, it is not practically applicable. The question of the portability of pension rights arises when a local worker requests the transfer of his/her rights from one fund to another in the same country due to a change of work place in that country. The issue becomes more serious when a citizen/resident requests the transfer of his/her rights to another country due to work related migration. And the issue becomes crucial when the workers involved migrate to several countries during his/her working life (European Actuarial Consultative Group, 2001). The portability of migrant workers’ pension rights entails four main difficulties: First, portability is conditioned upon work migration between countries where payment into pension funds is mandatory. Rights cannot be transferred when in at least one of the countries in question pension payments are voluntary. Second, portability is conditioned upon a basic similarity between occupational pension systems. It is not possible when physical migration is accompanied by migration from one pension system to another. Third, even if the pension systems are similar, and even if they are DC pension systems, the transportability of rights may present problems that derive from differences between pension systems in the various countries. For example, complications arise when eligibility does not relate to linear payments into the fund; when calculation of eligibility involves a preference for low wage earners, according to the principles of distributive justice (International Labor Office, 2000); when the method of updating pension payments between the countries is changed; or when the method of calculating the amount of pension to which the worker is entitled upon retirement based on accrued amounts is allocated differently in the various countries. Fourth, the portability of rights between pension funds, including the
portability of rights accumulated in funds managed according to the DC method, requires state regulation to ensure its realization and assure its fairness. Without such regulation decisions will be left to the discretion of pension funds with regard to allowing migrant workers to transfer rights and liabilities accumulated in the previous country. The very existence of the social security element will deter pension funds from voluntarily accepting such an obligation. Furthermore, regulation is necessary in order to monitor operating risks inherent in this kind of capital transfer.

**Mutual Arrangement: Multi-Country Consolidation**

International Consolidation?

The United Nations and the International Labor Organization adopted several treaties dealing with the social protection of migrant workers. In 1990 the United Nations issued a treaty guaranteeing the rights of all migrant workers and their families [The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families]. This treaty only came into force 13 years later when it was ratified by 22 countries. Section 27(1) of the treaty, which deals with the right to social security, provides a framework principle whereby, subject to the locals laws, migrant workers are entitled to the same rights as those that apply to local workers. Section 27(2) deals with situations where local legislation excludes migrant workers from the social security network. The treaty stipulates that in such cases the countries concerned should examine the possibility of an indemnity arrangement for the payments made by them while considering the conditions of local workers in a similar situation. The protection offered by the United Nation treaty is flimsy. Achieving equality by adding migrant workers to the existing pension system is not sufficient. Furthermore, the degree of deviation from the principle of equality was left to the discretion of the countries concerned and no directives were issued on how to implement the deviation. It appears that this thin layer of protection comprises the lowest common denominator around which the partner countries were able to agree on. This fact indicates the limitations of international law with regard to devising protection for social security for migrant workers. This conclusion is supported by an examination of the arrangements of the International Labor Organization, which is also responsible for ensuring protection for migrant workers in the global economy. In 1949 the ILO issued a general treaty regarding migrant workers’ rights. The provisions of section 6 prohibit discrimination between migrant and local workers. This is subject to the country’s ability to create special arrangements for migrants when this involves the receipt of monies financed by public funds (ILO Migration for Employment Convention, 1949). This treaty too does not provide the clear and detailed direction warranted by the complexity of the situation. Due to its omissions, the ILO tried to expand on it in a treaty issued in 1982 that was dedicated solely to the right of migrant workers to social security (ILO Maintenance of Social Security Rights Convention, 1982). However, this treaty was never put in force as only three states (Spain, the Philippines and Sweden) ratified it. The low rate of those joining the only relatively detailed pension arrangement supports the conclusion that it is difficult to achieve international consent with regard to the extent of the rights of migrant workers to social security.
The European Union

The survey below relates to the European Union’s attempts to achieve regional agreements in order to facilitate the migration of workers within and in the framework of the European Union. The aim of the survey is to show that due to the many obstacles it faced, the aspiration to determine minimal standards for acceptance to the occupational pension system was eventually abandoned. This abandonment supports the conclusion that the chance of multinational unification that is not part of a regional government is negligible. The freedom of mobility between EU countries is one of the four basic freedoms in the EU Charter of Fundamental Rights. Section 29 of the Treaty of Rome, the treaty upon which the EU Charter is based, anchored the concept of the full mobility of workers within the borders of the European Community as an integral part of freedom of mobility for all the region’s residents. Section 29 also stipulates that the freedom of mobility of workers within the European Community is guaranteed, while all forms of discrimination based on nationality shall be prevented (The Treaty establishing the European Economic Community, 1957). To safeguard this freedom the EU adopted a series of directives intended to remove obstacles to worker migration within EU countries. Inter alia, these directives deal with preventing harm to pension rights pursuant to the realization of the freedom of migration. In regard to the first pension pillar, the EU had already formulated agreements at the start of the 1970s guaranteeing that the statutory pension rights of migrant workers, including those for old-age pension, would not be affected by migration from one EU country to another (Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community, 1971; Regulation (EEC) No 574/72 fixing the procedure for implementing Regulation (EEC) No 1408/71, 1972). In 2004 the EU enhanced the coordination between statutory social security systems with additional regulation (Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems, 2004). These regulations apply solely to pensions that constitute “legislation”, in accordance with its meaning in Section 1(j) of Regulation 1408/71, and therefore by definition exclude most occupational pensions. In 1992 the EU Council of Companies made a recommendation, inter alia, to work toward coordination between supplementary pension systems in order to reduce the obstacles to full portability of such of pension rights between EU countries (92/442/EEC: Council Recommendation on the convergence of social protection objectives and policies, 1992). In 1996 the EU established committees or forums made up of representatives from the different countries, socialist parties and pension insurance companies for the purpose of seeking solutions regarding the portability of pension rights accumulated in occupational pension funds. This move was followed by the formulation in 1998 of an EU directive regarding supplementary pension insurance which provides a partial arrangement only (Council Directive 98/49/EC on safeguarding the supplementary pension rights of employed and self-employed persons moving within the Community, 1998). The directive stipulates that Member States take the necessary measures to ensure the preservation of the vested pension rights of workers who have left a supplementary pension scheme as a consequence of going to work in another Member State to the same extent as for workers for whom contributions are no longer being made but who remain in the same Member State (Section 4). Furthermore, the directive anchors the obligation to safeguard accumulated rights so that no expenses related to the transfer of funds or additional taxes beyond that paid on the accumulation of rights in the
country of employment are imposed on the worker (Section 5). The directive also instructs EU countries to take operative steps to ensure the transfer of pension funds from one country to another free of all taxes and transfer costs in order to allow uninterrupted accumulation of pension rights for a migrant worker that has been placed in another country (Section 6). Lastly, it is the obligation of all EU countries to ensure that employers provide their workers with all information regarding their rights when migrating from one country to another (Section 7). Despite its good intentions, the directive did not provide principles for coping with differences between the different pensions systems. In the country of origin it creates a parallel between migrant workers and workers who ceased making monthly allocations to the system (perhaps due to unemployment). This comparison certainly does not provide a solution for the need for social security for an individual who was an integral part of the labor market for many years in the form of a migrant worker (Hunt & Wallace, 2006). It did not provide operative instructions with regard to the portability of pension rights. A study conducted in 2001 by a group of EU experts indicated that while the portability of pension rights from one pension system to another in the same country is relatively high the portability of pension rights between EU countries is low (European Actuarial Consultative Group, 2001). In the following years the EU tried to formulate minimal standards for occupational pensions under the assumption that this unification would facilitate the portability of pension rights from one EU country to another. In 2005 the EU formulated a draft proposal for a Directive on improving the portability of supplementary pension rights (Draft Proposal for a Directive on improving the portability of supplementary pension rights, 2005). This proposal was formulated with the full participation and coordination of the communities that were to be most affected by it, including representatives of the business sector, civil servants, pension insurance companies, etc. The result of this process was that the original proposal underwent numerous changes and amendments. The main components of the original proposal were: Standardization of prerequisites for eligibility – with regard to age of entry, waiting time and period of pension rights acquisition; Preservation of pension rights in the country in which they were accrued – the proposal called on all countries to ensure that pension rights held in pension systems in the country in which the worker was employed are adjusted in such a way as to preclude any punitive element to the detriment of the migrant worker. Furthermore, in cases where the accumulated amounts are too small to justify their preservation, pension systems may convert them into lump-sum payments or transfer them to the next system; Portability of pension rights – pension systems are required to allow migrant workers to transfer their accumulated rights to the pension system in the country to which they migrated within 18 months from the time of the termination of their employment (while reserving the right of the countries to reject such an arrangement in the case of unfunded pension schemes); Ensuring the provision of all the necessary information to the worker with regard to his/her rights upon the termination of his/her employment and all the implications thereof. It is important to note that this proposal was meant to modify the huge diversity to be found in occupational pension schemes without pretending to standardize them. The assumption is that modification of the numerous diversities between the different occupational pension schemes with regard to several critical interface points is the key to guaranteeing the continuity of pension rights. In other words, the proposal does not provide a comprehensive solution for the problem of diversity that exists in occupational pension systems. It is rather an attempt to narrow the gap between the complex systems of supplementary pension schemes and the simpler statutory pension system, where the
discrepancy between EU countries is more moderate. The moderate differences between statutory pension schemes enabled the law to achieve continuity with regard to the accumulation of rights notwithstanding migration from one EU country to another. In June 2007 a discussion took place in the European Parliament during which the option of pension rights portability was removed from the original proposal. The problematic nature of the proposal was twofold: It aspired to generate internal legislation changes in EU countries without in fact having the authority to do so. The proposal had implications on the internal social security conditions and on the internal welfare and the financial systems of the EU countries, while the EU has no legal power to legislate internal pension laws. All EU activities require consideration for the freedom of its member states to create their own social welfare systems. Furthermore, the directive creates complex financial problems without providing satisfactory solutions. This aroused the opposition of small and medium companies in the parliament, who defined the proposal concerning the portability of accumulated pensions from one country to another as impractical. The proposal was amended due to this opposition. The amended proposal focuses on the preservation of pension rights and for easing eligibility requirements (Proposal for a Directive on minimum requirements for enhancing worker mobility by improving the acquisition and preservation of supplementary pension rights, 2007). In October 2007 the committee resolved to adopt the amended proposal in the EU institutions. Converting a proposal into a directive requires the unanimous agreement of the EU Council and the approval of the European Parliament. At the time of writing this chapter the discussion in the appointed EU institutions is still ongoing.

Thus, despite the existence of a strong incentive among EU member states to formulate standardized basic principles with regard to occupational pensions in order to enhance the mobility of workers between EU countries, they are finding it difficult to do so. Moreover the main focus of the current proposal is the proper preservation of fragments of pension rights, and not their transference, for the accumulation of a comprehensive occupational pension. It is therefore even clearer that the chances of multi-state standardization of the occupational pension systems among states that are not part of the regional government are almost nil. At this stage the aspiration to guarantee occupational pension rights for migrant workers within the EU – and more so outside of the EU – cannot be realized through the standardization model.

**Lump Sum Compensation**

According to this model, a certain amount is contributed to the pension fund monthly throughout the entire period of the migrant worker’s employment. Upon his/her departure from the country, or shortly thereafter, the migrant worker receives the amount accumulated in his/her name. It is up to the state to determine the appropriate legal arrangements (mandatory contributions by the employer, payment of accumulated amount to the covered worker, etc.) and appropriate administrative arrangement (ensuring the existence of a special bank account, under its supervision, an administrative mechanism for the receipt of the funds when the migrant worker leaves his/her job, etc.). This is the model in Japan (on the assumption that the worker has not completed 25 years of membership in the fund) (Social Insurance Agency, 2007); in Australia (Holzman, Koettl, & Chernetsky, 2005); and the Israeli legal system will adopt this model when the arrangement prescribed in the Foreign Workers
Law is realized. The model does not provide for the need to maintain the migrant worker’s economic security and dignity. The provision of a lump-sum payment upon termination of employment in the destination country does not deal with the market failure inherent in the workers’ shortsightedness. An improved version of this model is used in Switzerland with regard to migrant workers from EU countries. As of 2007 lump-sum payments are granted only when the worker reaches retirement age and not upon termination of his/her employment (Matthew, 2007). In this model the deferment of the lump-sum compensation payment to the time of retirement ensures that the social security purpose is not wasted. This model safeguards the basic aim of preserving the worker’s economic security and dignity. However, even this model is problematic in that from the migrant worker’s perspective, he/she is required to supervise and remain aware of his/her accumulated rights in all the countries he worked in over the years.

**THE PROPOSED MODEL – A BILATERAL AGREEMENT**

In recent years occupational pension systems around the world have undergone significant changes. Privatization of occupational pension systems and the expansion of pension systems based on DC are the identifying signs of these changes. Against this backdrop the question arises with regard to the division of responsibility between the function of state and the function of the private market in providing occupational pension services to migrant workers.

Public concern for the fulfillment of welfare requirements includes four dimensions: financing, standardization, production of the service and its presentation to the public (Doron, 1989). There is no doubt that the financing method in DC pension schemes is the one most appropriate for migrant workers. This type of pension is financed from allocation payments by the worker and his/her employer and therefore the social solidarity component is relatively low, facilitating easier portability from one country to another. The suitability of this system is indicated by studies conducted by the World Bank (Holzman, Koettl, & Chernetsky, 2005); in any case this financing method is in line with the global trend to expand the use of DC pension schemes also with regard to local workers. Can privately financed pension schemes serve as a foundation for the claim regarding total privatization of the pension system – with regard to regulation, the creation of the service and its presentation to the public – so that these would be offered to migrant workers through international corporations without state involvement? In the author’s opinion this is not an option for the following two reasons: Private entities operate for the sake of their own welfare. Therefore private pension funds will strive to include select customers in accordance with the “creaming” effect, while groups with “risky biographies” that are not profitable would be excluded. Migrant workers – especially those from developing countries – are not profitable for the pension system (Bridgen & Meyer, 2007). It is therefore not feasible to assume that the “invisible hand” would cause pension funds to include those groups with “risky biographies”. A necessary condition for the inclusion of workers with "risky biographies" is state regulation, which would require private companies to include them. This would provide detailed guidelines for the inclusion format and would supervise the performance of this service at a later stage. Finally, regulation is required to monitor the yield, actuarial and operating risks that are inherent in pension system
activities. A private entity is not qualified to monitor these risks while their own interests justify taking these risks.

What is the most appropriate legal tool for outlining the regulation principals and what should they include? The achievement of social security goals requires the portability of accumulated pension rights. The author proposes that pension rights shall always be portable to the migrant worker’s country of origin where he/she is likely to return upon retirement from the labor force. This portability is an important guarantee that the migrant worker retirement age is suitable to the life expectancy in the country where he/she is likely to age. Arrangements for the transfer of pension rights from one country to another cannot be implemented by one side only and requires cooperation between the countries. The European experience has taught us that multi-state cooperation is not feasible. Nevertheless, my recommendation is for the portability of pension funds to a single and fixed point – the worker’s country of origin – and not in accordance with the path taken by the migrant worker during his/her working life. The realization of this proposal does not require multi-state coordination, and minimal cooperation by means of a bilateral agreement would suffice. The parties to the agreement would be the country of origin, to which the migrant worker has a steady affiliation despite his/her move from one country to another for work purposes, and the destination country. In the bilateral agreement it would be appropriate to stipulate that upon the termination of his/her employment in the destination country and his/her migration to a third country, he/she should be given the option of choosing whether to leave his/her money in the local pension system (and to receive a pension from this system in due course) or whether to transfer his/her pension rights to his/her country of origin. It should be noted that the transfer of accumulated money to the country of origin does not require that the money be held by it directly. The country of origin may form a legal infrastructure that allows for the money to be held by a private entity subject to stringent state supervision. The accumulated money would be made available to the migrant worker upon the retirement age as determined by the country of origin. The bilateral agreement would also stipulate with regard to a range of additional matters, such as reasons for requesting early withdrawal of the accumulated funds (in part or all); the manner in which the worker redeems the money upon retirement (monthly pension or a lump-sum payment); the mechanism for supervision over the money; the manner of linkage and updating; the tax implications of transferred money for the purpose of avoiding double taxation, etc. Sturdy regulation by both the destination country and the country of origin is an important guarantee that placing implementation functions in the hands of pension funds will not lead to the exclusion of groups with “risky biographies” such as migrant worker or to the loss of the social welfare element. It should also be mentioned that the utilization of bilateral agreements is widespread with regard to the eligibility of migrant workers for statutory pensions. To date thousands of such agreements with regard to state pensions have been drawn up that apply to twenty percent of migrant workers (Holzman, Koettl & Chernetsky, 2005). No such agreements have been drawn up with regard to occupational pensions.

Certain progress was made in August 2008, when the governments of Australia and New Zealand announced their intention to enter into a formal agreement to regularize the continuity of occupational pension for migrant workers from New Zealand to Australia and vice versa. The details of the agreement are still to be finalized and are subject to discussion between the two countries. This announcement was preceded by years of deliberation between them (Chard, Kritzer & Rajnes, 2008). These lengthy negotiations are an indication
of the complexity of the task of establishing even the most measured cooperation for the purpose of a bilateral agreement. The breakthrough was made possible, *inter alia*, when the New Zealand government initiated a private long-term pension savings plan (Kiwisaver) based on DC schemes. As a rule, the system is not intended for migrant workers, whose stay in the country is temporary and subject to permits. Nevertheless, due to the system’s flexibility it may – in accordance with bilateral agreements – serve as a receptacle for pension savings for migrant workers.

These issues are relatively simple to arrange when an occupational pension system is in place in the country of origin and includes a system based on worker and employer contributions (DC). The task is more complex when the country of origin has an occupational pension system in place that does not include the aforementioned savings system, in which case the agreement should establish such a system. The complexity of the task increases tenfold when the migrant worker originates from a developing country where no occupational pension funds exists and social protection is reduced to the first pillar. In this case the function of the bilateral agreement is to establish an additional pension pillar and not “merely” to develop an additional system in the framework of the existing pension pillar. Will the countries of origin raise the gauntlet? These countries are supposed to have an incentive to work toward increasing the social security of their residents, who usually return to spend their senior years in their homelands. This is especially relevant when this pension pillar is financed, in part or in full, by foreign capital from the destination countries. The fact that with regard to statutory pension countries of origin, including developing countries, accepted the challenge, leaves room for optimism. As previously mentioned, for utilitarian reasons it is also in the interest of destination countries to allocate pension rights to migrant workers. Due to the mutual incentive (for both the country of origin and the destination country) to work toward pension insurance arrangements for migrant workers, we can hope that the required efforts will be invested in drawing up this bilateral agreement. The expertise and the experience of the World Bank, which in recent years has worked to develop this pension pillar, especially in developing countries, can be used to assist these countries in formulating the agreements.

Preparing the agreements entails a social-cultural-ethical transformation and is therefore expected to be a lengthy process. The first buds of a bilateral agreement regarding occupational pension have only recently sprouted, between two developed countries (Australia and New Zealand) where the DC pension method of employee/employer contributions is practiced. The expected lengthiness of the process calls for an interim solution until such time as the use of bilateral agreements with regard to occupational pension insurance is established. In my opinion a fitting interim solution would require employers to make a monthly contribution in favor of the migrant worker throughout the period of his/her employment. These contributions would be financed in part by the employer and in part by the worker, as is practiced with regard to local workers. The timing for realizing the funds would be a function of the extent of the total accumulated sum. Amounts lower than the bar to be determined by the destination country will be realized at the end of the worker’s period of employment therein. The assumption is that with regard to small amounts there is no justification for administrative burdening, as the benefit to migrant worker - taking into consideration the cost of maintaining them over the years – is minimal. Amounts exceeding the bar to be determined may be realized by the migrant worker only when he/she reaches pension age. The distinction between timing for the realization of funds according to the
amounts therein is part of the proposal currently taking shape in the EU. The author is not ignoring the fact that this model too suffers from certain disadvantages, but in the author’s opinion it is the least of the evils. To a certain extent it meets the need to retain the migrant worker’s economic security following his/her retirement from the workforce; it can be assimilated into the appropriate model with relative ease, turning it into an even more sophisticated mechanism; and finally, it provides destination countries with an incentive to take more assertive action with regard to drawing up bilateral agreements, thereby ridding themselves of the inconvenience of long-term supervision of the migrant worker’s accumulated savings.

CONCLUSION

The globalization process presents a constant challenge to the perceptions and functioning of the modern welfare state. Studies indicate that the Israeli arrangement as well as comparative arrangements does not include the proper balance between the need for guaranteeing the economic security of migrant workers and the need for ease of performance. The ethical shades in the perception of the role of a welfare state and the vast difference between occupational pension systems impede the chances of formulating a multi-country (multinational) arrangement. This chapter calls for the formulation of a bilateral agreement, where the required value-based bridge is between the perceptions of two countries only. Although the task of establishing this bridge is not a simple one, there is no alternative but to invest in these efforts for both ethical and practical considerations. If such bridges are indeed gradually constructed, they may be used to promote the concept of a modern welfare state along the axis of location and time, turning the globalization process into a fair one for all the factors that turn the wheels, including migrant workers.

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Chapter 2

THE PROTECTION OF MIGRANT WORKERS' RIGHTS BY COURTS: THE CASE OF ISRAEL AND FRANCE

Ofer Sitbon

ABSTRACT

The chapter tries to assess the changes brought about by the arrival of migrant workers to Israel, through focusing on the conduct of the Israeli Supreme Court, and the influence it has had on the protection of migrants' rights and, more generally, over the development of Israel's immigration policy in the last two decades. Indeed, courts hold a potentially important role in the introduction of a human rights discourse in regard to migrant workers, and in prompting changes within the institutional treatment of these workers. However, the Israeli courts' judgments usually reflect the hesitation and reluctance of judges - who tend, as part of their professional ethos, to protect human rights - to attribute these rights to those who do not belong to the national, or in the case of Israel, the ethnic collective. The chapter compares the judgments of the Israeli courts with the treatment given to migrant workers by the French Conseil d'Etat, France's highest administrative judicial instance. In France, which has been represented in political literature as an ideal-type of a "civic" nation, the migrant worker is typically considered as a future potential citizen. The chapter contends that both courts and governmental authorities should temper their attitude towards migrant workers in Israel in a more 'civic', French-like, direction.

INTRODUCTION

The immigration (Aliyah) of Jews to Israel has been one of the founding ethos of Zionism. This repatriation has transformed Israel into a migrant society, in which one out of three Israelis is a first or second generation immigrant (in the U.S., for comparison, the corresponding data is one out of ten). But, the Israeli immigration policy, which focused on Jewish immigration, saw its national and ethnic assumptions challenged by the massive appearance, for the first time, of non-Jewish immigrants in the early ‘90s. Indeed, at that time, hundreds of thousands of non-Jewish immigrants arrived from the former Soviet Union, and,
to a lesser degree, from Ethiopia. Other non-Jewish immigrants, who arrived in Israel for the first time during those years as well, were the migrant workers. In light of the degrading security conditions, and the tightening of the Israeli border controls, which meant many Palestinians previously employed in Israel now faced severe difficulties in entering the country, the immigration of thousands of workers from the South was encouraged by the government. It was seen to provide a suitable address to the growing demand for workers in the construction and other industries, which was enhanced by the massive immigration from ex-U.S.S.R.. (See Bartram, 1998; Kemp & Rajman, 2008). The focus of the chapter is on the immigration of these workers, and especially on its effects on the immigration policy of Israel.

The changes in the ethnic character of the immigration to Israel have sharpened the ongoing debates and tensions within Israeli democracy. These debates have centered on two issues: first, how to characterize the nature of Israeli democracy in light of the central place held within it by the ethnic component – was Israel an "Ethnic Democracy" or, rather, an "Ethnocracy" (e.g. Smooha, 1990; Yiftache,l 1992; Peled, 1993; Smooha 1996; Shafir & Peled, 1998; Ghanem, 1998; Smooha, 2001; Shafir & Peled 2002). Second, the enactment in 1992 of two Basic Laws which elevated the "Jewish and Democratic" formula into a constitutional principle, emphasized the inherent tensions between these two components, as well as their legal implications (e.g. Gavison, 1995; Gavison, 1999; Gross, 2000; Yaakovson & Rubinstein 2003).

However, the changes in the immigration to Israel should also be understood within the wider context of the accelerated processes of globalisation. The increased mobility of people, mostly emigrating from poor Southern countries to rich and industrialised Northern ones, increases social heterogeneity and erodes the sovereignty of the nation-state as well as its historical aspirations for cultural homogeneity (Joppke, 1999, pp. 2-3). It is clear, thus, that citizenship, as one of the most important institutions of the Nation-State, is dramatically influenced by both the volume and nature of immigration. In this context, the statements of some Israeli officials who claimed, in response to the arrival of masses of migrant workers, that "Israel is not an immigration country", seem to reflect the deep conflict between the aspirations of the state to encourage Jewish Aliyah, and between the economic logic of globalisation processes which reshape the Israeli immigration regime (Rosenhek, 1999).

The chapter tries to assess the changes brought about by the arrival of migrant workers to Israel, through focusing on the conduct of the Israeli Supreme Court, and the influence it has had on the protection of migrants' rights and, more generally, over the development of Israel's immigration policy in the last two decades. Indeed, courts hold a potentially important role in the introduction of a human rights discourse in regard to migrant workers, and in prompting changes within the institutional treatment of these workers. However, the Israeli courts' judgments usually reflect the hesitation and reluctance of judges - who tend, as part of their professional ethos, to protect human rights - to attribute these rights to those who do not belong to the national, or in the case of Israel, the ethnic collective.

The chapter contrasts the approach of the Israeli courts with those of the French Conseil d'Etat, France's highest administrative judicial instance. In France, which has been represented in political literature as an ideal-type of a "civic" nation (Brubaker, 1992), the migrant worker is typically considered as a future potential citizen. The author believes that despite the many differences in the history of workers immigration in both countries, as well as the partial differences between the political, social, economic and cultural contexts
between them, the comprehensive and complex French system could serve as a potential guide to the ways in which Israel should redesign its citizenship regime, especially in the case of non-Jewish migrant workers. Elsewhere (Sitbon, 2006), the author analysed many court rulings regarding migrant workers in both Israel and France, and thus, this chapter will summarise the main tendencies discerned in my former research.

Caution is required when analysing the role played by the courts in instigating social and political change, for the mere existence of legal rights does not usually mean, that these rights have been implemented fully or effectively. Indeed, there are various reasons for the gaps existing between the law in the books and the law in action (Pound, 1910) in regard to migrant workers. The weakening of regulatory and enforcement agencies in the neo-liberal era (Barak-Erez, 2002), a selective and discriminatory enforcement policy often influenced by prejudices, and the unawareness of the working migrants of their rights, all serve to undermine the effectiveness of the law within existing social practice. Hence, a research which is exclusively based on the analysis of judgments is, evidently, incomplete. However, we cannot, and should not, dismiss the value and importance of the legal process, for it offers individuals the possibility of guaranteeing the implementation of their rights, as well as holding an important symbolic place in the collective and civic spheres (Eisenstadt, 1999), and designating social norms.

Indeed, the relations between the legal norms and the daily practices are often dialectical, and in the case of migrant workers, it is hoped that the more their rights are recognised by the courts, the more the authorities and the public might reconsider their often uncongenial attitudes towards them. Such attitudes are based upon a contractual and commodified approach, which considers that the mere fact that migrant workers do accept, by arriving to Israel, the often unjust "rules of the game", legitimizes these rules. A more progressive and democratic approach of labour relations, and, more generally, of worker immigration, will gradually de-commodify the relations between the State and the migrant workers, and will allow for a less contractual view, by treating them as true subjects.

**Israel and France – A Comparative Look**

The well-known, and probably coincidental, analogy between Israel and France, suggested in the Nayman Case by former President of the Israeli Supreme Court, Justice Meir Shamgar, contended that “the 'Jewishness' of Israel does not preclude its democratic character, just as France's 'Frenchness' does not preclude its democratic character". As long as this claim is understood to mean that both states have a cultural and particular basis, characterised by their language, culture and history, and by the fact that that there is not a necessary contradiction between these shared characteristics and their democratic nature, then the analogy is indeed valid. However, this is not particular to these two countries.

In fact, one should rather analyse the contradiction between "Frenchness" and "Jewishness", as they represent two different paradigms of nationality and citizenship - an "ethnic" nation in contrast with a "civic" nation – which influence the openness and the willingness to integrate "foreigners" within the political community, including in the treatment by the courts of migrant workers.
A "Civic" Nation vs. an "Ethnic" Nation

The attitude of both the Israeli and French courts towards migrant workers is grounded in the respective approaches of these two nations to the issues of nationality and citizenship. Israel and France could be seen to represent two distinct Weberian "ideal types" in their regard to these issues (compare with Brubaker, 1992; Weiss & Levy 2002). On the one hand, there is the French universal "community of citizens", which anyone can potentially join, and whose citizenship regime is based on *Jus Soli*. On the other hand stands the ethnic and particular immigration regime of Israel, which is based on *Jus Sanguinis* and on a membership in the "community-of-origins".1

Both approaches have been often described in binary terms: voluntary vs. organic, assimilative vs. differential, subjective vs. objective, liberal vs. non-liberal and even western vs. eastern. However, the most accepted distinction in the literature is one which discerns between "civic" nations and "ethnic" ones. According to Brubaker, in the "civic" nation, there is an attempt to transform the citizens of Utopia into Utopian speakers, whereas "ethnic" nations attempt to turn the Utopian speakers into citizens of Utopia (Brubaker, 1992, p. 8).

The phenomenon of immigration - the entrance of "foreigners", non-citizens, into the political community - challenges some concepts of citizenship, and especially those of the "ethnic" nation, which seeks to admit only members of the "community-of-origins", which must be united by blood relations or other "organic" characteristics, such as language, race, religion, history, culture and folklore. Joining the "civic" nation, requires no such "organic" characteristics, but rather a voluntary and "acquired" association, in which members undergo a process of "naturalisation"(Schnapper, 1994). This approach sees immigration as a kind of temporary "noise" or disruption in the smooth running of the nation, but one which will disappear over time, when the new members are integrated into the existing homogeneous culture. This is well demonstrated by the terminology used, for in conceiving of the process as a "naturalising" one, the close relations between the political and the cultural are accentuated, and the nation-state is depicted as a part of the normal and "natural" order of the modern world.

These two very different approaches to nationality and citizenship shape, to a large extent, the ways in which "foreigners" and, in this case, migrant workers, may be treated within the political community, as well as the legal implications of their existence within the nation-state. In general, it seems that the more "open" the process of nationalization is, the more it would be likely that new members of the community may be accepted.

On "Frenchness" and "Jewishness"

The existence in France of a constitutional separation between the Church and the State, allows the French nationality to accept people of different religions, as religion has become “privatised”, and should, at least as an ideal type, be restricted to the private realm, out of the State's reach.2 The practical implications of the separation between religion (and/or ethnic

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1 Of course, Ideal types are just that, and, in reality, every national citizenship regime is based upon different mixtures of these two models. For a critic of the distinction between these models see Shachar 2003.

2 One should, however qualify these description which is based upon a reification of liberal democracy: a total separation between church and state has probably existed only in the analytic models of political science.
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origin), and nationality, is the overlapping of nationality and citizenship, which are seen as the uniting basis of the State, belonging to all its citizens regardless of their religion or ethnic origins. Joining the French nation is thus based on the willingness of individuals to assimilate and accept the French cultural and political identity; the existence of the nation is, as Ernest Renan wrote in 1882, a "daily plebiscite". This voluntary approach is embedded within a tradition of ideas which sees every foreigner – migrant workers included – as a potential partner and, at the end of the day, also a potential citizen. The words of Tallien, in 1795, capture this approach: "the only foreigners in France are the bad citizens" (Weil, 1991; Brubaker, 1992; Feldblum, 1999; Weil, 2002).

In Israel, on the other hand, the religion of the individual is an important issue in terms of his nationality and entitlement to citizenship. The symbiosis between the Jewish religion and the Jewish nationality is found throughout the history of the Zionist movement. An important illustration of this within the Israeli legal regime can be found in the most central immigration law – the Law of Return, which assigns every Jew in the world with the right to immigrate to the homeland and become an Israeli citizen. This "special key" – to quote the former president of the Israeli Supreme Court, Justice Aharon Barak, in the famous Ka'adan case - works in tandem with other laws in domains such as land law, and thus gives a considerable weight to the ethnic origin of the individuals. This makes it much more difficult for those who do not belong to the Jewish ethnic majority in the state to join the political community and enjoy its rights. The de-facto congruence between the Jewish religion and the Jewish nationality is also demonstrated by the fact that in Israel, a "Jew" by nationality must also be a "Jew" by his religion. Furthermore, religion in Israel plays a central role in the public sphere, and the religious belonging of the individual has legal implications within family law (Kretzmer, 1990). Finally, the definition of Israel as the "State of the Jewish People" does not take into consideration the national belonging of most of the World's Jews who do not live in Israel, while declaring that the State belongs to one ethnic-religious group rather than to all its citizens, of which a significant minority are non-Jewish. Thus, the fundamental role of religion and its special linkage to nationality, make the Israeli case rather unique, in comparison with other Western countries, and especially France, where the ethnic elements are of a lesser importance. It is thus clear that the possibility of non-Jewish migrant workers, from Southern countries, to integrate and assimilate into Israel is, if at all, fraught with difficulty.

One must remember, however, that the political reality in both France and Israel is never as one dimensional as the ideal type methodology may suggest. Thus, for instance, the

3 It is noteworthy that despite the hegemony of the "civic" citizenship discourse in France, more ethnocentric approaches of nationality – sympathetic with the notion of membership as a "community-of-origins" and based upon jus sanguinis – have never disappeared from the French public sphere. Examples vary from the Dreyfus Affair, through the dark years of the Vichy regime, up until the emergence of the Front National of Jean-Marie Le Pen in the 1980's. See generally Weil 1991: 97-134; Brubaker 1992; Feldblum 1999; Weil 2002: 54-75.

4 It is noteworthy, however, that "ethnic" approaches of nationalism prevail also in modern and liberal countries such as Germany. In other words, there is not a necessary connection between the citizenship regime of a country and between its definition as a "liberal democracy".
October 2005 riots in the French suburbs and the debates over the wearing of the veil by some Muslim women which preceded them (Feldblum, 1993) demonstrate the limits of the French "republican model" and its assimilatory possibilities (Hanagan, 1997; Soysal, 1997). By the same token, the expectation for a cultural assimilation of the migrant opens the way, even unconsciously, to xenophobic feelings towards those who would refuse to sacrifice their cultural identity. On the other hand, In Israel, some of the legal practices regarding migrant workers, which are grounded in a human rights discourse, such as the granting of citizenship to some of the migrant workers' children who were born in Israel, are beginning to challenge the "pure" ethno-national model which has been so dominant in the past. Furthermore, the "ethnic" model seems more tolerant than the "civic" model, in what regards migrants' religious and cultural practices.

WORKER IMMIGRATION

The Impact of Globalisation

Worker immigration accompanies humanity since its dawn. The need to assure one’s physical existence often required immigration to new territories and countries, in hope of a better future. This process has accelerated in the last centuries, with the development of the Capitalist economy and the institutionalisation of the international commerce in the mid 19th Century, and the great immigration waves of Eastern European Jews to the United States in the mid 20th century (Sassen, 1999, pp. 77-79). The end of the Second World War is often seen as a watershed moment in the history of worker immigration, in which several global processes unique to our times first took shape. Sociologist Yasemin Soysal has described four crucial developments in worker immigration. The first, a development of state-initiated recruitment programs of migrant workers in Europe which resulted in the internationalisation of the European labour market, and in massive immigration, mainly from Southern countries. Second, the de-colonisation processes which brought about a greater awareness to notions such as “human rights" and "multiculturalism". Third, the emergence of new political supra-national forms, such as the European Union, and, last but not least, the rise of the human rights discourse as a global hegemonic principle, anchored in the legal regimes of international covenants (Soysal, 1996).

These accelerated migration processes are transforming the Nation-State and challenging one of its most central institutions - citizenship. The growing diversity of the population in liberal democracies, for example, has increased demand for the legitimisation of a wide variety of cultural practices, and for the public recognition of minority rights and cultural difference. Also, as advances in technology and transportation allow immigrants to keep a close contact with their country of origin and its culture, the host countries have seen a growing emergence of transnational immigrant communities. These communities are less open to assimilation, and tend to form hybrid identities such as Israeli-Russian or Chinese-American, which undermine the often assumed relations between residence and belonging, and further challenge the homogeneity of the Nation-State (Joppke, 1999, pp. 2-3).

The growing mobility of persons is in accordance, or so it seems initially, with the process of globalisation in which capital, commodities and information easily transcend
national borders. However, the physical borders of the nation state have remained mostly intact and serve perhaps as the nation-state’s last vestige, reflecting the growing tension between the liberal commitment to the freedom of movement and the right to emigrate, and the state’s legitimacy to restrict the right to immigrate, a restriction which has only become more severe since the 9/11 attacks. This tension has existed already in the 1948 Universal Declaration on Human Rights, and its origins reside in the French Revolution, with the granting of different set of rights to "citizens" as opposed to "humans". This reflects, of course, also the contradiction of interests which often exists between the individual immigrant and the host society, in cases of international immigration. The contradictions are clearly evident today, as we witness how the global capitalist interests are bringing down even the walls of China (as prophesied by Marx and Engels in the Communist Manifesto) and open it up to free exchange of commodities, while national interests attempt to maintain the existing borders in order to protect cultural homogeneity.

Some scholars claim that the tension between the approaches of national membership and the universal approaches of personhood, is transforming immigration from a temporal "deviation" which might be “corrected” by full citizenship, into a new, and “post-national” mode of membership, in which the symbiotic relations between universal rights and national identity are being unraveled, and the classic distinction between citizens and non-citizens undermined (Brubaker, 1989; Soysal, 1996). The post-national mode of membership is salient in regard to workers’ immigration, as unlike other immigrants, migrant workers are not necessarily interested in becoming citizens of the host countries, as they consider their stay temporary, and their priorities lie with ensuring sufficient income and basic social rights (Chaney, 1981). Thus, what before was a temporary stage in the assimilation of immigrants, now becomes a quasi-permanent one, and whereas, said playwright Max Frisch, "we wanted workers, we got human beings", their very presence highlights and exacerbates the tensions within the citizenship and the nation-state.

Worker Immigration in Israel

The massive worker immigration to Israel started after the occupation of the West Bank and Gaza in 1967, with the arrival of Palestinian workers in Israel. However, this immigration did not necessitate a reexamination of the Israeli immigration regime, as these workers were commuters who returned every night to their homes, and who had no intention of settling in Israel (Semyonov & Lewin-Epstein 1987; Kemp & Raijman 2008). In the beginning of the ‘90s, however, a new reality emerged, with the deterioration of the situation in the Occupied Territories and the adoption of the closure policy which disrupted the regular commuting of Palestinians to Israel. At the same time, the growing demand for workers, especially in the building industry, which needed to supply housing for almost a million Jewish immigrants from former Soviet Union, led the Israeli government to recruit tens of thousands of migrant workers from Southern countries (Bartram, 1998). These documented immigrants were joined by tens of thousands of undocumented immigrants who bypassed the Israeli border controls and snuck into the country. Whereas the estimations of their precise numbers have been characterized by a manipulative exaggeration, illustrating the "politics of numbers" (Kemp & Raijman 2003), the Israeli governments have nonetheless become trapped, in the last decade and a half, in a complex web of economic interests. Indeed, in a classic example of the
"clientelism" which typically characterises immigration politics (Freeman, 1995), different lobby groups – such as agriculturists, human resources agencies and builders - who enjoy a strong, cross-party, political influence, have been pressuring for the continuance of worker immigration to Israel. These demands were also supported by Israel's neo-liberal economic policies, which seek first and foremost to minimise the cost of labour, as paying immigrant workers very low wages helps to create a secondary labour market which disciplines low level Israeli workers and diminishes the power of organised labour. The situation of the migrants is also exacerbated by the harsh and exploitive attitude of many employers towards them (Gill & Dahan 2006).

Unlike the "guest workers" programs in Post-War Europe, in which the State played a key role in recruiting and supervising the employment and integration of migrant workers within the local labour markets, Israel adopted a "privatised" worker immigration policy, in which employers, human resources agencies and other profit-oriented "mediators" were given exclusive responsibility for providing the migrant workers’ most basic needs, such as housing, medical insurance and so on (Rosenhek, 1999, p. 104). This "privatised" policy was adopted as the Israeli government feared that an official policy acknowledging the rights of migrant workers, might be the basis for future claims (both explicit and implicit) for recognition of the migrant workers as a distinct social group towards which the State has duties. Such a demand might then open the door for demands to be included within the Israeli collective, as well as transform Israel into a popular immigration destination for non-Jewish immigrants world wide (Yannay & Borowsky, 1999).

As migrant workers cannot, literally, be considered as "residents" by the Social Security Act, they are denied entrance to the main gate of the social security system and to basic social rights. Mundlak (2003, pp. 476-477) has thus justly noted that Israel has actively disowned its state responsibility towards the migrant workers in this regard..Furthermore, and unlike countries such as France, Germany or Switzerland, Israel refused to sign bilateral agreements with the “exporting” countries of the migrant workers – agreements which would formally regulate the modes of the workers' recruitment and employment. In 2008, however, and under the pressure of a petition to the Supreme Court, the Israeli Government retracted and signed an agreement with the International Organisation of Migration (IOM) and with the Thai Ministry of Employment. This agreement will supervise the recruitment of Thai workers, many of whom work in the agricultural sector in Israel.

All the Israeli governments since 1996 have declared their intention to sharply reduce the number of migrant workers, mainly by deporting undocumented migrants. For several years, this policy failed, and as the numbers of documented immigrants fell, the numbers of undocumented ones continued to grow. In July 2002, following an inter-governmental committee report, the Israeli government established the Department of Immigration, which, rather ironically, was given the role of expelling undocumented migrants. It indeed fulfilled its mission with "success", leading to the departure of more than 150,000 migrant workers from Israel.

The continuous growing in the number of undocumented immigrants was mainly the result of the "bondage" system of migrant workers employed in Israel, in which, similarly to Persian Gulf countries, every documented worker (except in the nursing sector) was exclusively "attached" to the employer who "imported" him. Thus, if in any case in which the worker wished to leave his or her employer before his permit expired (e.g. in cases of a dismissal, of an infringement to his rights, of the bankruptcy or even of the employer's
death)- the worker automatically lost his working permit and became "illegal" and thus, deportable. In 1999, it was estimated that more than half of the "illegal" migrant workers who resided in Israel used to be "legal", i.e. arrived Israel with a working permit (Kemp & Raijman, 2003, p. 14). In 2006 the "bondage system" was terminated after being declared illegal by the Supreme Court who ordered the authorities to set up a new system, which would assure the migrant worker’s basic rights and dignity. However, NGOs have criticized the new mechanisms set up by the Government to implement the judgment, and in 2008, a new petition was submitted to the Supreme Court.

In parallel to this hard-line policy, more liberal and "inclusive" approaches have begun to emerge within the various branches of the government (Rozenhek & Cohen 2000). Citizenship has been granted to some of the children of migrant workers who were born in Israel, and state agencies such as the Social Security Institution and the Ministry of Health, have worked to guarantee some basic social and health rights for the migrant workers. In July 2005, Ofir Pinnes-Paz, the Minister of Interior at the time, nominated an advisory committee headed by the renowned law professor Amnon Rubinstein, whose role was to suggest a new policy of immigration to Israel. The committee submitted only an interim report, in February 2006, which included several recommendations regarding migrant workers.

The most important one was that children of migrants – whether documented or undocumented – who were born in Israel, should be considered as permanent residents at the age of seven, and will be able to apply for citizenship when reaching adulthood. Other important recommendations were that documented workers who have lived in Israel uninterruptedly for ten years will become permanent residents; and that undocumented workers who have lived in Israel for fifteen years or more will not be deported. In June 2006 the Olmert Government decided that children of migrant workers (aged 6 or more), who have lived in Israel for at least five years, will be able to naturalize even if they were not born in Israel (Kemp & Raijman 2008). However, in 2009 the new Right-Wing Government has decided to resume expulsions of undocumented migrant workers, including of children born in Israel. Nonetheless, a strong public pressure has managed, at the time of writing, to delay the expulsion of these children.

One of the reasons for these changes seems to be the "importation" of the international human rights law discourse into the Israeli public sphere, especially by non-state actors such as Human Rights organisations or even the municipality of Tel-Aviv, where most of the migrant workers live (Kemp & Raijman 2003). Furthermore, it seems that migrant workers have also benefited from the fact that a larger than expected percentage of the olim (immigrants) from the former Soviet Union, turned out to be non-Jewish, yet take a part in the Jewish collective through speaking the Hebrew language, enrolling into public schools, joining the Israeli army and so on. These practices are widening the category of the Jewish collective in Israel in several non-religious directions, and, thus, have a useful influence also on migrant workers.

These positive developments have nonetheless encountered two major difficulties, both of which were already mentioned here above. First, the neo-liberal economic approach which prevails in Israel, favours the flexibilisation of the labour market through the constant supply of cheap labour (especially in agriculture). Second, the centrality of the "ethnic" assumption concerning the "Jewishness" of Israel creates strong prohibitive mechanisms, which prevent the permanent settlement of migrant workers, and generate a certain ambivalence – sometimes shared by the courts - towards the enforcement of their rights.
Worker Immigration in France

In contrast with the more distanced role of the State in the labour market of migrant workers in Israel, in France, the State, based in the Jacobin tradition, has always had a central and active role in the regulation of the labour market. Nevertheless, the political and legal treatment of migrant workers has been traditionally characterised by fluctuations which have reflected essentially changes in the political climate.

Since 1945 the State has had the monopoly over the recruitment of foreign workers via the national bureau of immigration (today known as “the bureau of international immigration”). As in other places, the growing economic demands quickly surpassed the capacity of the institutional frameworks, and up until the end of the 1960s the infiltration of migrant workers was a widespread phenomenon and their "laundering" was a common practice. A growing number of migrant workers, such as the Italian or the Algerian workers, managed to avoid the mainstream immigration regime altogether by belonging to specific immigration regimes. Employment crises in the 1960s', however, brought about a decision to stop the "spontaneous immigration" and attempts were made to restrict the "laundering" of workers who entered France without working contracts. This was the trigger for the first struggles of the Sans Papiers who managed to dissuade the government from implementing its plans and agree to a case-by-case examination. At the same time, several restrictions were imposed on family reunifications, which up until then, were encouraged by the government. On July 1974, facing the economic recession caused by the oil crisis, France, like most other European countries, decided to stop the immigration of workers, a decision which symbolised the beginning of a new era (which continues to this day), characterised by the stricter supervision of immigration, and the emergence of a "criminalising" discourse of immigration and immigrants (Lochak, 2000).

In 1981, after the election of Francois Mitterand, the French attitude towards migrant workers saw a dramatic, but brief, change. Pending decisions on deportations were aborted, and deportation in general was dramatically reduced, including an absolute interdiction to deport minors, and an almost total interdiction to deport persons who have family relations in France. The criteria for family reunification were loosened, official encouragement of immigrants to leave France was stopped, and, above all, a massive "laundering" of about 130,000 undocumented migrants was undertaken. In 1984, in a symbolic move, but one which also had practical implications, the demand to prove a linkage between residence in France and a valid working contract was aborted. Instead, a "certificate of residence", valid for ten years and automatically renewable, was offered to anyone who lawfully resided in France for at least three years, or who had family ties in the country, and afforded full freedom of occupation. These changes – together with the occasional appearance in the public debate of the question of the right of migrants to vote in municipal elections (Weil, 1991, pp. 242-250; Weil, 2002, pp. 170-171) - were seen as reflecting a marked shift in the general attitude towards migrant workers, from being merely a working force to becoming an integral part of the French society (Lochak, 2000).

However, the emergence of the Front National party, headed by Jean-Marie Le Pen, led to the radicalisation of the political sphere and of the attitudes towards immigrants (Feldblum, 1999: Brubaker, 1992, pp. 138-165). The last two decades have witnessed political fluctuations between the Left and the Right, in which, as a general rule, the Left wing governments were more generous towards immigrants, whereas Right wing governments
were more suspicious and restricting (Lochak, 2000). However, French scholar Patrick Weil has noted that consensual and cross-party undercurrents which are not always clearly visible, have emerged within the French immigration policy (2002, pp. 19-38, 314-318, 478-496). These tendencies, nurtured by the strong influence of the State bureaucrats, were strengthened by the establishment of the European Union as a political entity and its demand for legislative harmony.

In 2003, a year after the Right acceded power again, Nicholas Sarkozy, then Minister of Interior, led a wide amendment of the Entrance to France Act which, on the one hand, continued the tendencies of criminalising immigration, and, on the other hand, attempted to strengthen the integration of the immigrants. Hence, for instance, the consecutive period required for the granting of a certificate of residence was extended from three to five years, and a demand to prove "Republican integration" into the French society (mainly by means of knowledge of French and of "Republican Principles") was added. In addition, parents to children who were born in France, as well as persons who rejoined their spouse (or parents) in a family reunification, were no longer automatically entitled to a certificate of residence. They now had to reside in France for at least two years and prove their "Republican Integration".

By the end of June 2006, Sarkozy led another wide and rather radical amendment – the second within three years. It distinguished between "good" or "chosen" immigration ("immigration choisie" in the words of Sarkozy) in which working immigration was controlled and "strong" and economically beneficial immigrants were encouraged; and between "bad" or “uncontrolled” immigration ("immigration subie") in which criteria of the family reunification were toughened, and the "laundering" practice of the Sans Papiers who had resided in France for more than ten years was revoked. The constitutionality of the new law was affirmed by the Conseil Constitutionnel, but it was nonetheless severely criticised by human rights organisations who condemned its perception of the immigrants as disposable ("immigration jetable") and its renewed conception of migrant workers as merely "workers" rather than "humans".

**COURTS AND MIGRANT WORKERS**

**The Role of Courts in Protecting Migrant Workers' Rights**

Typically, the role of designing the immigration policy is within the hands of governments, and controlling the flux of entrances to the country is considered one of the prerogatives of national sovereignty. However, and as in other domains, here too International Law has begun to erode national sovereignty through various international covenants – the last of which is the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), which addresses the rights of immigrants. But there is one additional player within this sphere – the courts.

As a general rule, the power of courts in shaping and designing public policy is limited. Unelected judges do not have the same democratic legitimacy enjoyed by legislators in deciding upon value-laden social arrangements. Courts lack also a broad view of the range of social, economic and political considerations which lay within the domain of expertise of
governmental authority. On the other hand, migrant workers are individuals whose claims deal mainly with the concretisation of individual rights. Ruling in disputes between individuals and the State or between two individuals is traditionally "the bread and the butter" of courts, and it is here that their action enjoys a maximal legitimacy. Furthermore, in constitutional democracies courts are considered as the central supervisors of the actions of the authorities. Whereas in designing their policy towards migrant workers, governmental authorities usually enjoy a relatively wide margin of maneuvering, accompanied by limited public debate, their activity is also subjugated to the constraints of constitutional and administrative law. Thus, the more the regulation of immigration is broadened, the more scope for judicial review there may be.

Finally, protecting migrant workers, who have almost non-existent political power, perfectly suits one of the courts' most important roles – that of securing the rights of voiceless minorities (Benvenisti, 2003). Indeed, the well-known NBC (Naming, Blaming and Claiming) model suggested by the sociology of law (Felstiner, Abel & Sarat, 1980-1981) helps us to understand the unique difficulties faced by migrant workers who attempt to obtain their rights. Most often they have little command of the host country’s language, and even more crucially little knowledge of their social rights, which they thus may not be able to name. Their general vulnerability renders them reluctant to blame their employer, especially when facing the danger of deportation which is an imminent threat for all undocumented migrants. Only the few who overcome these hurdles might claim their rights in courts, most often with the aid of “gatekeepers” such as NGO'S and human rights organizations. However, even when they manage to accede courts, the immigrants' access to justice is inherently difficult, as they are usually "one shooters", whereas their employers as well as the immigration authorities are "repeat players" in courts - thus reproducing their inbuilt advantage within the legal system (Galanter, 1974).

Veronique Guiraudon has shown that the broadening of the rights and benefits awarded to migrant workers in Europe was achieved far from the lights of the political public sphere, when the policy designers where relatively insulated from the public. Aside of internal governmental forums, courts – essentially lower district ones – were also a salient locus within which the access of foreigners to welfare services was extended. However, the more the issues related to immigration emphasize symbolic questions dealing with aspects of national identity, they tend to move from the relatively closed state bureaucracy into the public political sphere. This sphere is typically a "veto point" in what concerns the granting of rights to immigrants, and this for several reasons: electoral considerations, which ignore the rights of immigrants who do not vote; a sentimental and usually negative media coverage which nurtures stereotypes and prejudices towards foreigners; and a rather easy access of marginal groups, such as the extreme Right, whose positions tend to polarize the public debate (Guiraudon, 1998).

In Israel, where the "Jewishness" of the State is constantly present in the public debate, it is expected that conservative tendencies will usually thwart official plans designed to improve the status of migrant workers, most often for an alleged danger to the state’s Jewish character. Israeli courts, who tend to identify with the "Zionist ethos" (Barak-Erez, 2003, pp. 122-129), also tend to limit the availability of judicial process to migrant workers and their claims. However, as the granting of political rights to migrant workers in Israel still seems as a far off utopia, and as the current struggles of NGOs – such as the rather successful struggle over the "bondage regime" - focus on the less threatening "human" level of migrant workers’
accessibility to social services, one can expect a gradual change in their social and legal status.

Whereas courts alone cannot bring about social change (Rosenberg, 2008), their institutional prestige, which relies on an esteemed "judicial tradition" and on an independence of electoral constraints, allows them, at least potentially, to maintain a distance from the immediate political and national concerns. Thus, courts may be able to offer minorities and other weakened groups the support and protection they need in order to obtain and implement their rights. Indeed, appealing to the courts is, on many occasions, the only resort of migrant workers, as their voice is hardly heard in the public debate because of both their insignificant political influence and their inexistent organisational power within the labour market. Furthermore, their limited access to governmental authorities, as well as their limited mastering of the local language, allows the courts to practice their counter-majoritarian vocation, and to protect migrant workers from the failures of the political process. It is thus predictable that, on many occasions, the action of courts in this domain would differ from those of governmental and parliamentary bodies.

Writing on this issue, David Jacobson goes even further and claims that the courts, both international and supra-national, are a step ahead of the contemporary political sphere, and set the standard for the new transnational legal discourse of human rights. These developments broaden the scope of legal action open to individuals and NGOs, who may now base their appeal to local and national courts in the international human rights law. The courts themselves have also taken on a more activist role and are now more willing to review actions and policies which, until recently, had been considered as exclusive governmental prerogatives. The growing attention ascribed to international law and to the human rights discourse, has forced governments to consider these issues more carefully (Jacobson, 1996).

In contrast with Jacobson, Christian Joppke claims that the protection of human rights, and consequently the rights of migrant workers, has not been an external constraint, imposed by the global human rights discourse, but, rather, an inherent component of the Western nation-state’s legal system, derived from the state’s liberal-constitutional character. Joppke reminds us that the roots of the universal protection awarded by human rights are grounded in the French Revolution, long before the adoption of international covenants. In his eyes, the crucial role which courts have played in the protection of immigrants' rights is based, first and foremost, on their position as the sole authorised interpreters of the constitution. This, rather than international law, is the main guarantor of immigrants’ rights (Joppke, 1999).

While as the author tend to agree with Joppke, it seems that there is nonetheless a general agreement among scholars that it is the "judicial capital" (Guiraudon, 1998, p. 301) of courts, i.e. their independent and prestigious position within liberal democracies and their perception (both of themselves and by others) as the protectors of minorities, which gives them an important and rather unique role, in guarding migrant workers' rights.

**Migrant Workers in Israel's Supreme Court**

Up until March 2006, when it annulled the "bondage regime" by which migrant workers were "tied" to a single employer, the Supreme Court in Israel evaded the writing of any "landmark judgements" (Shamir, 1990) in relation with the rights of migrant workers in Israel. While one could interpret this non-interference as an implicit legitimising of a less than
adequate governmental policy, it is clear that the Court has also helped to enhance and protect the rights of migrant workers and to influence the designing of governmental policy towards them. Nonetheless, the outcome of the role of the Court is, as will be seen, mitigated.

The fact that most of the Supreme Court’s judgments related to migrant workers' rights were short and laconic can be explained by the apprehension of the court to deal with this issue, together with its general tendency to accept the standpoint of the State. This apprehension is some ways understandable, as it is indeed the right of any State to design its own immigration regime, and the Supreme Court has indicated on many occasions that, as in other Western states, it is the privilege of the State of Israel to set its own immigration policies.

The picture, however, is more complex. On the one hand, the Supreme Court has indeed avoided commenting explicitly on the misdeeds of Governmental authorities in regard to immigration issues, thus sparing the government a public embarrassment (and perhaps depriving itself of local and international esteem). Furthermore, the judgments addressing migrant workers were not written using grand, constitutional wording, nor mentioned the international conventions which the authorities continuously ignored. On the other hand, the Supreme Court has frequently requested state agencies to reconsider their immigration policies and included in its judgements critical remarks (however cautious) regarding governmental conduct. The Damocles sword of a potential Supreme Court petition also continues to hang above the heads of the governmental legal advisors, and in the long run, these factors combined have had a tempering and moderating effect, influencing both the resolution of specific issues brought forward by specific petitioners and the general immigration policy. Hence, for instance, the pressure which the Supreme Court exerted on the authorities has influenced the legislation related to the detention of migrant workers before their deportation (Sasay and Levrick cases), as well as issues concerning the legality status of the migrant worker at the end of his contract (Ferdinand case) and the entitlement of undocumented migrants to various social rights (ACRI case).

Taking all this into consideration, the landmark judgment of the Supreme Court in the Kav Laoved case in March 2006, which annulled the "bondage regime", should be seen as only one part of a much larger picture, an additional "brick in the wall", built on previous and more minor cases brought forward by NGO's. Nonetheless, one can wonder why it took the Supreme Court no less than four years to annul the regime it itself described as a "modern version of quasi-slavery". Dealing with the rights of a grossly disempowered population, lacking political representation as well as significant economic power, this should have been a classic case for the Court in which to implement its traditional role of protecting those devoid of power.

**Comparison of the Attitude of Courts in Israel and France towards Migrant Workers**

The comparison between the judgments of the courts in Israel and France regarding migrant workers highlights both important similarities and differences.

First, Courts in both states are reticent about directly criticising governmental policy over issues of migrant workers. This is not surprising for, as we have seen here before, this issue touches at the heart of modern state’s sovereignty and its control of the physical and political
borders of the collective - a function which rests traditionally within the hands of
governments. The Courts' reticence is manifest especially in the long delay – which is even
accentuated in France - of the publication of "landmark judgments". Indeed, even when the
courts finally nullify governmental policy, the prolonging of judicial procedures means an
implicit legitimization for illegal acts. This reality reaffirms, once again, the built-in
advantages enjoyed in judicial proceedings by "repeat players" such as governmental
agencies.

Second, in both states there exists a dialectical relation between the reticence of courts
and the self-restraining of the authorities. The "judicial capital", especially of higher courts,
and their continuous dialogue with governmental authorities, has undoubtedly a moderating
influence, both on the design of general policies concerning migrant workers and on the
resolution of specific issues brought forward by individual petitioners. The prestige enjoyed
by the courts as independent institutions, insulated from immediate political and national
interests, confers upon them a heavy responsibility, namely - to use their moral and legal
authority in order to protect a voiceless and unorganized social group from the failures of the
political process.

The main difference between the judgments of courts in Israel and France regarding
migrant workers resides in the much more vast use of French courts of the constitutional and
international human rights law discourse. This is not surprising if one recalls the prevalence,
since the French Revolution, of a human rights discourse as well as of international law
(Section 55 of the French Constitution contends that international covenants overcome
domestic law). Nonetheless, even when the courts judgments had crucial implications for
governmental policies, such as the decision of the Conseil d’Etat in 1978 to nullify the
governmental decision to suspend family reunification, their language continued to be laconic
and formalistic. Such "professional" and reserved wordings serve to strengthen the courts'
legitimacy – a strengthening more needed when the courts adopt an activist policy in favour
of migrant workers rights.

The relatively limited employment of constitutional law by Israeli courts may be due to
the courts' hesitation to extend the constitutional discourse beyond the controversial
"Constitutional Revolution" of 1992, which conferred them with the power to review the
constitutionality of legislation. The courts also seem to hesitate to turn to International Law,
as it is not held high in the Israeli public opinion, and its employment might undermine the
court's public legitimacy. However, during the last years there is a growing awareness,
especially among the judges of the Supreme Court, of the transnational human rights
discourse. The first signs of this awareness in regard to migrant workers may be seen in the
2006 Kav Laoved case, in which the judges based some of their conclusions against the
"bondage regime" on International Human Rights Covenants ratified by Israel. One would
hope that the impact of international human rights law in the judgements of the courts in
Israel might become more substantial in the years to come.

Another important difference between the French and Israeli courts lies within the issue
of family reunification. The courts in France recognise the right of migrant workers to reunite
with their families, and the close links between this right and the migrant's right to work. The
legitimacy of family reunification, which is based on the recognised right to family life in
International and European law, does not exist in Israel. Rather, and as part of Israel’s efforts
to deter migrant workers from permanently settling in the country, a strict policy which does
not let migrants come to Israel with their families, and which totally forbids any family
reunification, has been devised. To this one should also add the severe restrictions over the family reunification of Israeli citizens themselves with their Palestinian spouses. A restrictive law on this issue was recently upheld by the Supreme Court, in a dramatic 6-5 majority (the Adalah case).

CONCLUSION

"Democracy", "citizenship" and "human rights" form a triangle which is in a constant flux. Most schematically, it would be correct to assert that democracy is manifested by the participation of the citizens through the act of electing and being elected (the formal aspect), but also, and maybe even more so, by respecting the human rights of all those whom the state controls or may control – citizens, residents, temporary residents and undocumented persons. The issue of migrant workers is especially interesting in this respect, as it questions the relations between these three components of liberal democracy. Indeed, one could say that the fissures which already exist when juxtaposing democracy and citizenship, and which are widened by human rights discourse, are the fissures through which migrant workers attempt to make their way.

As long as the Israeli labour market is governed by approaches which support flexibility and the reduction of the costs of employment, there will be forces within it working to maintain the supply of cheap labour based on migrant workers. The exploitative approach of the labour market may be restricted by various economic and political measures, including the reinforcement of organised labour, the raising of the "importation" costs of migrant workers, the strengthening of the penalties on recalcitrant employers and the enforcement of the progressive labour laws, especially those regarding minimum wage. These measures will render the employment of migrant workers less advantageous and will help to restabilise the Israeli labour market.

Nonetheless, the history of worker immigration in Europe teaches us that from a certain point in time, and especially after working migrants establish family ties in their "host" country, the temporary "guest workers" are here to stay. As this gradually happens in Israel, one may see that despite the state’s "ethnic" and restrictive immigration policy, and even though its regime is quite different from the "civic" model of France, the future presence of a non-Jewish population of immigrants becomes an uncontested fact. Understanding this may, in the long run, change the existing attitudes towards migrant workers, from mere disposable "workers" to "humans". Such a change may also have a pronounced effect on the "ethnic" paradigm of the Israeli citizenship regime, and begin its change in the direction of a more "civic" and assimilative French-like one. In contemplating these "sociological" aspects of citizenship, one should not forget the necessity of the legal tools which can work to encourage a more "inclusive" politics of migrants. Nonetheless, the maintenance of various supervision mechanisms designed to prevent the permanent settlement of migrant workers in Israel (Rozenhek & Cohen, 2000), combined with the selective and weak enforcement of their rights within the labour market (Mundlak, 2003), prove that that there exists a strong opposition amongst the Israeli establishment to such an ideological change.

Together with the legitimate will, at least in a world of Nation-States, to preserve the majority's cultural identity and heritage through, among other things, a selective immigration
regime (Gavison, 2001), a political will is required in order to allow, on a humanitarian basis, a deviance from the ethnic-religious criteria on which this regime is founded. The moral, political, economic and social prices attached to the existence of a growing population living outside the political community and in the margins of the economic and social community, are very dear. If continued they may erode the legitimacy of both the Jewish and Democratic nature of the Israeli state.

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Chapter 3

THE STATE OF ISRAEL’S APPROACH TO FOREIGN WORKERS AND THEIR FAMILIES: A POLICY OF IGNORING AIMED AT SEGREGATION1

Anabel Lifszyc Friedlander

ABSTRACT

This chapter examines the issue of policy-making in relation to granting citizenship to the children of labor migrants in Israel from 2003 to 2006. As a Jewish state, Israel grants citizenship according to the principle of *jus sanguinis* (the right of blood). The Law of Return (1950) entitles every Jew to automatic citizenship upon arrival in Israel. Non-Jews, however, have little chance of being granted Israeli citizenship. The issue is not a purely legal one, but also relates to the essence of Jewish nationhood. Concerns for preserving a Jewish majority as a necessary condition for the existence of Israel as a Jewish and democratic state have formed the basis of discussions about and changes to the Citizenship Law. This is the context in which we should understand debates regarding the granting of citizenship to the children of foreign workers who were born in Israel or who came to the country at a young age. This study combines both quantitative and qualitative research methods. After tracking the decision-making process regarding Israeli citizenship, the author shows that it does not take place at the level of national strategy. Instead, it appears to be driven by the need to provide ad hoc solutions to individual problems following court petitions. In court these petitions come up against government ministries and various officials – “gatekeepers” of the Jewish nature of the

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1 In this study I use the term “foreign workers”, and not “labor migrants”, as is the case in other studies (Loss, 2002): they are “workers” on account of the reason for their arrival and their employment; and they are “foreign” because on the one hand they have no explicit intention of belonging to the host country, and on the other hand because the host country admitted them following a need for manpower and with no wish to absorb them in order to settle the land or for humanitarian or other reasons. The adjective “foreign” is particularly fitting for the outlook expressed by this study, more than the noun “migrants”, because their foreignness can only change following a decision by the host country, which is responsible for the rules of inclusion. Additionally, in the specific case of Israel, the establishment terms them “foreign workers” and their children, “the children of foreign workers” (for instance, the law concerning them is called The Foreign Workers Law). Therefore, terms such as “labor migrants” and “the children of labor migrants” do not faithfully reflect attitudes to them.
State of Israel – who try to disrupt any effort at normalizing the status of foreign workers’ children and other groups they perceive as constituting a threat to “national identity”.

INTRODUCTION

Globalization has heightened the tension between the inflexibility of national borders and the increased flow of people who wish to cross them. On the one hand, economic interests are making it easier for borders to be crossed by capital, goods and people; on the other hand, nation states are becoming increasingly selective about the individuals admitted into their sovereign territory. As a result, there is a greater need to set clear rules of inclusion and exclusion, and the debate over the conditions for acceptance into the nation state has sharpened (Castells, 2000; Freeman, 2004; Hollifield, 1992).

There are disagreements over the status of the nation state as the arena of people’s primary collective belonging, and some argue that the notion of citizenship should be minimized, changed, or even dropped altogether (Bauböck, 1994; Hammar, 1990; 2000; Soysal, 1994). Nonetheless, in democratic societies where political rights are afforded only to citizens, the need to determine who is and who can become a citizen of the state is crucial. Therefore, nation states continue to formulate migration and citizenship policies that will enable them to sustain both their national identity and their democratic nature.

Foreign workers moved to developed Western countries after World War II, with the sole aim of finding work and improving their economic situation. A lack of manpower in those countries enabled the import of very large numbers of workers. Accordingly, they were treated as temporary guests, who were meant to return to their countries of origin as soon as the demand for manpower declined. However, in reality, laborers settled in the host countries (Miller, 1981; Ciccourel, 1991; Castles & Miller, 1998); they stopped being a passing phenomenon and became a permanent facet of society. This made it necessary to redefine the borders of the collective and raised a plethora of questions regarding civil rights, especially those related to the policies of awarding citizenship to individuals who do not belong to the national collective.

The State of Israel started to deal with the issue of foreign workers following the first Intifada (Arab uprising against Israel in the occupied territories, 1987). In order to meet demand for manpower, the government decided to issue work permits to non-Israeli and non-Palestinian laborers – foreign workers. It allocated those permits mostly to employers in the fields of nursing, agriculture and construction, but also in industry and the hotel and food sectors (Bartram, 1998; Bar Tzuri, 1998; Borowsky & Yanay, 1997; Fischer, 1999). In early 2003, more than a decade later, the population of foreign workers in Israel stood at around 240,000 (43% of whom had work permits, and 57% of whom did not).² They constituted 10% of the labor force. Israel had among the highest proportion of foreign workers in the world,³ who were integrated within the local economy.⁴

As in Europe, Israel saw its foreign workers as a passing phenomenon – as cheap, accessible and temporary labor. However, some of the workers settled down and either

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⁴ For a broader discussion of the mutual relations between the employment of foreign and Palestinian workers, see” Mundlak (1999) and Kemp and Raijman (2007).
brought their families to Israel or established new families. Such a massive presence of foreign workers and their families served to renew debate over the provision of social rights and civil status.

As a Jewish state, Israel is a country that awards citizenship based on the “right of blood” (jus sanguinis). This classification has been officially ratified in the Citizenship Law, 1952, whose first clause states that every Jew who is born in or migrates to Israel is entitled to citizenship by virtue of the Law of Return (1950; last amended in 1970), as is his family. Every Jew automatically becomes a citizen of Israel upon his arrival in the country. Whoever does not meet the criteria stipulated in this Law has little possibility of receiving Israeli citizenship.

As Israeli citizenship is primarily granted on the basis of blood ties to the Jewish people, the issue is not only a legal one, but it is also related to the essence of Jewish nationhood. Public debate over the entitlement to civil status and changes to the Citizenship Law reflects concern about preserving a Jewish majority as a necessary condition for the existence of a Jewish and democratic state (Gavison, 2006). Decisions regarding Israel’s immigration policies are seen by some of its citizens as a guarantee for the country’s continued existence as a Jewish state. On the other hand, there are those who maintain that a democratic country should not only be concerned with representing the majority but must also protect the rights of minorities. Therefore, it is argued, discussion of immigration policies must reflect the diversity of Israeli society, which is made up of a mosaic of different groups, cultures and identities. Adherents of this approach oppose moves toward the sweeping negation of the right to citizenship for anyone who is not Jewish or “Jewish enough” (Peled, 2001).

This chapter tracks the process and rationale of policy-making in relation to the granting of citizenship to the children of foreign workers in Israel during 2003-2006. Its objective is to examine how the State of Israel and its governing bodies have tried to avoid dealing with the issue and have used policy to exclude certain groups with the ultimate aim of protecting the Jewish nature of the country. This is a very descriptive approach.

This study combines both quantitative and qualitative methods. Data was collected via content analysis of primary and secondary sources, participant observations at meetings of Knesset (Israeli parliament) committees, the Ministry of the Interior and the Ministerial Committee, semi-structured interviews with policy-makers, and statistical estimates of the number of children of foreign workers living in Israel, a number that in retrospect turned out to be extremely significant in the policy-making process.

THE CHILDREN OF FOREIGN WORKERS – “CHILDREN WITHOUT A HOME OR CIVIL RIGHTS IN ISRAEL”

According to one estimate, in 2006 about 1,600 children of foreign workers between the ages of 0-18 were living in Israel.5 Categorizing the children by their parents’ country of origin, based on Central Bureau of Statistics (CBS) data from 2002, shows that most of the children who had been born in Israel belonged to the community of African expatriates, the

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5 This figure is based on an estimate of the number of the children of foreign workers in the Israeli education system in 2005-2006. It was arrived at by the author for the submitters of petition 8204/05 to the High Court of Justice.
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oldest foreign community in Israel. The proportion of children from the African community of Ghanaian extraction is of particular note. Another notable group is of children whose parents are from South America, and especially Columbia. Lately, the number of Asian children has been growing, in particular children to mothers from the Philippines who are working as nursing caregivers (or, more precisely, who were formerly working as regular nursing caregivers). Accordin to estimates, only a small number of children of foreign workers from Europe live in Israel, and they are children of workers from Eastern Europe.  

A significant proportion of the foreign worker population in Israel is concentrated in the large cities. Workers with permits are employed throughout the country, but the population of irregular foreign workers, which includes most of the families of foreign workers, tends to concentrate in and around Tel Aviv-Jaffa, or to move there as their stay in Israel becomes extended (Shnell & Alexander, 2002). Those who come with a permit but leave their legal employer and remain in the country as irregular workers also tend to move from the periphery to the center. In addition to Tel Aviv, there are also concentrations of families of foreign workers in Haifa, Jerusalem and Eilat.

The total number of foreign workers’ children in the education system is estimated at around 720. As expected, most of them (67%) are concentrated in Tel Aviv, 20% live in Haifa, with the remainder resident in Jerusalem and Eilat. In addition, there are approximately 900 babies and infants under the age of 5 who are cared for at family health stations in the same cities. Thus, the overall number of foreign workers’ children under the age of 18 stands at about 1,600 (as of December 2005).

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<tr>
<th>Age</th>
<th>City</th>
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<td></td>
<td>Eilat</td>
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<tr>
<td>Total</td>
<td>16</td>
<td>141</td>
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<td>Age 6-9</td>
<td>11</td>
<td>18</td>
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<tr>
<td>Age 10+</td>
<td>5</td>
<td>128</td>
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</tbody>
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Source: Tel Aviv: The Education Administration and the Planning and Evaluation Department, Tel Aviv Municipality; Jerusalem: The Headquarters for Computation and Systems Analysis, Jerusalem Municipality; Haifa: The Education Administration, Haifa Municipality; Eilat: The Education Administration, Eilat Municipality. Data collected September 2005 to January 2006.

Most of the foreign workers’ children were born in Israel, or arrived in the country at a very young age. Israel is at the center of their lives, and they see themselves as Israelis. As a result of their parents’ illegal residence in Israel, and because Israel’s governments have ignored the process of foreign workers settling in the country and establishing families,

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6 Most of the mothers from the Philippines had a work permit and were employed as nursing caregivers. According to a Ministry of Interior regulation, when a foreign worker with a work permit falls pregnant and gives birth, if she keeps the child with her and does not send it to her country of origin, she is no longer entitled to her work permit. This makes her a candidate for deportation. (The Special Committee for the Problem of Foreign Workers, Ministry of Interior regulation regarding: Pregnant Foreign Workers, Protocol no. 39, 3.11.2004.)

7 This figure derives from data given to the Aid and Information Center for the Foreign Community by the public health services of Tel Aviv-Jaffa in June 2005, and from statistical estimates provided by public health stations in Jerusalem, Haifa and Eilat.
“though no fault of their own and to their patent detriment, the children of foreign workers are caught in a difficult situation whereby they have no home in Israel and are denied legal status or rights.”

For the children of foreign workers, the question of their civil status is not only a political-bureaucratic matter of being given rights and taking on duties. Their civil status is directly related to how they define their identity, and their lack of citizenship influences their lives from the moment they are born through to adulthood.

Their lack of citizenship prevents these children from being enrolled in the education system in an orderly fashion, thus depriving them of the services that it provides. From age 16 it prevents them from receiving an identity card, without which they cannot get a driving license, sign up for matriculation exams, participate in professional courses, play in national sports leagues, and more. When they reach the age of 18, their lack of civil status limits their opportunities to request citizenship based on the existing criteria in Israel, or to receive citizenship on the basis of the Citizenship Law.

For children born in Israel the issue is even more problematic, as the denial of civil status in a way that is harmful to children contravenes the Convention on the Rights of the Child, to which Israel is a signatory. The Convention states that every child has the right to be registered after birth, as well as having the right to citizenship and to construct an identity, if these have been denied him. Although the status of the Convention on the Rights of the Child is only interpretive – that is, signatory countries commit to passing laws in the spirit of the Convention – countries that have signed it are forbidden from contravening its spirit. Today, there are children living in Israel who have no citizenship. These children, who were born in Israel, are not entitled to receive citizenship in their parents’ country of origin, because citizenship there is granted according to the principle of *jus solis* (that is, only people born in the country’s sovereign territory are entitled to citizenship). The only document that testifies to the very existence of these children is their Certificate of Live Birth, which confirms that a living child was born. This situation contradicts the Convention on the Rights of the Child. It follows that Israel is obligated to provide such children with some kind of civil status, or alternatively to assist them in attaining civil status in another country, such as by signing bilateral agreements guaranteeing a wide range of rights.

As noted above, Israel is a nation state where membership in the collective is primarily determined on the basis of blood ties with the Jewish people. As a result, the children of foreign workers are unlikely to be included within the legal framework that defines the right to citizenship in Israel. Indeed, there are regulations that explicitly deny them this right. For instance, Section 12 of the Regulations of Entry into Israel, 1974, stipulates that “a child born

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8 Petition for Judicial Review 1113/03, Yehavin Mok vs. the Minister of the Interior.

9 The Compulsory Education Law, 1949, states: “Every child who has been living in Israel for over three months is entitled to free education and is insured against personal accidents by the local authority in whose jurisdiction the educational establishment in which he studies lies.” This law applies to every child regardless of their parents’ formal status between the ages of 5 and 16. There are municipalities and areas defined as disadvantaged where the law applies to children from the age of 3. The Ministry of Education, the local authorities, and school principals will provide these children with all of their educational needs. However, these children of foreign workers, who are in need of social, pedagogical, and sometimes psychological assistance, are not registered in such a way that enables them to be included in the school’s “absorption basket” and to receive proper attention to their needs.

10 At the age of 18, as they become adults, they may find many obstacles stand in their way when they wish to request citizenship, see article 5 and 6, Nationality Law 5712-1952.

in Israel, to whom Clause 4 of the Law of Return, 1950, does not apply, shall have the same status in Israel as that of his parents’. This regulation was originally intended to preserve the family unit and children’s welfare by awarding permanent residency to a child whose parents are permanent residents. However, by the same token, the child of parents illegally residing in Israel is also seen as an illegal resident. As such, he is liable to be arrested and deported as an illegal alien.

Furthermore, the question of maintaining a Jewish majority in Israel guides every discussion regarding citizenship policies. It is in this context that we should understand the debate regarding the citizenship of foreign workers’ children and the role that various government ministries and bureaucrats have played (and continue to play) as the guardians of the Jewish character of the State of Israel. This is also the context of the efforts to prevent the regularization of these children’s status, given that they are perceived as a threat to the country’s national identity.

THE CHRONICLE OF A DECISION: YEARS OF DISCUSSIONS, APPEALS AND DEFERRALS

The civil status of the children of foreign workers was first debated in the public arena in 2003. That year, the number of deportations from Israel of irregular foreign workers reached new peaks: 21,000 irregular foreign workers were deported - 20% of all irregular foreign workers living in Israel at the time (Bar Tzuri, 2008).

In August 2003, the Immigration Administration launched Operation “Leaving Freely”. The operation was aimed at encouraging families without permits to leave the country within two or three months. Heads of families had to sign up at the Administration and present airplane tickets. In return, they were given residency permits until their departure, assistance in extracting money owed to them by employers, and were entitled to leave the country without a deportation stamp in their passport. Families who did not sign up as part of the operation would be held at the Michal detention center (a facility for holding families of foreign workers located in Hadera, a town 45 km. North of Tel-Aviv) until their deportation. One Thousand families, including approximately four hundred children, left the country as part of the operation.

As a result of the activities of non governmental organizations, who appealed to the courts to prevent the deportation of children, and in the light of decisions made by the Minister of the Interior, who was sensitive to the circumstances and exercised his discretion regarding the civil status of foreign workers’ children, in 2003 a process of debate was initiated in various forums: the Ministerial Committee, ministerial administrations and the courts.

The first step toward naturalizing the children of foreign workers was taken by the Association for Civil Rights when, in 2003, it petitioned the Tel Aviv District Court demanding that permanent residency be granted to four foreign youths so that they would have a legal status in Israel and be entitled to apply for Israeli citizenship. The petition was

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based on the entry into Israel Law, which gives the Minister of the Interior the discretionary power to award a visa or residency status in Israel.\textsuperscript{13}

That year, the then-Minister of the Interior, Avraham Poraz (Shinui- Liberal Party, since then, ceased to exist), declared that he would exercise his authority to award civil status to all of the children of foreign workers. At that time, the Immigration Administration claimed that the number of such children stood at 10,000 (a figure that was later shown to be hugely exaggerated\textsuperscript{14}) In light of these estimates, individuals in the government, and especially the Attorney General, Elyakim Rubenstein, felt that there was a demographic threat to the Jewish nature of the state and insisted that the Prime Minister establish a Ministerial Committee that would debate the matter, thus limiting the Minister of the Interior’s exclusive ability to award citizenship.\textsuperscript{15}

Minister Poraz prepared for this hostile forum by gathering information on the various aspects of the issue, and thus requested a detailed estimate of the number of children and their distribution by age. This quantitative information was extremely important, as the number of foreign children would influence the decision-making process regarding their civil status: exaggerated estimations reduced their chances of being awarded civil status, while more realistic estimations might increase their chances. The various estimates provided to the Minister by The Aid and Information Center for the Foreign Community, the Brookdale Institute, the Knesset Research and Information Center and, later on, the Ministry of Education, enabled him to argue that the phenomenon was not so widespread as to be threatening, and that the overall number of the relevant population of children was no larger than 2,500, most of whom were under six years old.

At the Ministerial Committee that was convened on 1 March 2004 to discuss the civil status of foreign workers’ children aged over 10, most of those present agreed that humanitarian considerations made it necessary to deal with the problem. However, they were also well aware of the apparent impact that the decision to award the children civil status might have.\textsuperscript{16}

Later, the Ministry of the Interior, the Ministry of Justice and the Attorney General formulated a proposal that the Ministerial Committee was meant to pass at its meeting on 27 November 2004. However, there was resistance within the Committee, particularly from the Finance Minister, Benyamin Netanyahu; in addition, because Poraz’s tenure as Minister of the Interior came to a sudden end when his party left the governing coalition, discussion of the issue was postponed to a later date.

Upon being appointed Minister of the Interior on 10 January 2005, Member of Knesset Ophir Pines-Paz (Avoda- Labour Party) declared that he intended to regularize the status of foreign workers’ children, and on 23 March of that year he submitted a bill to the Special Committee for Matters of Population Administration. In contrast to his predecessor, Pines-Paz said that he would award civil status to the children of foreign workers who were over 10 years old, \textit{who had been born in Israel, and whose parents had entered the country legally}. However, a decision was not made this time due to the opposition of representatives from the

\textsuperscript{13} Petition for Judicial Review, 1113/03, Yehavin Mok vs. the Minister of the Interior.

\textsuperscript{14} The purpose of such exaggeration has always been to create fear and to convince the public and Policy-makers that a real threat to the Jewish nature of the State of Israel exists.

\textsuperscript{15} Government decision no. 1289, 1.4.2004.

\textsuperscript{16} Participant observation at the Committee as part of the Knesset Research and Information Center’s steering team on the issue of the children of foreign workers.
Ministry of Industry, Trade and Employment and because the official responsible for awarding work permits to foreign workers in Israel rejected the proposal on the grounds that its implementation would cost too much. Their opposition was given backing by the excessively high estimates of the number of foreign workers’ children that had been submitted to the Committee. According to Minister Pines-Paz and the Ministry of the Interior’s Population Administration, the number of children who met the criteria stood at around 2,500. This time, in contrast to Poraz’s figures, the Minister’s estimation accorded with the Population Administration’s data, but not with the actual number of children.

Every attempt by various organizations to show that no more than 200 children met the new criteria, and that it was thus desirable to include children of foreign workers who had not been born in Israel within the decision, was rebuffed.\(^{17}\)

At the same time, Minister Pines-Paz established a committee headed by Prof. Amnon Rubenstein (a former Minister of Justice and Minister of Education as well as a distinguished scholar). The objectives of the committee were to advise the Ministerial Committee for Population Affairs, to propose principles for migration policy, and to examine relevant legislation, including the Law of Return, the Citizenship Law, and the Entry into Israel Law. It was also charged with studying the procedures of the Population Administration, including the awarding of citizenship to the children of foreign workers. The committee submitted its conclusions to Minister Pines-Paz at the end of 2005. To date, not one of its recommendations has been implemented.

When Roni Bar-On (Kadima-Center Party) took over as Minister of the Interior on 4 May 2006, the parameters set by the Ministerial Committee at the end of 2005 were changed. On 18 June 2006, an amendment to the government’s standing order was made regarding the provision of status to the children of irregular foreign workers, their parents and their siblings living in Israel. According to the amendment, the Minister of the Interior was entitled to award permanent residency to children who have been living in Israel for an uninterrupted period of six years and who entered the country under the age of 14, irrespective of whether or not they were born in Israel. Furthermore, the child must be able to speak Hebrew and he must be a pupil at school (at least a first grader), or a graduate of the state education system. Only children whose parents originally entered Israel legally (even on a tourist visa) would be entitled to civil status.\(^{18}\) After their first year of military service, they would be entitled to receive citizenship. Their parents and siblings would receive temporary residency, which would enable them to attain legal work permits. Regarding their siblings, this permit would be extended each year until their twenty-first birthday. Upon completing military service, the child’s parents would be awarded permanent residency. This government decision was a one-off arrangement, and so all requests had to be submitted by the end of August 2006. Foreign children and their families who did not meet these criteria would be expelled from Israel.

According to current data, by 30 August 2006, the deadline for submitting requests to regularize their civil status in Israel, 824 families of the children of foreign workers had

\(^{17}\) Participant observation at the Population Administration in Jerusalem a number of days before the Ministerial Committee meeting of 26th June 2005 that was meant to discuss the number of children who might receive civil status (the meeting was initiated by the Association for Civil Rights and the Hotline for Migrant Workers and at the request of Minister Pines-Paz and the head of the Population Administration).

\(^{18}\) This clause was designed to exclude the children of Palestinians, most of whose parents entered Israel without a visa.
submitted their request for Israeli residency. By the end of 2007, a total of 522 requests had been granted, 166 rejected, and 136 were still pending. These data suggest that even if all of the requests are granted, there are still far fewer than the earlier estimations of 2,500 children that had been presented by the professional cadre at the Ministries of the Interior and Justice.

This government decision seemingly brought to an end a three-year process, in which attempts were made to prevent a decision being reached regarding the status of the children of foreign workers. During these three years there were three different Ministers of the Interior. While they all saw the subject as requiring their attention, they did not always accept decisions made prior to their arrival at the ministry. For instance, in his decision of June 2006, Minister Bar-On ignored the recommendations regarding the children of foreign workers that had been submitted by the Rubinstein Committee established by Minister Pines-Paz in 2005.

Thus, we can see a decision-making process in Israel in recent years that is characterized by inconsistency as a result of governmental instability (three different ministers were put in charge of the Ministry of the Interior, each one of them belonging to a different Party) and the inefficiency of professional committees, in addition to the problematic nature of the subject matter in general. Sometimes these committees find themselves submitting their conclusions and recommendations to a different minister to the one who appointed them, and who subsequently ignores their work. Another characteristic of the decision-making process regarding foreign workers is the discordance between the intentions and declarations of the political echelon and the activities of the professional staff. The latter is not replaced along with the minister, and so it is able to sustain its own agenda contrary to the minister's spirit and intent. The bureaucrats at the Ministry of the Interior (and especially at the Population Administration) have become the obstinate guardians of the Jewish nature of the State of Israel. As a result, politicians find it easy to make declarations to their potential voters without truly intending to carry them out, knowing that they can make insubstantial statements because the bureaucrats will block their implementation in any case. Furthermore, the question of the exact number of the children of foreign workers took center stage in all of the discussions. In the absence of precise data on the size of the population of the children of foreign workers in Israel, those who opposed their naturalization put forward inflated figures, which later turned out to be inaccurate. In fact, the argument over numbers was used to corroborate claims of a threat to the Jewish nature of the state and to prevent substantive discussion of the issue.

If You Will It, It’s No Dream: A Jewish and Democratic State

The need for clear policies of inclusion and exclusion makes civil status a subject that is up for negotiation. These dilemmas are deepened when it comes to dealing with the question of the children of foreign workers. On the one hand, these children are second generation migrants. This makes them an unwanted generation, as the original intention was to bring

19Ilan, Sh., Haaretz, 5.9.2006.
20...
cheap manpower for a limited period of time. On the other hand, however, the presence of these children is a fact. Because they are children, they are entitled to intrinsic and extrinsic rights that are anchored in various conventions. These dilemmas need to be discussed.

Given Israel’s commitment to international conventions and Jewish tradition, it must ensure decent living conditions for all children living in the country – be they locals or foreigners. This means that a decision must be made regarding Israel’s position on the continuum of approaches to the issue of foreign workers: from seeing foreign workers as future citizens and opening up a route for their naturalization, through to viewing them as temporary guests with no right whatsoever to receive the legal status of citizenship; as such, they should be given assistance in returning to their countries of origin.

In Israel, the national government has tried to avoid dealing with the issue of foreign workers and their families. Apart from setting quotas for their entry and deportation, the government sees them as a passing phenomenon and tries to prevent their access to channels that might enable their integration. Even when the naturalization of the children of foreign workers might suggest that other directions are being taken – and there are those who see the decision of June 2006 as a sign of the liberalization of the naturalization process in Israel, in keeping with developments in Western Europe and the United States (Feldblum, 1997; Kemp, 2007) – we must remember that it was a one-off standing order based on humanitarian considerations aimed at regularizing the status of a small group of children. In addition, its acceptance was based on the support of a certain Minister of the Interior and on a very particular political constellation. The decision was certainly not an admission or acknowledgement of the need to integrate foreigners within Israeli society.

The exclusion of foreign workers and their families is not the outcome of an explicit decision to segregate them as in Switzerland. Instead, it is the practical result of the state’s general attitude of indifference towards them. There is no specific policy relating to the health, education or welfare of the children of foreign workers and as such, they remain outsiders. But the "general attitude" is the outcome of underlying assumptions which have to be explained. Given that foreign workers have no hope of receiving Israeli citizenship and that there is no systemic view of how to deal with them, and given that they are excluded from social and political arenas, we can term the State of Israel’s approach to the foreign workers and their families a policy of ignoring aimed at segregation.

Based on ongoing patterns in labor migration in developed countries, it is unreasonable to expect that by ignoring the phenomenon the state will succeed in making it go away. Indeed, the opposite would appear to be the case. In the absence of a clear policy, reality determines modes of action, which do not necessarily accord with the principles that guide the state’s behavior and nature.

If the State of Israel does not want to deal with the issue of the civil status of foreign workers’ children, it would be wise to take a number of steps aimed at preventing foreign workers’ families from settling down in the country, such as bilateral agreements, a period of amnesty, and so on.

Ignoring the problem will not solve it, and it will certainly not absolve the state of its responsibility toward the children of foreign workers. Having opened the door to foreign workers, the state must now devote serious thought to how they and their families are to be

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21 By this I mean giving a visa for a limited period of time to irregular laborers. This makes them legal residents, and requires them to leave the country within a predetermined period of time.
treated. The issue of foreign workers and their families is yet another aspect of the complexity of Israeli society and poses another challenge in setting the boundaries of its collective.

As mentioned above, the definition of Israel as a Jewish state means that the discourse of citizenship is an ethnic discourse (Shafir & Peled, 2005), according to which the question of belonging to the collective is determined by one’s membership in the group of the Jewish people. The issue of naturalization is not a purely legal one, but rather is related to the essence of nationhood. There are those who argue that as long as Israel is the state of the Jewish people, and not a state of all its citizens, it cannot be a democratic country. In contrast, there are those who hold that there is no substantive contradiction between Israel being both a Jewish and a democratic state. They do not see the definition of Israel as a “Jewish state” as necessarily harming the rights of non-Jewish minorities, and so they believe that the Law of Return and the state’s Jewish symbols should remain untouched. At the same time, however, they believe that religion should be separated from the state, that there should be a secular route for attaining citizenship, and that a Palestinian state should be established alongside Israel in order to protect the principles of democracy (Jacobson & Rubinstein, 2003; Gavison, 1999; Dowty, 1999; Smooha, 2002).

It should be noted that although international law recognizes the right of every sovereign state to decide whom it shall admit and whom it shall exclude (Carmi, 2003), these decisions should nonetheless be grounded in principled justifications. While these justifications may sometimes sound isolationist or even racist, they are preferable to attempts at avoiding principled debate, including the repeated deployment of exaggerated data regarding the population asking for citizenship—children of foreign workers, children of reunited Palestinian families, fourth generation immigrant children, and so on, based on the argument that it constitutes a demographic threat to the nature of the country. Therefore, the only way to ensure applicants’ rights and protect both the Jewish and democratic nature of the State of Israel is to carry out a principled and in–depth discussion of the issue of citizenship in order to establish and implement clear, consistent policy in this regard.

REFERENCES


22 A few months ago in France, a country with high rates of naturalization, a Muslim woman who was married to a French citizen was denied citizenship on the grounds that her strict religious views were harmful to the values of the Republic.


Chapter 4

ILLEGAL EMPLOYMENT OF IMMIGRANTS IN GERMANY: COMBATING THE PHENOMENON VERSUS SOCIAL RIGHTS?

Christoph Junkert and Axel Kreienbrink

ABSTRACT

The chapter gives an overview of the phenomenon of the illegal employment of immigrants in Germany. The illegal employment of immigrants does not only stem from an undocumented residence status of an immigrant or the lack of a work permit for regular migrants but also from illegal practices by employers. Since the illegal employment of both natives and immigrants is considered to be harmful to the economy and the society as a whole, illegal employment is pursued with the full rigour of the law. In doing so, the combating of the illegal employment of immigrants is primarily integrated in the general ‘fight’ against illegal employment. The measures taken have consequences for the (social) situation of the illegally employed and often illegally resident migrant workers. The issue of illegally employed migrant workers’ rights, in the context of national law and international conventions, access to social services and protection against the exploitation as well as the question of regularizations are issues discussed in this chapter.

INTRODUCTION

In Germany, awareness of the issue of illegal immigration and the illegal employment of foreign nationals, which are interdependent, only emerged in the 1990s, in the wake of the fall of the Iron Curtain and the reunification boom, especially in the construction sector. Between 2001 and 2005, during the slowdown of the German economy, this awareness died away again. It is against the backdrop of the two ‘eastern’ enlargements of the EU and the enlargement of the Schengen Area that the debate about irregular migration and the illegal employment of foreign nationals has been revived in the media and become a matter of public
discussion. The discussion in Germany focuses on illegally employed nationals of the new EU Member States and other Eastern European third country nationals.

IRREGULAR EMPLOYMENT OF IMMIGRANTS IN GERMANY: OVERVIEW

According to survey data (Enste & Schneider, 2007, p. 263, figure 2; European Commission, 2007, p. 21), data held by the authorities and reports in the media, irregular employment occurs primarily in the construction business, the hotel and catering industry, household services, meat processing, transport and forwarding, facility management, agriculture and forestry, car repair services, domestic nursing and geriatric care, private tuition and child care, the entertainment and amusement business, and hairdressing. Generally, illegal employment of foreign nationals seems to be more common in small- and medium-sized enterprises than in large ones and it is more concentrated in urban than in rural areas, which is due to the greater economic activity and anonymity which these alternatives represent (Bundesregierung, 2005, p. 12).

When defining the phenomenon of ‘illegal employment of immigrants’, one has to differentiate between four groups of foreign nationals, all four of which have different implications for potential illegal employment: 1) Citizens of the old EU Member States (EU-14), who are free to live and work anywhere in the EU; 2) nationals of the new EU Member States (EU-10: Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic, Slovenia; EU-2: Bulgaria, Romania), whose labour market access to Germany is restricted until 2011 and 2014 respectively but who can apply for a work permit-EU; 3) third country nationals who are subject to the recruitment ban imposed in 1973 but who can apply for a residence/settlement and work permit and 4) citizens of countries who are freed from the obligation to obtain an entry or residence permit for short-term stays of up to three months, but may not work in Germany without a proper work permit. As soon as they do so, their stay itself becomes illegal. If their initial intention is to come to Germany in order to take up employment, they then require a visa. Table 1 provides a categorization of the phenomenon of the illegal employment of immigrants in the German context.

Until the mid-1990s, a continuous increase in immigrants without legal residence and employment status was noticed; this was, in part, due to the fall of the Iron Curtain and the German reunification boom, which stimulated the national economy and the labour market. It can be assumed that, since then, the number of illegally resident and employed migrants has remained stable, or even decreased (Kreienbrink & Sinn, 2007). Due to the nature of undocumented stays and irregular employment, there is no data available on the number of undocumented and/or illegally employed migrants in Germany. Inferences from the process data held by the authorities are problematic (see Figure 1); estimations by researchers and other stakeholders are vague at best.¹ The range of estimates of the total number of illegally resident migrants in Germany, most of whom can be assumed to have entered Germany in order to take up gainful employment, differs widely, from 100,000 up to 1 million people.² These figures equate to approximately 0.25 to 2.5 per cent of the national labour force. On top

¹ For an overview of studies for Germany covering 1975 to 2005, see Bühn, Karmann and Schneider (2007).
² These figures have been constantly recurrent since the late 1990s.
of that, there are those migrants who are legally resident but who are employed under irregular conditions. Yet, immigrants are assumed to make up for a relatively small fraction of total illegal employment only. The countries of origin of the illegally employed immigrants are assumed to be particularly Eastern and South-eastern European countries.

Table 1. Constellations of the illegal employment of foreign nationals, according to their official status with regard to residence and work permits

<table>
<thead>
<tr>
<th>Employment1)</th>
<th>Illegal</th>
<th>legal</th>
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<tbody>
<tr>
<td>Stay / Entry</td>
<td>illegal</td>
<td>'classic' case</td>
</tr>
<tr>
<td></td>
<td>legally staying immigrants who do not possess a work permit</td>
<td>a) legally employed immigrants working under illegal conditions</td>
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<tr>
<td></td>
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<td>b) work permit received under false pretences, for example, bogus posting of workers or bogus temporary work</td>
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<td></td>
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<td>c) bogus self-employment</td>
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<td></td>
<td></td>
<td>d) legally employed immigrants who perform illicit work alongside their regular job, like natives, or who, in addition to their legal employment, carry out work they are not permitted to do</td>
</tr>
</tbody>
</table>

1) Either dependent or self-employed.

Source: BAMF (2008), p. 185, based on data from the Federal Police; authors’ elaboration.

Figure 1. Apprehensions of foreign nationals illegally entering Germany.
MEASURES TAKEN TO PREVENT AND TO COMBAT IRREGULAR EMPLOYMENT

The Federal Government and the social partners consider the illegal employment of both natives and immigrants to be harmful to the German economy, as well as to society as a whole. To prevent and combat the use and exercise of illegal employment, Germany has set up a wide range of measures. The ‘fight’ against the illegal employment of immigrants thereby integrates in the combat against illegal employment in general (Junkert & Kreienbrink, 2008, pp. 27-51).

Legal Labour Migration Schemes

In 1973, during the economic turbulences of the Oil Crisis, Germany imposed a recruitment ban on foreign workers, which put an end to the guest-worker programmes and closed the German labour market to third country nationals. In fact, this recruitment ban remains in effect, but there are multiple exceptions, both for workers from the new EU Member States and for third country nationals. The largest group of foreign labourers enters Germany as seasonal workers (see Figure 2). Workers from the new EU Member States and Croatia (see Table 2) may work for up to 4 months a year in agriculture and forestry, fruit and vegetable farming and the catering business. The respective employer is obliged to pay collectively agreed or customary wages and to provide appropriate accommodation.


Figure 2. Placement of seasonal workers, 1994 to 2007.
### Table 2. Placement of seasonal workers in Germany according to country of origin

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<tbody>
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<td>170,576</td>
<td>196,278</td>
<td>202,198</td>
<td>209,398</td>
<td>205,439</td>
<td>229,135</td>
<td>243,405</td>
<td>259,615</td>
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<td>286,623</td>
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<td>6,236</td>
<td>7,499</td>
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<td>22,233</td>
<td>24,599</td>
<td>27,190</td>
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<td>311</td>
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<td>223</td>
<td>195</td>
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<td>70</td>
<td>131</td>
<td>188</td>
<td>203</td>
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### Table 3. Contractual workers in Germany according to country of origin, yearly average

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<td>682</td>
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<td>966</td>
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<td>1,481</td>
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<td>659</td>
<td>603</td>
<td>681</td>
<td>450</td>
<td>516</td>
<td>612</td>
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<td>8,993</td>
<td>5,813</td>
<td>5,036</td>
<td>6,429</td>
<td>6,705</td>
<td>7,263</td>
<td>7,466</td>
<td>6,709</td>
<td>3,422</td>
<td>919</td>
<td>896</td>
<td>912</td>
</tr>
<tr>
<td>other countries</td>
<td>572</td>
<td>244</td>
<td>141</td>
<td>101</td>
<td>107</td>
<td>148</td>
<td>107</td>
<td>101</td>
<td>37</td>
<td>70</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>41,216</td>
<td>49,412</td>
<td>45,753</td>
<td>38,548</td>
<td>32,989</td>
<td>40,035</td>
<td>43,682</td>
<td>46,902</td>
<td>45,446</td>
<td>43,874</td>
<td>34,211</td>
<td>21,916</td>
<td>20,001</td>
<td>17,964</td>
</tr>
</tbody>
</table>

Furthermore, Germany has concluded a number of bilateral agreements with Eastern and South-eastern European countries (namely Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Latvia, Macedonia, Poland, Romania, Slovak Republic, Serbia incl. the (former) Republics of Montenegro and of Kosovo, Slovenia, Hungary and Turkey), in order to allow foreign employers who are subcontracted by German entrepreneurs to send workers to Germany. **Contractual workers** may be deployed in the construction business, meat processing, mining and chimney construction. The peak of admissions was reached in 1992 with nearly 95,000 contractual workers. By 2005, the number of admissions has declined to around 20,000 (see Figure 3). In 2007, the majority of contractual workers came from Poland followed by workers from Croatia, Romania and Bosnia-Herzegovina (see Table 3).

On top of this, there are multiple other possibilities especially for (highly) qualified citizens of the new EU Member States and for third-country nationals to come to Germany in order to work.

**External Controls**

*Visa policy.* As is often the case, illegally resident migrants enter the country legally via tourist visas and overstay the permissible period (OSCE, IOM & ILO, 2006, p. 7). Therefore, the German embassies and general consulates, which are responsible for issuing visas abroad, act as preventive bodies during the preliminary stage of the migration process. Measures of control are oriented towards those who try to obtain a visa by providing false information. Third country nationals who enter Germany legally with a visa and outstay its validity, or
who take up employment, although they are not in possession of a work permit, are difficult to trace. Since no exit controls are carried out, it cannot be ascertained whether they have already left the country. In order to improve the handling and control of these cases, as well as cases of people who entered Germany with forged or fraudulently obtained visas, the Central Register of Foreign Nationals Act was modified in 2002; the visa file was extended to become a visa decision file. Whereas previously, it was only information on applications which was registered, the visa decision file now also includes information on issued visas and rejected visa applications (Schmahl, 2004, p. 218).

**Border controls:** With the enlargement of the European Union and the Schengen Area came the gradual abolishment of ‘regular’ border controls.\(^1\) As circumstances have changed, so has the implementing agency, the Federal Police, formerly the Federal Border Force, which has recently been reorganized. With regard to border controls, which can be conducted within a range of 30 km on the German side of the border, as well as at sea and air borders,\(^2\) the Federal Police focuses on the prevention of illegal border crossings, the fight against human smuggling and trafficking and other cross-border crimes.

**Internal Controls**

**Labour market inspections:** On 1 January 2004, the Third Act on Modern Services for the Labour Market came into force and led to the bundling of the control responsibilities with which the newly founded monitoring authority for illegal employment (Finanzkontrolle Schwarzarbeit, FKS) under the authority of the customs administration was charged. With its nearly 6,500 officers, deployed in 113 locations, each of which is affiliated to the local customs administration offices, the FKS carries out all inspections and investigations on-site as well as of document checks, data matching, for which no external work is necessary, and for the monetary fine proceedings. At irregular intervals, the FKS conducts nationwide inspections with an emphasis on specific sectors such as, for example, the construction business. In 2007, 477,035 workplace checks on people and 62,256 checks on employers have been conducted, ascertaining a loss of EUR 561.8 million\(^3\) (BMF, 2008, p. 20).

**Data transmission/matching and cooperation between authorities:** As a consequence of German federalism, control responsibilities and the collection of data are mostly fragmented, both spatially and between authorities, so that the data exchange and the obligation of cooperation between various authorities are central elements of the German system for counteracting illegal employment. By pooling the tasks at the Federal Customs Administration and by introducing the ‘one-stop-government’ system at the authority for foreigners,\(^4\) as provided for under the Immigration Act of 2005, this decentralization has been

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\(^1\) The only remaining land border controls are carried out at the Swiss-German border.

\(^2\) Passports checks at airports are becoming more and more crucial and, to an increasing extent, airline companies are involved in passport and visa checks and are held responsible for cases of irregular immigration via airports.

\(^3\) The loss results from non-payment of social security contributions and taxes and from the receipt of benefits by unemployed people who are not entitled to them, as well as from withheld wage payments, particularly in the case of workers who were entitled to the payment of the minimum wage, but were paid less.

\(^4\) Apart from issuing residence titles, the authority for foreigners is now also charged with the issuing of work permits, a task which previously came within the remit of the labour offices; however, it is still the labour
significantly reduced. Furthermore, several databases were developed in order to compensate for the consequences of decentralization and fragmentation (Sinn, Kreienbrink & Loeffelholz, 2005, p. 80-83).

In accordance with § 87 para. 2 of the Residence Act, public entities have the obligation to forward information to the authority for foreigners if they obtain knowledge of 1) the whereabouts of a foreigner who does not possess a required residence title and whose deportation has not been suspended; 2) a violation of a spatial restriction; or 3) any other reasons for expulsion.

CONSEQUENCES OF THE MEASURES TAKEN FOR THE ILLEGALLY EMPLOYED IMMIGRANTS

Legal Labour Migration Schemes

First and foremost, labour migration schemes are suitable to channel migration pressure in legal ways since “irregularity is rarely a matter of choice for the migrant worker” (IOM, 2008, p. 297).

Despite the numerous possibilities especially for low-paid migrant workers, there still seems to be a significant potential of unqualified labour migrants abroad, which, in combination with a respective demand in Germany for unqualified workers, leads to irregular employment. As Hanson (2007, p. 28) argued, undocumented immigrants bring certain qualities, such as flexibility, the willingness to do jobs that natives are no longer prepared to do and geographical and occupational mobility, which are highly estimated amongst employers and which workers arriving within the framework of legal labour migration programmes may not offer (Amin & Mattoo, 2006, p. 4).

Yet, legal channels for labour migration also harbour some risks. Knowing potential employers from previous, legal working stays and, in this way gaining access to & knowledge of the local labour market, can facilitate a future illegal working stay (Lederer and Nickel, 1997, p. 28). In particular, it is much easier and less costly for foreign nationals to enter a country legally via labour migration schemes and then to overstay the permissible period in order to take up illegal employment, than it is to enter the country illegally.

A problem regarding the rights of migrant workers comes with the modus operandi of issuing work permits. In Germany, work permits issued in combination with a temporary residence permit are usually conditional on a specific employer. Once the migrant workers lose their job, they also lose their work and residence permit. Thus, migrant workers could be exposed to exploitation by employers who take advantage of this situation.

A problem connected with the foregoing exists for migrant workers who are legally posted to Germany by a foreign subcontractor of a German firm. For example, if violations
regarding the minimum wages in the construction business, as defined by the Act on the Posting of Workers, are ascertained, the general contractor then cancels the contract with the respective subcontractor, whose foreign workers thus loses their residence and work permits and are therefore obliged to leave Germany. The foreign workers are therefore less inclined to report violations of minimum standards of pay and working conditions given that they are aware of them at all.

External Controls

In addition to the effect of impeding migrants from crossing the border irregularly, it is hoped that border controls will have a deterrent effect on potential irregular immigrants. Dávila, Pagán and Soydemir (2002) showed that this is the case only in the short-term. Undocumented migrants quickly adjust to new situations, so a long-term deterrent effect is non-existent. Yet, as border enforcement increases the costs of entry it is thus likely to reduce clandestine flows.

But when the possibilities of entering the country become more difficult, migrants more frequently turn to the services of smugglers. Increased demand of smuggling services results in increased prices for smuggling operations, with higher profits, and thus this field of criminal activity becomes more attractive (Orrenius, 2001). However, as the smugglers run a greater risk of detection, they are more inclined to use violence against the authorities and, particularly, against the migrants (Sachverständigenrat, 2004, p. 355; Neske, Heckmann, and Rühl, 2004, p. 62; Schatzer, 2000, p. 43). As prices rise because of the increased demand, more migrants might find themselves in a situation, where they cannot pay the smugglers fee and end up in forms of servitude to pay off their debts.

Internal Controls

Theoretically, domestic enforcement is suitable for the reduction of irregular migration and, thus, of the illegal employment of immigrants, in two ways (Gaytán-Fregoso & Lahiri, 2004). First, in comparison with border surveillance, domestic enforcement leads to a higher risk of being caught & apprehended. Second, as employers also face a greater risk of being caught, they pass this risk on to the employees by paying them less than they would receive in a scenario without labour market controls (Cobb-Clark, Shiells, & Lowell, 1995). A lower expected wage, in turn, reduces incentives for immigrants to take up irregular employment (Entorf & Moebert, 2004) and it might become “[...] attractive for them to explore options in other geographic locations and industries within the host country, where the probability of detection is lower and where enforcement measures are relatively less effective” (Djajic, 1999, p. 57). This seems probable, as qualitative studies prove that irregular resident migrants

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7 The authors argue that a deterrent effect might come about if the probability of being apprehended were to be more than 90 per cent, but that the resources needed to create such a probability might be prohibitively high.

8 Another effect could be the manifestation of illegal stays by undocumented migrants. As crossing the border becomes more dangerous, irregular migrants are more likely to stay in the country rather than circulating between the home and the host country.
are a highly mobile workforce, whose selection of their whereabouts is subject to the economic possibilities of given locations (Düvell, 2006, p. 174).

Domestic enforcement can clash with the enforcement of migrants rights, especially the payment of due wages. This result from the fact that the migrants workers often are already expelled from Germany when it comes to the court proceedings against the respective employers. As a consequence the migrant workers concerned can no longer appear as witnesses and it is thus much more difficult to enforce migrants’ rights as well as to punish the employers who violated the law.

As was stated above, both the cooperation of the authorities and the transmission and the matching of data are central elements in combating the illegal employment of immigrants. Yet, at the same time, non-governmental and charitable organizations as well as the churches specifically criticize these measures for adversely affecting migrants’ rights. Consequences especially of the obligation of public entities to forward information to the authorities of foreigners are shown in detail in the next section.

**RIGHTS OF ILLEGALLY EMPLOYED IMMIGRANTS**

**National Law and International Conventions**

Of the rights enshrined in the German constitution it is only universal human rights (protection of human dignity, the right to life and physical integrity) which may be invoked by undocumented foreign residents. Constitutional rights do, nevertheless, have what is referred to as the ‘third-party effect’, as they establish an ‘objective value system’ which is legally binding in both civil and labour law. This entails, for example, the fact that employers must respect the fundamental values of the Basic Law in their dealings with illegally employed foreign residents, including the protection of their fundamental rights (McHardy, 1994, p. 97).

The basic rights codified in international law and the documents of the United Nations and the International Labour Organization apply to all human beings; in other words, they also protect illegally resident and/or employed migrants (Taran, 2004). To what extent these basic rights are legally binding and enforceable by individuals through legal action is a matter of controversial discussion (Schneider, 2005).

Three international conventions are especially targeted at migrant workers, including those who are irregularly employed. The first of the conventions (ILO Convention No. 97 – *Migration for Employment Convention* – of 1949) aims at the prosecution of those promoting irregular immigration and does not yet give consideration to the rights of irregular migrants, while ILO Convention No. 143 (*Migrant Workers Convention* of 1975) demands that a migrant worker, who has been legally residing and employed in a country of destination “[…] shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorization of residence...”

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9 This section mainly deals with undocumented migrants who, in turn, are often illegally employed. But once again, the group of illegally employed immigrants not only comprises undocumented migrants, but many legally employed foreign nationals, for example, working under irregular conditions as well.

10 “Any person who promotes clandestine or illegal immigration shall be subject to appropriate penalties” (ILO Convention No. 97, Annex I, Article 8; ILO, 1949).
or, as the case may be, work permit” (ILO Convention No. 143, Art. 8 No. 1; ILO, 1975), which is typically the case in Germany. Furthermore, Article 8 No. 2 calls for equality of treatment with nationals regarding “guarantees of security of employment, the provision of alternative employment, relief work and retraining”.

In December 1990, the United Nations General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which is the most comprehensive with regard to the rights of migrant workers (Spieß, 2007). Articles 68 and 69 explicitly refer to migrant workers and their family members in an irregular situation. Especially worth mentioning here, is that “[t]he rights of migrant workers vis-a-vis their employer arising from employment shall not be impaired by […]” measures taken to counteract the illegal employment of immigrants (Art. 68 No. 2 of the Convention). Germany has only ratified ILO Convention No. 97.

**Access to Social Services**

Irrespective of their residence status, migrants are entitled to certain welfare benefits. Inter alia, this pertains to the claim of assistance in cases of medical emergency, which, in principle, is not limited to German nationals (Schönwälder, Vogel & Sciortino, 2004, p. 41).

Illegally resident migrants are entitled to medical care under the provisions of the *Asylum Seekers Benefits Act* (AsylbLG), which grants services which are limited in comparison to the regular insurance coverage. In particular, medical services are granted in cases of acute sickness and pain, pregnancy and childbirth (§ 4 of the AsylbLG). The accident insurance covers illegally employed people, irrespective of their residence status, which is particularly important in the construction business. In this case, the insurance coverage does not depend on individual contribution payments, but is disbursed in cases of work-related accidents or occupational disease (Röseler & Vogel, 1993, p. 25).

The social welfare offices responsible are obliged to cover the costs for the services defined in § 3 of the AsylbLG, which covers standard benefits, such as, for example, food, clothing, or accommodation, and § 4 of the AsylbLG. Generally speaking, it is also possible to apply for social benefits, but whether or not there is an entitlement must be reviewed in every single case (Schönwälder et al., 2004, p. 41). Illegally resident and/or employed migrants cannot claim pension payments, child benefits or child-raising allowances (Röseler & Vogel, 1993, p. 26).

However, under the provisions of the AsylbLG, the application for these services or the application for social benefits at the social welfare offices means the automatic disclosure of the residence status of the migrant, who, in the case of an irregular stay, is thus threatened with expulsion. This deters most irregular migrants from claiming social benefits since, in accordance with § 87 para. 2 of the Residence Act, public entities have the obligation to forward information on illegally resident immigrants to the authority for foreigners.

In its evaluation report, “Illegally resident migrants in Germany”, the Federal Ministry of the Interior discusses this problem (BMI, 2007). In general, all private individuals and

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11 There has been controversial discussion as to whether the treatment of chronic diseases is covered by the Asylum Seekers Benefits Act (Müller, 2004, p. 65).

12 See Cholewinski (2005) for a comparative paper on obstacles to irregular migrants in the accessing of social services.
institutions are exempt from the obligation to transfer information to the authority for
foreigners, that is, physicians, private hospitals and schools, as well as privately operated

Nonetheless, there still seems to be legal uncertainty among several non-public actors.
Furthermore, there is the question of who pays for the services used. If the answer to this
question involves the social welfare offices, it then, in turn, leads to the obligation to forward
information.

The existing medical care received by illegally resident migrants therefore has a
predominantly charitable character.

Charitable organizations demand the state to reduce the obligation to forward information
to the authority for foreigners because it would not lead to increased apprehensions but only
deter undocumented migrants from using medical services, legal protection and schooling for
their children. They demand the state to step in and provide medical treatment as well as
schooling and legal protection, especially in the case of the exploitation of illegally employed
migrants, for undocumented migrants and their children (Caritas, 2007). Recently there has
been some political progress in this regard. The parties forming the Federal Government
agreed on facilitating the school attendance of children of undocumented migrants.
Nevertheless, special regulations depend on the state level and not the federal one, so further
progress remains to be seen.

**PROTECTION AGAINST EXPLOITATION**

On the basis of Hofer’s research findings (1992, 1993), Lederer and Nickel (1997, p. 29)
indicated the “structurally-founded vulnerability to be blackmailed” which characterizes
illegally resident employees.\(^{13}\) As they lack a residence permit, and must therefore fear that
their status may be revealed at any time, they are hardly in a position that allows them to
protest against underpayment, fraud or exploitation by employers.

Usually, foreign workers who are paid less than they should be in accordance with the
Act on the Posting of Workers and other statutory provisions do not complain. This is mostly
because they are unaware of those provisions and what they are paid, even if it is below the
statutory minimum, is often much more than they would receive in their home country if,
indeed, they were employed there at all.

Yet, whatever the legal nature of the employment relationship with a foreign national, be
it regular or irregular, and whatever the residence status of the immigrant, migrant workers
have the right to claim due wages. In cases where the irregular nature of an employment
relationship with a foreign national who is eligible to work in Germany results in illegal
practices on the part of the employer, it is clear that foreign nationals can sue for their due
wages. The vital point here is whether the respective migrant workers are aware of their
rights.

In cases where the foreign national is not entitled to work in Germany, the
abovementioned Federal Ministry of the Interior report comes to the conclusion that the
actual employment relationship constitutes the basis on which a migrant worker can claim
due wage payments (BMI, 2007, p. 25). The problem is, that illegally resident migrants risk
the disclosure of their status and are thus threatened with expulsion, as judges are explicitly

\(^{13}\) As was shown above, this can be the case for regular labour migrants as well.
bound to transfer the relevant information to the authority for foreigners, since they will have received the information in the execution of their duties (BMI, 2007, p. 30). Therefore charitable organizations maintain their critique that it is not acceptable to have spaces where affected persons are de facto hindered to use the means of mediation and enforcement of their rights (Caritas, 2007).

**Regularizations**

Regularizations, as conducted in several southern EU Member States, have not, and in all likelihood, will not be implemented in Germany. It is normally argued that illegal residence and employment should not be rewarded in the medium-term. In addition, these types of measures would undermine the controlling effect of migration policy and put those immigrants who overcame the hurdles necessary in order to legally take up employment in Germany at disadvantage.

It is fundamentally debatable as to whether regularization campaigns are effective. Admittedly, there is general agreement that such campaigns improve the social situation of illegally resident people. Apart from the humanitarian considerations, they can also constitute a pragmatic approach to reducing illegal employment on the labour market (Sachverständigenrat, 2004, p. 358 et seq.). That regularizations are an appropriate means of reducing illegal immigration and thus, in the long run, the illegal employment of immigrants, is very much doubted in Germany; consideration tends to be given to the experiences of other countries, where the expectation of future regularization campaigns seems to have acted as a strong pull factor for further illegal immigration (Schönwälder et al., 2004, p. 75).

A second problem is that regularized migrants could lose the jobs they had when they were still undocumented, because they will lose their competitive advantage and employers would turn to ‘new’, undocumented, and more ‘competitive’ migrant workers.

Those new undocumented migrants then face the same hindrances and exploitation as the former, which exerts pressure for new regularization campaigns, creating a vicious circle. In this context, Kuptsch (2004, p. 15) points out that “[p]rotection of irregular immigrants therefore goes hand in hand with combating irregular migration.”, while Ethier (1986, p. 62) argued that illegal entry attempts would decrease “[...] once the employment prospects of immigrants are reduced”.14

Yet, for humanitarian reasons, discretionary action has been taken in Germany in the form of Arrangements for the Right to Stay aiming at migrants who were tolerated, i.e. who were obliged to leave the country but whose expulsion was not executable. Undocumented migrants were exempt from these arrangements. The most recent arrangement of this kind, which was passed by the Standing Conference of the Ministers and Senators of the Interior of the Federal States on 17 November 2006 (IMK, 2006), offered these tolerated foreign nationals, who are “economically and socially integrated” in Germany, the possibility of obtaining a residence permit if several requirements were met.15 In the same line the Act to Implement EU Directives, which came into force on 28 August 2007 and which implemented

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14 Also see Vogel and Cyrus (2008, p. 5).
15 Criteria were the length of the stay, the employment status, the reliance on social benefits, the command of the German language and the crime record of the potential beneficiary.
11 EU-Directives concerning residence and asylum, enacted a *Legal Treatment of Older Cases* (cf. § 104 a and b of the Residence Act), which resembles the IMK decision in its conditions.

**CONCLUSION**

With the continuing globalization, the fall of the Iron Curtain and the recent EU-enlargements, Germany was confronted with a number of challenges including the irregular immigration and illegal employment of immigrants. To combat the irregular employment of immigrants, both undocumented and legally staying, Germany has set up a wide range of sophisticated measures to counteract the problem. These measures are a combination of fostering legal employment via monetary incentives and deterring the irregular one by a wide range of controls and punishments. The focus of the punishing actions lies on employers of illegally employed immigrants. Yet, some measures taken directly or indirectly adversely affect the immigrants also as enforcement measures can clash with the possibilities of the migrants to claim social rights and legal protection against exploitation. This is not to understand that there is any right on illegal stay or employment – not even representatives of advocacy groups or charitable organizations do maintain such a position. But these organizations demand that the legal regulations which lead to the fear of being apprehended and expelled (especially the obligation to forward information to the authority for foreigners) do not lead to a de facto hindrance of the use of legal protection and social rights to which illegally employed and illegally staying migrants are entitled. The discussion on changing the current regulations is an ongoing one in Germany although the government does not seem to be inclined to move in this regard.

The incidence of illegal employment of immigrants would decrease significantly if the controls which focus on the employers actually lead to an effective enforcement of the sanctions imposed and call employers to account. Moreover, if employers are effectively held responsible for the payment of all duly acquired entitlements of the irregularly employed migrants (even after they have been expelled) it would be even less attractive for employers to resort to illegal employment. As long as the means of the foreigners law are faster and easier to enforce on the illegally employed immigrants than imposing and enforcing legal sanctions on the employers, the claiming of the social rights for irregularly employed – and all irregularly staying – immigrants will remain difficult.

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Christoph Junkert and Axel Kreienbrink


Chapter 5

UNDOCUMENTED FOREIGN WORKERS DETAINED IN THE ISRAELI PRISON SYSTEM:
“The Bastard Child” of the Prison System

Efrat Shoham

ABSTRACT

Incarceration of foreign workers in the Israeli prison system—for assorted periods of time—along side the criminal population, convicted by the penal system, fervently violates the detained foreign workers’ basic human rights. This chapter examine some of the central problems existing in the imprisonment process of undocumented foreign workers in Israel. The employment reality created by the “chaining arrangement” exists within the immigration policy facilitating victimization of and harm to the foreign workers. The deportation of foreign workers and their imprisonment became a central, standard tool in the immigration policy active in Israel. Observations in the illegal alien prison blocks, over six months during 2006, show that these holding areas have great difficulty in providing basic needs for such a heterogeneous population. The imprisonment of hundreds and thousands of undocumented foreign workers in the Israeli detention facilities was made according to a “nil policy,” a policy that does not call for change, but rather attempts to handle problems using the means available at that time, without further budgetary expenses or any additional preparation. The political issue that deals with the division of society’s resources receives an outspoken expression in this matter, particularly dramatic in the area of health services. The question if to act in accordance with humanitarian reasoning and allow the detainees to receive medical treatment in Israel is a question of heavy principle that encompasses all areas of the state’s responsibility in relationship to illegal undocumented aliens detained in prison.

INTRODUCTION

Within the last few years, the subject of foreign workers in Israel has become a hot topic of the media, but has yet to become a prominent focus for academic research. Most information published by the media, discusses the phenomena of illegal entry to Israel,
exploitation of foreign workers by Israeli employers, the abuse of female foreign workers in prostitution commerce and trafficking in women, and criminality of foreign workers (Oshishkovitz, 2001). The few academic studies on the subject, mainly focus on the government’s policies vis-á-vis foreign workers (Borvorski & Yanai, 1997; Condor, 1997), lifestyles of foreign workers (kemp & Reichman, 2003; Kemp, Reichman, Resnik, & Gesser, 2000; Roznick, 1999), legal and economic aspects of government policies with regard to foreign workers (Fisher, 1999; Klienman, 1996; Mishal, 1998); and the relation of Israeli society to foreign workers (Borvorski & Yanai, 1997; Fisher, 1999; Klienman 1996).

"The Immigration Policy" existing in Israel, binds the foreign worker to one, specific employer through a permit and threatens deportation of all foreign workers found in Israel lacking the same. This policy forced the Israeli prison system to be the “end user” of the deportation policy adopted by the Government of Israel.

Incarceration of foreign workers in the Israeli prison system—for assorted periods of time—along side the criminal population, convicted by the penal system, fervently violates the detained foreign workers’ basic human rights. This chapter examine some of the central problems existing in the imprisonment process of undocumented foreign workers in Israel.

Observations in the illegal alien prison block over six months during 2006 show that these holding areas have great difficulty in providing basic needs for such a heterogeneous population. Some of the main difficulties are associated with the inability of the prison staff to understand and communicate with the population of illegal aliens. The presence of tens or even hundred of detainees unable to communicate affects a wide range of issues, beginning with the inability to participate in assorted prison tribunals and ending with the absence of medical facilities or other services that the general prison population is entitled to in the prison system.

To the author’s knowledge, as to date, there has been no academic study that examines the problem of the undocumented foreign worker incarcerated and detained in the Israeli Prison System.

FOREIGN WORKERS IN ISRAEL IN THE AFTERMATH OF THE INTIFADA

The immigration policy is composed of both the declared public policy as well as the effective policy (Hammer, 1986) and relates to the arrival, residence, and deportation of citizens from foreign countries. Thus, the immigration policy answers the question; to what degree is society willing to share her resources with the foreign worker. Notwithstanding this political, central, and contiguous question regarding society’s division of resources, Freeman (1995) claims that the general public has almost no influence on this policy; rather the creation and implementation of the immigration policy are because of the endeavors and the influence of political interest groups on the government. The seeming resistance to employ foreign workers in Western countries—beginning in the mid 1970s and continuing until the

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beginning of the 21st century—resulted from a long-lasting economic crisis. Those states claimed that the cutback in the number of foreign workers created an opening for the employment of many of the states’ citizens. Accordingly, as foreign workers consume social services and are located in the lower socio-economic layers of the states, this amplifies and strains the states’ welfare departments (Hammer, 1985). Notwithstanding the studies in those states that showed the effect of the foreign worker on the salary level of local workers to be negligible—lacking a distinct correlation between the use of foreign workers and the percentage of unemployment in the nation (Stalker, 2000).

From 1980 to the 21st Century, foreign workers were engaged in Israel; however, the allocation of visas and work permits were kept to a minimum. Workers specializing in agriculture were allowed in Israel with a permit provided by the Ministry of Interior (Bar-Tzuri, 2003). At the end of the 1980s, those work permits were expanded to include additional industries, particularly the nursing industry as was necessitated by the aging of the Israeli population and the need to supply appropriate care for this growing population. Due to the heightening of terrorist activities in the First Intifada (1993) and the closing of the occupied territories—preventing Palestinian Arab workers from working in Israel—the Government of Israel allotted work permits to foreign workers in the agricultural and building industries, two industries particularly hurt when the Palestinian Arabs were prevented from working in Israel. This decision was the first of many decisions in this regard and signaled a period of massive influx of foreign workers into Israel (Oshishkovitz, 2004).

Alongside the admission of workers with permits, grew a parallel track of workers without permits and whose population grew substantially. While in the year 1995, the number of workers without permits grew to 46,000, in 2003 this number jumped significantly and increased to 175,000. In July 2002, the Government of Israel decided to create an authority accountable for the related powers and responsibilities associated with foreign workers, i.e., handling of naturalization requests and implementation, and enforcement of foreign workers entering and exiting Israel’s borders (Zalphon, 2002).

Toward the end of 2002, the Israeli Government decided (Israel government decision 2469 from August 18, 2002) on the expulsion of 50,000 undocumented foreign workers by the end of the year 2003. Additionally it further decided to create a temporary administration that would decrease the number of the foreign workers living in Israel. In the course of the year 2004, the Immigration Administration began to act as an operational arm of the Israeli Police (Fibish, 2005).

The mandate of the Immigration Administration includes locating foreign workers and when necessary expelling them from the country. Under an arrangement of the Ministry of Internal Security, foreign workers without the necessary documentation and with a valid writ of expulsion are detained in IPS detention facilities. These foreign workers are effectively defined as arrested and held as detainees of the IPS until their expulsion from Israel.

“The Chaining Regime”

A working permit allotted to the employer and specifying the name of the foreign worker is the legal basis for the employment of a foreign worker. It is important to note that the permit is giving to the employer and not the employee (i.e., the foreign worker). The working permit is in turn, the legal basis for a residential permit as well. These permits are dependant
one on another; if one is cancelled or becomes invalid, the other permit is automatically invalidated and the foreign worker becomes an undocumented foreign worker. The allotment of the permit to the employer creates a relationship in which the foreign worker is powerless and completely dependent on the employer (Nathan, 2006; Turain-Mizrachi, 2004). The employer decides the number of work hours, the remuneration, employment and living conditions of the foreign worker, as well if the foreign worker will actually receive payment.

This “chaining arrangement” shifts the responsibility from the State to the employer. Moreover, the foreign worker is well aware that if he leaves the employer, even if justified, he becomes an undocumented foreign worker and likely faces deportation. Data from the Foreign Worker Hotline (May, 2006) shows that the “chaining arrangement” brings about the victimization of the foreign worker and violates his basic human rights. The payment out of fees and various taxes from the foreign worker's salaries, some even illegal in nature, the payment of only part of the already minimum salary, below standard living conditions, the holding of passports, the deportation of sick or wounded workers and workers who stand up for their rights against their employers, are only a part of the damage caused by the “chaining arrangement.”

The High Court of Justice (HCJ), (Hotline for Workers v. The Government of Israel) invalidated the “chaining arrangement” and ordered the government to create an arrangement less harmful and less intrusive to the foreign worker (see HCJ 4542/02 given 2006). The Supreme Court judges ordered the State to create a new plan for employing foreign workers, which takes into account the need to protect foreign workers’ rights and not only measures the implementation and management of their work. Even though the HCJ found the plaintiff’s claims correct—foreign workers who wish to recognize their “freedom” and be released from their contract with their employer become criminals and face arrest and deportation—the reality associated with foreign workers’ daily lives has yet to change.

THE CUSTODY TRIBUNAL FOR ILLEGAL ALIENS

The population of detainees in the illegal alien (non-Palestinian) blocks (some 1210 beds) of the prisons is divided into three groups which each may be sub-divided even further:

1) Foreign workers who came to Israel with valid work permits which were not renewed and since expired either because they were not renewed as the law requires; or because they did not meet the requirements set by the Immigration Administration.

2) Foreign workers that arrived in Israel with tourist visas and were employed against the conditions of their visa or stayed in Israel longer than the time permitted according to their tourist visa.

3) Border jumpers who arrived illegally and passed over the international borders,—usually from Jordan or Egypt (Bar-Tzuri, 2005).

The differences between the above groups is not just semantic but normative and influences the amount of time an individual stays in prison, the treatment received, the potential for deportation, and the nature of the problems he must overcome.
It is important to remember that detainees in the various prison blocks for illegal aliens have not been convicted in a court and that their matter was not deliberated before a court, but rather in front of the Custody Tribunal of the Ministry of Interior. Thus the amount of time they are held in custody is not a function of a judicial decision, but rather in many cases dependent on external factors such as the employer, the consulate and embassy, representatives of the U.N., etc. Additionally, the amount of time is also dependent on the cooperation of the detainees themselves in matters such as the completion of an expulsion form.

Since the foreign workers are detainees and not prisoners, they are not entitled to the same privileges as that of prisoners. Detainees, as opposed to other prisoners in the prison system, are not entitled to receive free weekends regardless of the amount of time they spend in prison or their behavior during their detention. They are not entitled to obtain an education, work in the prison or outside of it, and are not entitled for early parole after a third of their sentencing.

Because this is a population with a high risk of escape, detainees are kept in closed blocks, spend most of the day behind bars. They are allowed outside only one hour daily in the prison courtyard. As all of the detainees are from different origins, a majority does not even speak Hebrew or even English. Most of the detainees lack means and are alone without family or friends in Israel. All of the care and treatment in their private matters and problems fall on the prison staff and on the representatives of the Immigration Administration (for a complete description of the detainee sections in the prison system see Bar Tzuri, 2005).

Many of the foreign workers detained in the illegal alien sections of the Ma’asiyahu Prison have outstanding expulsion warrants against them and all are detainees and not prisoners. None has been tried before a court or been convicted of a criminal offense. Some of these detainees have been in jail for more than two years and still have no date for their release. With the large waves of mass arrests of undocumented foreign workers, which at its peak were hundreds daily, there were no detention centers available to hold all the detained undocumented foreign workers. Thus, it was decided to transform sections in the Ma’asiyahu Prison to absorb these detainees, and as such, most of these illegal aliens are the basis for our research.

Being arrested and imprisoned as opposed to being imprisoned after being found guilty are very different one from the other. A person who is arrested without being charged faces criminal proceedings which can continue for months in which the detaining is held under harsh physical conditions without rights granted for leave, visitation, or rehabilitation.

The harmful nature of arrest necessitates the recognition of clear basic rights and definable goals that negate, as much as possible the harm caused by arrest and allows the existence of a fair, appropriate procedure in the arrestee's eyes. The right to a fair procedure includes, among others, the detainees’ right to a viable defense with legal representation, the right not to incriminate oneself, and the right to appropriate arrest and holding conditions. The “New Arrest Law” determines the general principal: “a detainee shall be held in conditions that will not harm either his health or his self respect and liberty.” The law additionally states that the detainee must receive: appropriate sanitary conditions that allow the protection of the

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2 The Ma’asiyahu Prison, A medium security Prison of 1,400 beds of which, 500 are undocumented foreign workers. The prison is located in the geographic center of Israel. Almost half of the detentions places for illegal aliens are in this prison. See the IPS website http://www.ips.gov.il/Shabas
detainee’s personal hygiene, the necessary medical treatment to protect his health, a bed, mattress, blankets, and food—in the quantity and quality to ensure his personal health—(See Article 9, Law Criminal Procedure (Enforcement Powers – Detention) Law, 1996).

Sykes and Messinger (1970) in their article on “arrest pains” state that the detention and custody in prison is not just one punishment, i.e., imprisonment alone, but rather, a series of various punishments. Imprisonment denies the detainee's personal freedom of man, but also, deprives the detainee of products and services, prevents heterosexual relationships, and imparts a lack of autonomy and security. According to Sykes and Messinger, the prisoner suffers doubly from the loss of freedom; first he must exist in a physically limited area and with his movement limited. Second, he is removed from his family and his emotional relationships, forced to leave his previous living style and social life, forced to cease his daily activities. According to Goffman (1973), imprisonment can be compared to the “civil death” of a person who was removed from his social, political, and economic rights. He is not allowed to choose which product to consume or which service to use, the types and amounts of products are limited and deprivation controls the basic services and products. In many instances, imprisonment enforces poverty on the prisoners. Meetings with the opposite sex while in prison are limited and the prisoner is forced to control his own sexual urges, a matter that causes many psychological and physiological problems (Shoham and Zeichner, 2008).

In addition to the deficiencies mentioned above, the detention of illegal aliens brings additional problems associated with the specific characteristics of this population. The next section describes the central problems the illegal aliens within the prison system must contend.

**METHOD**

The descriptive part of the associated problems that accompany the imprisonment process of the undocumented foreign worker is based on observations in the illegal alien block of the Ma’asiyahu Prison.

Observations were conducted over an uninterrupted six month period, beginning in June 2006 by a Criminology Master Degree student who volunteered at the Ma’asiyahu Prison during the course of her Master Degree studies at the Institute of Criminology.

The observations occurred once a week, beginning at 9:00 a.m. and ending at 3:00 p.m. and were conducted as part of an existing project in which students accompanied a prison block commander throughout the day, performing specific tasks at the request of the commander. While in the section, the observer managed a field diary which describes her assessments and records her formal conversations conducted with the staff of the illegal alien block in the prison. Regardless of the fact that the observations occurred only in the Ma’asiyahu Prison, it is important to note that most of the undocumented illegal aliens are located in this prison. Moreover, our observations occurred in the first part of 2006; it is likely that since then there have been various changes in the situation.

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3 Estimated numbers of 35,000 Illegal workers were detained inside Israeli prisons between the years of 2002-2004. Around 80 percent of them were deported. There is no valid estimation regarding time of detention—between 14 days to many months. (Bar Tzuri, 200).
Data was collected according to the principles of qualitative research (see Creswell, 1998; Shakedi, 2004 for a description of the principles of qualitative research). The research was conducted in three parts: First, the observer become familiar with the daily activities of the detainees through visual and audible observations and wrote in her field diary comments and illuminations regarding different activities occurring that same day. Second, different occurrences were identified from events described in the field diary. At the end of each month, the various issues noted in the field diary were collected for discussion and clarification in open discussions with the illegal alien block personnel. The discussions included issues raised by the detainees and incidents that were observed by the student herself during her observations while accompanying the prison block commander. These issues will be discussed in greater length later in the chapter.

Third, all of the observations and the records of the open discussions with the block personnel were collected and organized into eight general categories, which describes the explicit hardships of the foreign workers held in prison. The eight categories are: communication complications, extreme cultural differences, religious disparities, political rivalries originating from the detainee’s native country, lack of medical treatment, varying culinary habits, lack of funds and abundance of external organizations involved with the treatment of this matter.

It is important to note that during the observations, open discussions were held with the block personnel and with a small amount of the detained illegal aliens, particularly those speaking English. Due to ethic limitations, methodology considerations, and in order not to harm those detainees who were not aware their statements were to be used for research purposes and have no knowledge when they will be released, it is decided not to quote from these detainees' statements.

a. The Relationship between Language and Communication: “Voiceless Detainees”

According to statistics of the Israeli Central Bureau of Statistics, in the year 2005, 98,000 foreign workers with work permits entered Israel from 100 different countries. However, most of the workers arrived from 12 specific countries: the former Soviet Union countries, Jordan, Romania, Brazil, Poland, Columbia, the former Czechoslovakia, the Philippines, Mexico, Egypt, Turkey, and Hungary; the rest arrived from a large number of different countries. Within the framework of these 12 countries, the main countries such as the former Soviet Union and former Czechoslovakia historically contain a number of smaller countries in their borders whose citizens speak various languages and use different dialects and idioms. Additionally various dialects are found among detainees from Eastern Asian countries.

This heterogeneous population speaks a fodder of languages, idioms, and dialects, and makes reciprocal, personal, and socials relationships between detainees extremely difficult. The inability to communicate characterizes, not just the discussions with the authorities in prison, but also the inability to converse with fellow detainees. The amount of illegal aliens and the constant situation in which the population is moved from place to place within the prison, forces prison personnel to enclose within one area detainees from different countries. The inability to communicate and the lack of one common language between groups locked together for all hours of the day (not withstanding their one hour courtyard break) brings
about great friction which borders on violence and whose source is sometimes due to a simple misunderstanding.

Some of the prison blocks hold between six to eight detainees in a cell, who are allowed free movement within the halls during the majority of the day. In other sections live 10-12 detainees in a cell. The fact that the detainees are closed in their rooms for long hours each day, all day, inflates the antagonism and conflicts between the detainees. The inclusion of a television in the cells brought about another avenue for potential conflict between the detainees speaking different languages.

Regardless of the communication conflicts between members of the block, the lack of a common language also brings about a management nightmare. Sign language becomes the number one method for communication and giving and receiving directions from the block personnel. Additionally “translation services” of the “established” detainees who learned Hebrew assist the personnel by translating from Hebrew to different languages and vice versa for daily management purposes and allows minimal communication between the personnel and the detainees. Additionally the block personnel have learned a few words in each language to assist with communication.

When a detainee is in need of medical services, communication problems are felt greatly—both by the patient and by the medical staff. It is important to note, that most of the detainees left their native country without any documentation and specifically without any medical documentation; moreover, some of the detainees themselves have a sundry of medical issues that are unknown. A similar problem is noticeable in the social services field; detainees experience an inability to either receive treatment or discuss their problems at hand, even with the assistance of a peer translator. These personal problems—whether they existed prior to their emigration and were the reason for emigration in the first place or came about following the emigration and specifically their detainment—become without a receptive, caring assistance of a social worker, greatly exacerbated. Some detainees even experience such trauma during their detainment that they become in need of medical care.

Language problems are also revealed during the hearings before the custodial tribunals. Some of these hearings lacked a translator and the judge herself attempted to be understood or to receive information from the illegal alien using the few words she knew in Chinese, French, Thai, Russian, etc. To an ordinary bystander this situation seems impossible and unimaginable. On the one hand, the detainee’s minimal right to present his case before the tribunal is not upheld and on the other hand, the judge’s mandate to give a correct, relevant decision without having the appropriate tools for doing so is dashed. When comparing between the procedures in the tribunal and between the intense protections allotted to a criminal in the criminal courts in Israel, it becomes apparent that it is not just about procedures and semantics, but rather about normative foundations in a just legal system.

At the beginning of 2006, a translation service was made available through the Ministry of Interior. According to a judge in one of the open discussions the student observer was present at: “suddenly it is obvious that they [the detainees] have something to say.” A very partial comparison between the events observed in the custodial tribunal held in the year 2006 and the tribunal protocols that were examined by Bar Tzuri in 2003 show emphatically the importance of translation and the difference in the amount of information that was kept back from the judges when the two sides are unable to communicate (for a description of the 2003 protocols see Bar Tzuri, 2003). As is expected, the later trials were more explicit with relevant information in all matters associated with: the foreign worker’s arrival in Israel: the
offensive behavior of the employer, the fraudulent offenses committed against them by various individuals who took advantage of their situation, humanitarian reasons that should be balanced in determining whether the worker should be deported, and many other important issues.

b. Varying Cultures of the Detainees

Data from various formal and informal documents of the IPS as well as the Immigration Police (Israeli Police, 2002, 2004; IPS 2002, 2004) point to a wide range of nationalities of illegal aliens within the Israeli prison at one given moment, as many as twenty different nationalities at one time (Bar Tzuri, 2003; Worker’s Hotline, 2005 Zalphon, 2002). The illegal alien nationalities include citizens of: small villages from Asia, Africa, Europe, and America arriving uneducated from distant villages that others never left as well as those from large cities who had received an education. Some are illiterate but come from rich tribal cultures and others from Western cultures that view tribal cultures as primitive and irrelevant.

The placing of the detainees under one roof—in stressful conditions and removed from their natural environment—creates an infinite number of friction points that bring about expulsions of violence. The inclusion of different cultures in one prison block exacerbates various forms and expressions of prejudice between and amongst detainees. Some of this prejudice is based on the skin color of the detainee—particularly toward dark skin and yellow skin detainees—or toward Muslims, toward desert dwellers, etc. The prison authorities are faced with a difficult dilemma: On the one hand, they wish to separate detainees of the same ethnic group, in order to spread about their own power base and enforce control over the group; on the other hand, if the groups are separated according to their homogeneous features, the environment will be calmer with less violent events. Thus, a large amount of management discussions were held on this issue, i.e., the need to create a balance between these two interests and to formulate the correct mixture in each cell in order to eliminate friction between detainees.

c. Religious Differences among Detainees

The illegal alien block is a microcosm of various religious ceremonies; some may even seem from the Western religious perspective to border on magic, mixed in with yelling, loud readings, and even the use of force such as in simulated whipping. Thus, it is necessary to promote tolerance toward and adapt to the religious ceremonies, while, ensuring that these ceremonies do not exceed the religious context and are not used as a cover for violent acts.

While the prison personnel learns about, adapts to, and respects the various religious ceremonies, the same cannot be claimed for all of the other detainees who are circumspect of the activities, disrespectful toward and guffaw over them. This presents an additional reason for friction among the detainees. These instances are heightened by the inclusion in the cell of individuals from various nationalities during ceremonies that may be long and entailed. While the prison authorities are obligated to provide religious services for those within the prison confines, taking into account the various compositions of religions, it is an almost impossible task.
d. Political Rivalry from the Detainee’s Country of Origin

A large proportion of the detainees, i.e., detainees whose origins are in the African nations, arrived from countries involved with national struggles which take place over long periods of time between tribes and other oppositional ethnic groups. Some detainees were even victims of “ethnic cleansing” in their native country and witnessed massive killings by controlling tribes (such is the case in the Sudan, Ethiopia, Guinea, and other countries). Some detainees escaped from their native country after losing their families and becoming refugees. Detention, not once, has created a meeting between members of two rival opposing groups. For each detainee the action of the other is unforgettable and unforgivable, but within the prison block they are now asked to reconcile and live in peace. This is obviously an impossible task and a potentially life threatening problem which necessitates the separation of the detainees in different cells even different blocks. This separation is conducted without the use of the usual separation policies in place in the IPS or using the other prisons within the IPS.

e. Medical Treatment of the Prisoners

If there is a place in the prison the detainee's “bastard child” syndrome is felt it is in the infirmary. Communication problems with the prison personnel, the fact that the detainees are foreigners, have a temporary status, no political backing, and are illegal in the country aid in creating a low, humbling status in the infirmary. Communication problems and lack of documentation inflate the difficulties detainees face in receiving medical treatment. The commander of the detainee block and the detainees themselves have reported repeated requests for medical treatment that have either been ignored or denied by the medical staff. In certain instances, the block commander himself accompanied a detainee to the infirmary in order to ensure that the detainee was examined and received proper medical treatment. The importance of providing local medical care inside the prison as well as health services outside the prison in situations deeming additional medical care is one of the conspicuous weak points in the care of the illegal alien detainees.

Article 3 of the Patient Rights Law- 1996, determines the right to medical treatment:

(a) “(a) Every person in need of medical care is entitled to receive it in accordance with all laws and regulations and the conditions and arrangements available at any given time in the Israeli health care system.

(b) In a medical emergency, a person is entitled to receive unconditional emergency medical care.”

Accordingly, illegal aliens in need of emergency medical treatment, on the one hand, are entitled to receive it regardless if they possess medical insurance or financial compensation for the said treatment. On the other hand, if they are not in need of emergency medical treatment, they are entitled to the same treatment and according to the same conditions available in the Israeli health system; i.e., after ensuring financial compensation for the treatment. It is not redundant to state that most, if not all of the detainees in the prison system, cannot pay for their medical treatment, particularly treatment for chronic or fatal diseases.
Thus, it falls on the shoulders of the medical authorities in the IPS to determine if the detainee's medical status is an emergency vis-à-vis the Patient Rights Law and as such obligates the provision of emergency medical treatment, even without financial compensation by the detainee.4

When a decision is made to provide life-saving medical treatment, the issue becomes a logistical nightmare for the IPS. Each such treatment necessitates the accompaniment by prison personnel to the public medical facility and the guarding of the detainee during transportation and treatment. The issue of detainees falling ill is certainly not exceptional; however, it becomes much more difficult to care for due to the same reasons which brought the detainee to prison. The detainee population is in Israel without permits or permissions, does not receive medical treatment—not in Israel and not in their country of origin—and does not have insurance to cover their care regardless of their medical need (Odot, 2002).

It is notable that some of the detainees arrived in Israel knowing that they were ill, but were unable to receive treatment in their native country. In some cases their arrival in Israel was in order to receive life-saving medical treatment that they were prevented from receiving in their country of origin. In other cases, they discovered their disease in Israel, and in the rest of the cases they contracted it in Israel.

It is not unnecessary to note that some detainees do not cooperate with the completion of deportation documents, even when there is no diplomatic reason for it. This is in order to delay deportation and as such allow their illness to deteriorate such that they receive the necessary medical treatment. In these circumstances the IPS does not allow medical treatment in Israel and thus pushes the detainee to return to his native country in order to receive medical treatment, preventing an additional expense of the detainee’s medical treatment to the Israeli taxpayer.

f. Differing Menus and Eating Habits with Origin in Customs and Religious Beliefs

The various nationalities of the detainees also find expression in their different culinary diets. While in most cases the food supplied by the IPS, except for detainees with medical reasons, is comprehensive and according to the needs of the general prison population, if the detainee is not used to the IPS diet this in itself causes an additional burden for the detainee. It is not expected that the prison service provide different food and menus according to dietary regimes and requirements, i.e., different food for the Chinese, Romanian, and the Sudanese detainees. The various religions of the detainees also necessitate different dietary regimes. Some diets do not permit eating meat during certain periods as is required in the religion followed by the Ethiopian detainee population; thus the vegetarian portion of the menu needs to be enriched. Other religions require fasts at specific hours of the day, an example of this can be found in Islam and the Ramadan holiday where the main meal is eaten after the sun sets. In IPS facilities, the main meal is served in the afternoon and this too causes scheduling problems.

4 From the year of 2007 every illegal aliens which asks to be released from detention is required by the authority to go through expensive medical examinations for infectious disease. Since most of the detainees cannot pay for the medical tests, the period of their detention is significantly increased.
The different food menus not once caused medical problems for the detainees, creating once again additional hardships. As opposed to other prison blocks in which the prisoners are allowed the use of the block’s kitchen for their personal use and are allowed to cook themselves additional foods to those found in the prison kitchen, in the block of illegal aliens there is no kitchen and the prisoners are not allowed any other foods besides those offered by the prison. While this issue might seem esoteric, when a detainee is in prison for months, even years, and the problem of the type of food available to them becomes a main issue and causes additional turmoil between the block personnel and the detainees.

**g. Lack of Available Funds**

As is obvious by now, many of the detainees arrive alone in the country, without families and friends and far removed from their family in their country of origin. Most, if not all, arrived in Israel due to economic hardships found in their native country and in an attempt to improve their and their families' economic standings. Previous to their arrest, many of the detainees sent money to their families abroad and left themselves with only the minimal funds needed. It is notable that the foreign workers have no savings and/or possessions that can be sold.

Thus—as opposed to the other prisoners in the prison who have financial backing due to savings, possessions, or family members who send money—the detainees have no source of income. Moreover, when illegal aliens are detained and found with large amounts of money or possessions, these funds are put aside to purchase a return airline ticket to their country of origin.

Their inability to pay legal fees prevents detainees from receiving representation before the custody tribunal, which is doubly detrimental since they cannot understand the proceedings or the language, do not know the relevant laws, and cannot participate in their defense. NGOs that administer aid to foreign workers (Hotline for Foreign Workers Hotline for Workers, etc.) obviously are involved in these processes as much as possible, but they cannot offer legal representation to all the workers and most of the detainees are left without. It has even been brought to our attention of instances illegal aliens used their last remaining funds to pay for legal representation, fully aware that it is impossible to successfully appeal deportation and thus legal representation did not contribute to the likelihood of the illegal alien staying in the country (for a description of unfair, oppressive acts against foreign workers see Turbain-Mizrachi, 2004).

The detainees’ lack of funds is particularly noticeable in the prison canteen in the purchase of cosmetic products, telephone calling cards, etc. and creates various statuses among detainees in the block particularly between those who are "stuck" in the block and cannot be returned to their native country or released in Israel and those who are in the prison only for short stays. It is important to note that many of the detainees arrive in the prison without any means except for the clothes on their back. Thus the IPS that must come up with solutions for all their problems, such as lack of clothing and basic existence items for those detainees who cannot pay for them themselves. Upon arrest, the Immigration Administration allows the detainees to go back to their dwellings, accompanied by an officer, to pick up their possessions, but in most instances the illegal aliens wish to protect their friends and not expose them to the Immigration Authority. Thus they are left with nothing.
One of the solutions found for this is by employing these detainees in work positions within the prison system. They are responsible for the cleaning, food distribution, and order in the block, and receive daily payment which allows for the financing of minimal basic needs.

**h. External Organizations Involved in the Care and Management of Detainees**

This category is different than those presented earlier and does not describe hardships faced by the detainee. Rather it describes the difficulties faced by the block personnel in coordinating between the external organizations responsible for aiding and assisting illegal aliens within the prison. Due to their foreign nationality and special status, a number of different international organizations are involved in the care and management of the detainees and their cases. In the view of the IPS, these are organizations “disrupt” everyday occurrences at the prison. The activities of the external organizations enforce, not once, the decision of the detainees not to return to their native country of origin because of the hope imbedded in them by these organizations—for instance, a group of Ethiopians wishing to receive political asylum in Canada.

The process of receiving political asylum is long and lasts over the course of at least one year, when during that time, the detainee is “stuck” in the prison system. Obviously, the longer the detainee stays in the prison a greater number of factors is influenced, including the number of places available in the prison and the number of problems and issues the IPS must handle which increase relative to the amount of time spent in prison. Management and care of potential refugees involves the U.N. organization for political refugees (LTNHCR) and representatives of the International Red Cross in Geneva, Switzerland, who visit the prison from time to time, interviewing the detainee, and completing forms requesting political asylum. Additionally U.N. representatives supply clothing, personal supplies, books, and games to the detainees in order to improve their living conditions and attempt to provide detainees with materials to fill their days with content, until a solution is found for their problems. At the same time the involvement of the consulate, embassies, and diplomatic representatives of those detainees whose native country has a political relationship with Israel, is great particularly in those situations the claimed care of the detainee is unacceptable.

Moreover those detainees who were taken advantage of by their employers and did not receive adequate wages for their employment are under the care of the Ministry of Industry, Trade, and Labor whose job is to record the account of the detainee, to receive figures from the employer, and to act in the name of the detainee to sue the employer for the detainees wages. Parallel to this, volunteer organizations act in the best interest of detainees, organizations such as the Workers’ Hotline, Hotline for Foreign Workers, and other such organizations provide legal representation for the detainees, treat humanitarian issues, and care for the social good of the detainees—such as the provision of necessary products and clothing. The various organizations that often visit the prison and provide aid are perceived by the prison staff as a disruption to every day activities at the prison.
DISCUSSION

The attempt of the Government of Israel in the 1990s and in the beginning of the 21st Century, to create a “moral panic” around foreign workers in Israel—blaming them as a sources of unemployment, crime, and a danger to the Jewish composition of the country—allowed and strengthened the policy of deportation of undocumented foreign workers (for a discussion of the “scare tactics” of the Ministry of Interior see Oshishkovitz, 2001).

The removal of undocumented foreign workers behind prison walls and their detention until deportation, at times for long extended periods of time, did not successfully "interest" Israeli society or the various authorities involved in this matter. The representation of foreign workers as dangerous, debauched, and unlawful who endanger Israel's economics and harm the weakest chain on the socio-economic ladder, even when this picture is inaccurate, allowed the existence of the policy of detention and the removal of foreign workers to the prison system without any problem, except of course the problems it caused to the prison system itself.

The employment reality created by the “chaining arrangement” exists within the immigration policy facilitating victimization of and harm to the foreign workers. The majority of these workers, as we have seen, came to Israel with the appropriate permits and visas, found themselves arrested and in prison for long spans of time once they left their employer (for a description of the time spans spent in prison see IPS Data, Yearly Report 2006). The deportation of foreign workers and their imprisonment became a central, standard tool in the immigration policy active in Israel. The allotment of funds for enforcement of the policy, the claims and comments of the Labor and Welfare ministers regarding the existing dangers to the Israeli society in the form of foreign worker, the threatening television spots, and the Immigration Police who act without interruption effecting massive arrests morning and night, enable the effective presentation of the foreign workers as dangerous and threatening to the Israeli society.

The presentation of the foreign workers as volatile catalysts threatening to explode and cause economic, social, and national havoc brought about, also in Israel, increased enforcement and the deportation of and move to, on the one side, increase of foreign workers without documentation in prison and on the other side to the strengthening of public indifference to these workers. (For a discussion on the occurrences in Europe see Nathan, 2006; Stalker, 2000).

The imprisonment of hundreds and thousands of undocumented foreign workers in the IPS detention facilities obligates a re-structuring of the system by the Ministry of Internal Security and the IPS. Nevertheless, according to the results of observations completed in the illegal alien block in 2006 and from reading the protocols of the Committee for the Examination of the Problems of Foreign Workers, the government's decision to hold them in custody was made according to a “nil policy,” a policy that does not call for change, but rather attempts to handle a problem or issue using the means available at that time, without further budgetary expenses, without any additional preparation, and without any training to find pinpoint solutions for a populations who by and large is not a criminal population (Cox, Paulus & McCain, 1984; Gertz & Nardulli, 1985; Shoham & Shavit, 1990).

It is important to note that this qualitative, descriptive research is mainly based on observations and less on interviews with detainees, due to ethnic and communication
problems, and can theoretically bring about an inadequate, subjective description of the breadth, intensity, and type of problems experienced by the detainees. With that said, the ability to converse with the prison block personnel—throughout the entire period of the research—successfully increased the identification of the main issues faced by the detainees; this is true even when the magnitude was not the same as that experienced by the detainees.

The political issue that deals with the division of society’s resources (Freemen, 1995) receives an outspoken expression in this matter, particularly dramatic in the area of health services. This issue airs and highlights the debate between the obligation to enforce the law in an exacting, rigid manner and the preservation of existing resources for which they were meant to be used. It is important to note the limited resources existing in these institutes and organizations to begin with and the identification of prison personnel with the detainees’ humanitarian issues and concerns, who face on a daily basis, the necessity to supply the basic needs of the illegal alien detainees.

The question if to act in accordance with humanitarian reasoning and allow the detainees to receive medical treatment in Israel is a question of heavy principle that encompasses all areas of the state’s responsibility in relationship to illegal undocumented aliens detained in prison. This issue is not very different, normatively, from the other issues raised in this chapter, (particularly the treatment of kidney patients, treatment of cancer patients, treatment of heart patients, etc.) which also fall on the shoulders of state's public treasury—and involves the philosophical debate: can the state supply appropriate medical care to all of its citizens and is there a moral justification to obligate the state to carry the costs of medical treatment of detained illegal aliens. This dilemma is further heightened due to the fact that in some of the cases, the deportation to their native country may mean a death sentence, in terms of their medical care, without the means and knowledge to care for their illness.

The imprisonment of undocumented aliens in existing holding facilities, created to imprison criminals, raises the necessity, as discussed above, of variation and creativity on the part of field personnel in adapting existing resources and tools to meet the new and different problems and challenges of the population now housed in these facilities. The exigency to look for unique ways, without new facilities raise before the block prison personnel a series of moral and organizational dilemmas that they are not prepared to answer.

This “nil policy” which is based on the assumption that what was, will be, brought about that the majority of the issues dealt with daily by the block personnel, and who do not receive, according to their perception, the assistance and the aid of the upper echelon needed to solve the special issues raised by the foreign workers imprisoned in the IPS. These special issues raised in this chapter, describe that in almost each and every circumstance, these detainees are treated as the “bastard child” of the IPS who is responsible for their treatment and special care. But because of the instructions of the “nil policy” in order for anything to change, nothing short of a “catastrophe” is needed to wake up the public lethargy and become aware of the issues of the illegal aliens in Israel.

It seems that the issue of the IPS's “bastard child” is not a front page issue in Israel and does not receive any expression in the central public dialogue and as such does not successfully awaken a public, political, or academic debate. The formal organizations, already accountable for other, non-related problems and issues, are not receptive to the addition of detained illegal alien to its list of responsibilities. Thus block commanders and prison personnel are left alone to face critical humanitarian issues and work together daily to create creative solutions, when possible, to address these problems.
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SECTION 3.
CRIMINOLOGY AND VICTIMOLOGY ASPECTS:
TRAFFICKING AND VICTIMIZATION
ENSLAVEMENT AND HUMAN TRAFFICKING:
THE SUPPLE SWIMMERS OF FISHING AT YEJI,
GHANA

C. Nana Derby

ABSTRACT

This chapter presents the findings from qualitative research on child trafficking in Ghana, a West African nation with a population of about 23 million. It assesses the etiology of asymmetric power relations existing between child victims of trafficking, and their perpetrators. Data were obtained from interviews with child survivors, their parents and representatives from governmental and non-governmental organizations working with child survivors of trafficking. The victims were mostly underage, and some of them were recruited at the young age of four. They worked long hours, had only one meal a day, and suffered injuries some of which had been fatal. This practice is believed to have emerged from the abuse of a traditional fosterage system in which younger family members migrated to urban centers to live with and help older relatives with domestic chores and in return, went to school or received apprentice training. The exact number of trafficked victims is not known, but in 2002, the Ghana Office of International Organization for Migration (IOM) registered 814 child workers who had been trafficked. The three interrelated theories of agency, slavery and alienation informed the etiological component of this assessment. The resultant framework conceptualizes contemporary slaves as persons who, through conditions beyond their control, work under exploitive and dehumanizing conditions that could be enslaving, and which may alienate them from their freedoms and labor, objectify and commodify their bodies, turning them into saleable products the proceeds from which they may not be able to access or benefit.

CONCEPTUAL FRAMEWORK

This chapter is a qualitative examination of asymmetric power relations between child survivors of trafficking, whose work entailed diving into the deep waters of Ghana’s Volta Lake to inspect and to release fishing nets, and their perpetrators. It examines the etiology of
the trafficking of such children from contextual explanations in qualitative interviews with child survivors, their parents and representatives from governmental and non-governmental organizations. In 2003, when this research was conducted, these survivors of trafficking had just been rescued, rehabilitated and reunited with their parents. They were mostly underage, with some of them having been recruited at the tender age of four. They worked long hours, had only one meal a day, and had suffered injuries, some of which had been fatal. It is not known when this form of labor exploitation emerged, but a prevalent consensus points to the abuse of a traditional fosterage system in which younger family members migrated to urban centers to live with and to help older relatives with domestic chores and in return, went to school or received apprentice training. The Ghana Office of International Organization for Migration (IOM) identifies other historical antecedents that included the tendency for parents to migrate to other regions, leaving their children behind in response to the seasonal nature of their fishing occupations, an action that increased the vulnerability of their children to trafficking. The exact number of trafficked victims is not known, but in 2002, the IOM registered 814 child workers who had been trafficked.

The etiological assessment of this use of children’s labor is located in the three interrelated theories of agency, slavery and alienation. The resultant framework conceptualizes contemporary slaves as persons who, through conditions beyond their control, work under exploitive and dehumanizing conditions that could be enslaving, and which may alienate them from their freedoms and labor, objectify and commodify their bodies, turning them into saleable products, the proceeds from which they may not be able to access or benefit from. While individuals engage in calculative rational decisions and voluntarily enroll in certain kinds of jobs, to not qualify as a victim of contemporary slavery or human trafficking requires the subjects to play active roles in their recruitment, have the ability to leave the occupation whenever they please, receive and have access to incomes at agreed upon levels and in agreed forms, and be considered intelligent enough to participate in the recruitment and negotiations about working conditions and remuneration. The underlying argument in this framework is the victim’s inability to exercise agency or freewill in making personal and economic choices that they consider acceptable, routine and which conform to the practices normal to them.

Contemporary slavery is markedly different from traditional slavery in several ways. Ownership of slaves, which seems legally, morally and academically unimaginable in contemporary society, formed the basis of traditional slavery. This legal ownership commoditized and dehumanized the victims, stripped them of their freedom, and turned them into saleable objects. Like traditional slaves, the contemporary slave is commoditized and dehumanized (Kopytoff, 1986) through kidnapping, capture, and deceptive recruitment processes that lead to the loss of the varied identities they have. For children, the loss of their identities may entail the alienation from their statuses as daughters, sisters, grandchildren, and students, which would lead to their assumption of the novel roles of sex workers, domestic servants, and farm workers for as long as they remain capable to do so. They are “disposable people”, held against their will through violent control (Bales, 2000; 1999).

Many contemporary slaves are obtained by means of trafficking.

Human trafficking involves mainly women and children who are taken away from their homes under false promises such as education, a job, or marriage, but who are forced into
This form of victimization can be conceptualized in terms of deceptive processes of recruitment, slavery-like working conditions and the victims’ inability to exercise free will and control over their lives. Hence, definitions of human trafficking revolve around enslavement, the use of force, and deception. “Human trafficking is a worldwide form of exploitation in which men, women, and children are bought, sold, and held against their will in slave-like conditions” (US Government Accountability Office, 2006, p. 1). United States Federal law, for example, defines this phenomenon as “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age”; or “the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery” (Trafficking in Persons Act, 2000). The International Labor Organization (ILO) sees human trafficking as “the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (International Labor Organization, 2005). It further defines exploitation to include, at a minimum, “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” On its part, the International Organization for Migration (1999) defines it as “migrants illicitly engaged (recruited, kidnapped, sold, etc.) and/or moved, either within national or across international borders; [and] intermediaries (traffickers) during any part of this process obtain economic or other profit by means of deception, coercion, and/or other forms of exploitation under conditions that violate the fundamental rights of migrants” (Gaon & Forbord, 2005, p. 63).

These definitions point to the involuntary nature of migration among trafficked victims, but as previously noted, they are quite oblivious to how structural factors having the potential of controlling their level of security influence their calculative and rational decisions. Although beyond the scope of this chapter, these calculative responses also drive parents to use their children when in dire needs, and culture is significant in that process. The relevance of culture is reflected in expectations of gender division of labor and the patterns of recruitment of children for exploitation. In a previous research on domestic servitude, for instance, girls were observed to dominate this type of exploitation, while in the current research on fishing, boys dominate. In some fishing communities in Ghana, it is even taboo for women and girls to touch the fishing canoe. These traditional expectations of gender have often deprived women of economic opportunities usually accorded men, and created vulnerabilities in them while increasing the risk of their children for recruitment into some form of child labor exploitation (Ankomah, undated).

Part of the discourse on contemporary slavery vehemently cautions against overgeneralization of the slavery tag and the wrongful equation of human trafficking to commercial sex work (Feingold, 2005). There is also the argument against the depiction and perception of women as victims and inactive participants in the processes of their migration (Sharma, 2005, Weitzer, 2007). Such subjects supposedly make rational decisions to migrate.
for better living conditions (Chuang, 2006), and that any instance of victimization associated with the process of migration should be explained in terms of broader socioeconomic conditions that include globalization and neo-liberal economic policies that have impoverished many households around the world. While trafficking is a real canker in some migration, the exercise of agency through the rational choice of migration for survival, i.e., to escape severe economic conditions; or for opportunistic goals, i.e., to better their lives (Chuang, 2006), cannot be overlooked. As Janie Chuang suggests,

The problem of trafficking begins not with the traffickers themselves, but with the conditions that caused their victims to migrate under circumstances rendering them vulnerable to exploitation. Human trafficking is but "an opportunistic response" to the tension between the economic necessity to migrate, on the one hand, and the politically motivated restrictions on migration, on the other (Chuang, 2006).

In some households, response to severe economic conditions may entail the use of children’s labor; conditions that necessitate migration among adults may force them to permit the recruitment of their children, some for severely exploitative purposes. The problem is that unlike adults, children cannot exercise agency. They are not mature and knowledgeable enough to exercise agency; they are not knowledgeable or mature enough to give consent (Barry, 1984); hence the use of their labor may constitute slavery even when not violently controlled. Children cannot accept employment offers, open bank accounts, and in some countries, can be picked up by law enforcement officers when walking alone (Ramanathan, 2000, Landsdown, 1994, Derby, 2009). These legal expectations vest decision-making powers about children in their parents and guardians, and in times of severe economic conditions, child labor is used to supplement, or to replace adult incomes (Fukui, 2000, Verlet, 2000; Banpasirichote, 2000; International Labor Organization and Inter-Parliamentary Union, 2002).

**METHOD**

This chapter is a presentation of the findings from qualitative research on child trafficking in Ghana, a West African nation with a population of about 23 million. Since the attainment of political independence in 1957, Ghana has embarked upon many development programs that have failed (Gladwin, 1991; Donkor, 1997; Donkor, 2001; Owusu, 2001; Hormeku, 1997; Konadu-Agyemang & Takyi, 2001; Verlet, 2000; Owusu, 2001, Mbembe, 2001; Meillassoux, 2000) probably due to inappropriate projects, poor implementation strategies, domestic policy mismanagement and corruption. There is severe poverty in both rural and urban regions, and parents, in some cases, have been misled into allowing their children to work, at times under exploitative conditions. This chapter researched child trafficking at Ekumpoano, a village severely hit by poverty.

In this research, the interview technique was applied to three sets of samples consisting of 11 survivors of trafficking, six parents from six different households, and representatives from various organizations currently working with the victims. Both parents and victims were interviewed at Ekumpoano, but government representatives were interviewed at Koforidua, the Regional Capital of the Eastern Region where they participated in a one week workshop.
on trafficking organized by the International Organization for Migration. I code-named the child victims of trafficking “the Supple Swimmers of Yeji,” because of the duties they performed as aides to fishermen at Yeji, a small town in the Brong Ahafo Region of Ghana. The oldest person I interviewed was 17 years old, and the youngest was 11. The oldest age of recruitment for this group was 11, while the youngest age was four. There was only one victim who attended school while in slavery. All rescued victims but one had been enrolled or were about to be enrolled in schools; they were either in the kindergarten or the first grade, their ages notwithstanding.

The interviews were semi-structured with mostly open-ended questions. I started each interview with an informal interviewing technique to create a friendly and conducive environment that enhanced my interaction with the participants. This approach was necessitated by the nature of welcome the author received on arrival – both parents and the assemblyman at Ekumpoano were apprehensive and upset about my presence, because weeks before my arrival, there had been newspaper reports about the enslavement of children from Ekumpoano. The villagers did not take kindly to these reports and had resolved to refuse interviews with any researcher or news reporter, but eventually consented to participate in this study because of the author’s key informant, a regular visitor and field assistant from the IOM who accompanied her.

Ekumpoano is a small coastal village in the Central Region of Ghana, West Africa. Located 85 kilometers from Accra and approximately 13 kilometers away from the main Mankessim (the District Capital) to Accra Road, it has a population of about 1800 people, according to a 2000 population and housing census. It has both primary and junior secondary schools, but children who successfully graduate and intend to further their education to a higher level have to migrate to other towns, or commute on a daily basis. Ekumpoano has no hospital, clinic, health post or medical center, and the closest hospital facility is located about 13 kilometers away. This village is also not equipped with potable water; residents are able to use a well, and in the rainy season, store water from the rains.

**SUPPLE SWIMMING: RECRUITMENT, HAZARDS AND RESCUE**

This subsection discusses the findings of the study. It assesses the impact, mostly negative, of the exploitation of child labor in the fishing industry of Ghana. It starts with a discussion of the working conditions of the children, and their perceptions of Ghana’s traditional fosterage system and the use of children’s labor in fishing. Two sources of recruitment were identified in the study. According to the Assemblyman at Ekumpoano, some of the men emigrated in anticipation of bumper seasons elsewhere, leaving their children behind and sending for them later, while others relocated with their children. This constituted the first type of recruitment; the problem is that the child fishers in this study did not live with their parents at Yeji. In the second type, fishermen who were not related to the child victims went to recruit them from Ekumpoano. In some cases, there were intermediaries, originally from Ekumpoano, who negotiated with parents for the fishermen. When they came around, usually once a year, they looked for children to migrate with, but parents also approached them to offer their children for recruitment.
The child fishers usually went fishing twice a day. Their day began around 1 a.m. when they left for the first shift. They returned around 6 a.m. to unpack their catch, and to have lunch, the only meal they ate, and went back fishing. They returned around 6 p.m., unloaded the fish, and went to bed immediately in order to get up around 1 a.m. for the next day’s work. Their principal assignment was to dive to untie nets stuck under the water. On days they did not go fishing, these young men cut the nets for the older fishermen to mend.

Parents did not consider the recruitment of their children harmful. In these interviews, they suggested it was normal or acceptable for their children to live with other people for a few years and to return home to continue with their education. They indicated further that when they permitted their children’s recruitment, they believed they would be given the opportunity to go to school. To them, permitting their children to live with the fishermen simply conformed to a historical fosterage system that allowed minors from rural and underdeveloped regions in Ghana to live with older relatives to exploit available resources, including educational facilities in urban Ghana. These fishermen were, however, not related to the supple swimmers they lived with. In addition, the towns along the Volta Lake were not in any way superior in terms of infrastructure availability to the villages, and this nullified the basis of the original fosterage system. The parents were emphatic that this practice is not slavery, and that their children’s stay with the fishermen was only temporary.

Both the parents and the Assemblyman overlooked the hazards characterizing the children’s work. In fact the latter stated that when children dropped out of school, it was only rational for them to work with their parents. The problem with this view is that these children were not school dropouts; some of them were not even of school age when they were recruited. Each of the boys interviewed knew of some fishing related fatalities among the “supple swimmers.” These fatalities usually occurred when the boys dived to remove the nets. In one particular case, an 11 year old boy, recruited at six, said his colleague dove and came up but the “master” asked him to dive down again, and when he did, he could not swim up again; he died. One respondent stated that he knew of at least seven fishing-related deaths. Given the general cultural environment that tolerates and defines the moderate use of child labor as a method of socialization, the assemblyman and the parents saw no harm in the use of children for fishing. In their view, children should actively engage in formal education; and if they do not fulfill this expectation, they must learn a trade.

The child victims also received cuts from the fish, and injuries from the blades they used to cut the nets for the adults to mend. In addition, they were beaten if they asked to be sent back to their parents, refused to run errands, or asked for more food when hungry; they ate once a day. One of them said he usually ate to his satisfaction, but that did not last, probably because of the quality of the food (mostly made from cassava or corn mill without fish or meat), or the amount of energy required in their work.

Representatives from various governmental and non-governmental organizations showed concerns about the exploitation of traditional practices to strip these young Ghanaians of their childhood. They agreed that while poverty was primarily to blame for the incidence of child trafficking, their views corroborated portions of the literature asserting that the interaction of large family size and traditional practices created this problem. They were also concerned about the physical development of the children, and complained about malnutrition leading to their atrophied physiques. With the exception of the 17 year old child participant, each one of them looked much younger than their actual ages. Interviews with a representative from the Department of Health suggested that the children also suffered several health hazards. They
were anemic, infected with lice, eczema, eye infections, bilharzias, and malaria, and they were obviously malnourished. One of them, 18 years old with a girlfriend at the time, was infected with gonorrhea. They were both treated.

Rescue efforts have been collaborative among governmental and non-governmental organizations. The International Organization for Migration, Pro-Link Ghana, and Save the Children were among the non-governmental organizations working together to rescue the children. The Government of Ghana was represented by the Ministry of Women and Children Affairs, the Ghana Police, the Department of Social Welfare, and the Ministry of Health. These efforts included the removal of the children from their perpetrators, their rehabilitation at an Accra center, and their reunification with their parents. The process of removal entailed negotiations with their employers, and in some cases, the employers were provided with funds to reduce their need for cheap labor. At the rehabilitation center, the victims were provided training and services to overcome any sociological or psychological damage that could prevent their successful re-insertion into society. The elaborate effort to rescue the children climaxed in colorful traditional durbars at which parents saw their children for the first time since their recruitment. Part of the program provided micro-financing to the parents to start trading to become financially stable, and the children were enrolled in schools.

To ensure the continued protection of the children at the various sending communities, the collaborative efforts also ensured that close contact was maintained among the above agencies and the various communities. The International Organization for Migration and its partners organized regular workshops, and had personnel assigned to the various sending communities to monitor them. Community watch dog committees led by the police maintained a close eye on networks in the villages and attempted to prevent the return of the children, or the recruitment of any children, for fishing at the Volta Lake.

The parents indicated that today, they have different perceptions of the work their children did while away, because of the campaign by IOM and other nongovernmental organizations. None of the children interviewed in this study would recommend the sending of children to the communities along the Volta Lake. They agreed that the living conditions of such children were dangerous, and did not approve of the hazardous and hostile working environment. They detested the long hours of work, the starvation, and the loss of their childhood. The children said they preferred living in poverty with their parents and going to school, irrespective of the lack of facilities at the Ekumpoano public school.

**EXPLOITATION OF CHILDREN’S LABOR IN THE FISHING INDUSTRY: THE ETIOLOGY**

Suppil swimming is a function of numerous sociological factors including their minority statuses, poverty and socialization. Imbedded in the notion of children’s minority status is the inability to exercise agency since they are immature and not knowledgeable. In response to this, parents are expected by law to make decisions on their children’s behalf. When such legal stipulations are not stringently imposed, parents could grant their children’s labor in harmful ways. Ghana is signatory to the convention on the rights of the child. In 1998, its Children’s Act (Act 560) came into law. In 2005, the Human Trafficking Act (Act 694) also became law. The former merely replicates the British Children’s Act of 1989 (Laird, 2002),
and the Convention on the Rights of the Child (CRC) (Derby, 2008). These laws significantly ignore the socioeconomic and cultural realities of Ghana, and thus are flawed and ineffective. The culturally tolerated use of children’s labor for socialization purposes seems to overshadow the relevance of these laws, making it easy for perpetrators of children’s labor exploitation to consistently violate them.

These ineffective laws interact with the incidence of poverty to create further vulnerability for children. Parents want to expose their children to better living conditions, and to avoid absolute and relative poverty (Ramanathan, 2000). Absolute poverty exists whenever people cannot afford basic necessities. Relative poverty, on the other hand, refers to the inability to afford goods and services that are luxurious based on the general living conditions of the population in question. For both types of poverty, households may decide to allow their children to live with families in urban centers, or the children’s labor may be used to supplement or to replace household income (Fukui, 2000). Historically, socialization processes and expectations have permitted children to live with older relatives to take advantage of educational and other infrastructural facilities in urban Ghana, otherwise, they may have to walk miles to nearby towns and villages to attend school. Ekumpoano is a very poor village. It does not have adequate educational resources. Responses from the parents and an assessment of the infrastructure at Ekumpoano corroborated observations in the literature that identify poverty as the primary cause of child labor exploitation in contemporary societies. A 2000 study by the Ghana Statistical Service suggests that between 18 and 32% of the population of the Central Region where Ekumpoano is located is poor. At the time of this study, the economic conditions in this village showed a larger percentage than quoted above could be poor. Their main occupation is fishing, which is seasonal. During the lean season, the economy nearly stagnates, with residents having very little to spend. Their level of productivity is further hampered by their fishing technology, which is very simple.

Gender role expectation plays an important role in “supple swimming.” In the fishing communities of Ghana, women culturally wait for their male counterparts to bring the fish to land. Women clean, smoke or prepare them for sale. During the lean season when the fishermen come home with no catch, or do not fish at all, they may not engage in any other economic activity. Women then assume the sole financial responsibilities of their households; they may have to find supplemental sources of income. Usually they petty trade in food items that do not bring in any major proceeds. A parent lamented that she was not able to keep account of how much they sold because they spent the sales as the day went by. In this kind of economic environment, any approach to reducing their level of household dependency, even when detrimental to their children’s growth and development, could be a welcome relief.

Respondents representing governmental and non-governmental organizations agreed with the parents on the role of poverty in the incidence of child trafficking at Ekumpoano, but they also believed fertility was equally important. The largest number of children for the families in this study was five. The argument of the representatives was the inability of parents at Ekumpoano to support their children. But large family sizes are traditionally expected in Ghana. As Augustine Ankomah notes,

On the whole, Ghana is a pronatalist country and the value of children inestimable. To suggest that children are the *raison d’etre* of marriage is an underestimation: they are the *raison d’etre* of life. The specter of childlessness is indescribable, and it is felt by both men
and women as the greatest of all tragedies and humiliations. Children are the sign of a woman’s normality, femininity, and healthiness.

In addition, parents consider large families as social security in old age, and earlier, in fishing and farming communities, children provided the source of labor, scarce at the time, for household agricultural ventures. These perceptions of the functionality of large family sizes have, however, changed over the years – parents are not always guaranteed their children’s support in old age, and with the requirement and infiltration of formal education, there is little regard for children’s labor as a source of wealth.

Contrary to their observations, this chapter argues that cultural practices and poverty hold more significance in this regard than fertility in the incidence of child trafficking in Ghana. Traditional patterns of socialization in Ghana have tolerated the use of children’s labor, and until the involvement of the international community in championing the fight against sending their children to Yeji, these parents assumed it was another means of getting their children better conditions of living. Both parents and children indicated that recruiters promised to send the children to school. When parents live in severe poverty, the idea of a child migrating to receive formal education may be more interesting to them than the fear of exploitation.

**Exploitation of Supple Swimmers: Alienation and Enslavement**

The discussion above suggests that the use of children’s labor has resulted from the interplay of poverty, traditional practices and failure to enforce existing laws to protect children. The flaws in legislation, as pointed out, emanate from the interplay of children’s inability to exercise agency and a complex web of traditional practices, part of which deter them from defying adult decisions; the children live according to decisions, good or bad, made on their behalf by their parents and guardians.

This coupled with the abusive and asymmetric relationship between them and their recruiters/employers alienate them from many rights, including their childhoods, which in turn engender multiple forms of alienation. The victims do not attend school, cannot play like children, and they do not live in a family that loves them. They worked all day, and had only four hours of sleep – there was barely any time to play. They lived in constant fear, and did not receive the love they needed as growing children.

To borrow Marxian terminology, the author argues that these victims were alienated from the produce of their labor. They helped enormously in the fishing, yet they ate little or no fish at all; their meals were just carbohydrates. They were, in fact, mostly atrophied when the author met them for these interviews.

It is in view of the many forms of alienation facing these children that this chapter concurs with existing literature that they were contemporary slaves – they lived in fear, could not make decisions about their employment, lost their freedoms, and were not compensated for the long hours and dangerous work they performed.
CONCLUSION AND RECOMMENDATIONS

This chapter suggests that while the practice of recruiting children as aides for fishermen along the Volta Lake remains harmful to the victims, some parents may not come to this realization. It is quite difficult to conclude that this practice benefits the sending families. This may stem from the paltry sums parents receive at recruitment. When the children are away working, they are not paid and parents do not receive any income. The problems facing these child workers suggest a net loss to both the parents and the children. The living conditions and the nature of their work are deplorable, should be criminalized and discouraged. The processes of recruitment, however, are not generally considered to be trafficking. Advocacy groups view “supple swimmers” as trafficked, but the parents and guardians believe they merely engage in age old acceptable cultural practices. Parents believe that like another original practice, when they send their children to live with other families, they provide the children with better living conditions. They also admitted it helped them economically, though temporarily. Parents believe it is normal to have their children recruited for fishing, and the harsh economic conditions make it easy for them to engage in this practice. Of all the factors responsible for this phenomenon, poverty seems to the most cited and immediate cause. All other factors appear to be secondary. Therefore, a proactive approach to this problem must focus on various economic development programs that can directly improve living conditions of rural parents. These strategies must also encourage parents to live with their own children. It is worthy of note that until corruption and economic mismanagement are significantly addressed in the rank and file of public administration, the easiest and most effective approaches may fail in Ghana. When rural regions have adequate infrastructure, including educational and health facilities, parents may not feel justified to send their children to the cities. Finally, severe forms of child labor exploitation should be criminalized in Ghana. Perpetrators should be prosecuted to deter others, and those who refrain from it should be rewarded with economic facilities to expand their businesses.

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Enslavement and Human Trafficking


Chapter 2

TRAFFICKING IN WOMEN FOR SEX IN A GLOCAL CONTEXT: THE CASE OF ISRAEL

Gabriel Cavaglion

ABSTRACT

This chapter examines the glocal (portmanteau word of global and local) pushing and pulling socio-economic factors in sex trafficking of women from the Former Soviet Union to Israel in the last 20 years. It discusses Israel's climate of tolerance, sexual permissiveness, moral ambivalence toward prostitution, and the many loopholes in the legal and criminal justice system. These women are viewed as dehumanized merchandise by themselves as well by traffickers, the clients, the media and the public. As part of a pervasive culture of consumerism, the sex industry "turns out" a woman by eradicating her identity, erasing her sense of self, and any belief that she is entitled to dignity and bodily integrity. Glocal reasons for changes in trafficking in the last three years are discussed.

Lasciate ogni speranza, o voi ch’entrate [abandon all hope, ye who enter]
Dante Alighieri, Divina Commedia, Inferno, III, 9

THE DANGEROUS WHIRLPOOL OF GLOBALIZATION AND MIGRATION

Trafficking in women for sex is probably the most rapidly growing form of human trafficking. Its potential stems in part from the low investment, low risk and reusable nature of the commodity itself (Farr, 2005; Hughes, 2005a; Lim 1998). To understand the personal stories of many trafficked women caught up in this global transnational criminal whirlpool it is worth viewing society as a single village of 1000 people, an idea developed by John Macionis to depict the effects of globalization (1997). In this village, goods, wealth and
education are unequally distributed, with 150 people accounting for one half of the total income and only 75 people holding a college degree.

In today's global context – as mirrored by Macionis' depiction – sex trafficking is affected by two factors: the growing divide between rich and poor, and a vast migratory movement as a result of these disparities (Castles & Miller, 1993; Zolberg, 1989). Further, the pull of employment elsewhere is augmented by the home country's implicit or explicit policies to export labor for remittance to counteract exorbitant national debt, high unemployment and imposed re-structuring of national economies (Amin, 2004). Many countries encourage their citizens to seek employment abroad so that the payments, which workers send back to families, can stimulate and stabilize the local economy (Silliman & Bhattacharjee, 2002; for a general statistical overview see for example OECD, 2006). On the other hand, the affluent world exploits many physical, emotional and sexual resources of those migrants who are available for any job or service (Ehrenreich & Hochschild, 2004; Sassen, 2004).

Many forms of migration are today "feminized": half of the world's 120 million legal and illegal migrants are women (Ehrenreich & Hochschild, 2004; Gamburd, 2004). These female migrants overwhelmingly take jobs as sex workers, maids or domestics, creating a dependency of a particularly intimate kind when "the First World takes on a role like that of the old-fashioned male in the family – pampered, entitled, unable to cook, clean or find his socks" (Ehrenreich & Hochschild, 2004, pp. 11-12). Poor countries are not only from the Third World, but also from middle-income countries throughout Latin America and the nations of Eastern Europe. According to Donna Hughes (2000) in 1998, the Ukrainian Ministry of Interior estimated that 400,000 Ukrainian women were trafficked during the previous decade; other sources, such as non-governmental organizations, claim the number was higher.

A CHOICE MADE BY THOSE WHO HAVE NO CHOICE

Trafficking of women cannot be viewed as an aggregate of random decisions taken by loose individuals, or as an issue of free will and consent on the part of these women. It is a result of the global economy which includes the smuggling of illegal immigrants and trafficking in lost women which often linked to sex work (Kampadoo & Doezema, 1998). There are cogent arguments to see all sex workers as part of this form of global turmoil and as victims of "female sexual slavery" (Barry, 1979). Most of these women have no real alternative to prostitution to survive: they are not "sex workers" recruited by a contract (Farley & Kelly, 2000). The United Nations estimated that 700,000 to 4 million girls and women are trafficked annually as sex workers around the world (Amy O'Neill, 1999). However, since trafficked women constitute a hidden population, the figures are most probably educated guesses (Statistical Commission, 2004). Most of these women are living in the grey zone of exploited/sexually abused domestic workers (Zarembka, 2004).
SEXUAL SLAVERY AS A TOTAL INSTITUTION

Sexual slavery in the form of trafficking often does not require overt coercion or verbal threats since the system of domination perpetuated and enforced by sex industry businessmen and buyers is intrinsically coercive (Leidholdt, 2003). The "choice" to engage in unwanted sexual acts is shaped by individual men (pimps and clients) within a social context that promotes women's social, sexual and economic subordination to males (Giobbe, 1991; Shannon, 1999). This business has been likened to a total institution, akin to a form of incarceration with an invisible fence, where the daily life of the "inmates" is governed and regimented by the "staff" (Goffman, 1961).

Israel is part of a global market of legal and illegal workers (Kemp & Raijman, 2008) as well as women trafficking (Amir & Amir, 2004; Hammerman, 2004; Hughes, 2000; Levenkron, 2007b; Levenkron & Dahan, 2003; Sagi, 2007; State of Israel, 2005; Vandenberg, 1997). Israel is an affluent society which attracts migrant workers as well as Jewish immigrants from all corners of the world. Each wave of recent migration and immigration (for example more than one million immigrants from the former Soviet Union since 1988) has included practicing prostitutes, but "while the marginal status of the newcomers and their economic hardships has increased, so has the number of women who viewed prostitution as their only way to survive" (Amir & Amir, 2004, p. 144). Each year between 1988 and 2006, about 1000-3000 young women, mainly from countries that experienced the collapse of economic and social institutions which accompanied the demise of the Soviet Union, in particular Russia, the Ukraine, Belarus, Moldova and recently Uzbekistan, became involved in the local sex industry (Gershuni, 2004).

Valentina, a trafficked woman from Moldova to Israel stated: "the conditions were horrible. A girl was kept in the basement and was forced to work there for eight months. There was so much humidity she got tuberculosis" (quoted in Amnesty International, 2000, p. 13). In captivity such as brothel cubicles, massage parlors and small apartments, there are few physical barriers to escape. They are nonetheless extremely powerful. Women are rendered captive through economic dependency and social and psychological subordination, as well as by subtle intimidation: "prostituted women can expect an escalation of violence should they attempt to escape from their abusers" (Herman, 2003, p. 9). Unable to speak local languages, many of the women are totally dependent on traffickers, managers, drivers and gatekeepers for all of their needs (Farr, 2005, p. 63). Intimidation and rape are common, and the only way they can leave is if they come to the attention of the local authorities who will arrest and deport them back to their country of origin, mostly penniless and traumatized.

Elena, describing her first days in Israel stated: "I tried to resist, I asked them to leave me alone, but they told me, the term 'no' doesn't exist for you anymore, you are now a living corpse, you are our slave; if you resist, you will die very young, you will never go back home. You have to understand, if you want to survive you have to work for us" (quoted in Hammerman, 2004, p. 90).

Personal psychological denial as a defense mechanism among the victims in these extreme conditions may be activated from the very beginning. A trafficked woman in Israel said: "I am not a bad person… I knew that they were going to sell girls, I read it in the newspapers, I am not saying that I didn't know, but I didn't think that it could happen to me, because I thought I am OK, I am smart, I know everything – nothing will happen to me"
Under persistent and harsh mental conditions, forms of numbness and depersonalization may pervade. These become a functional stratagem used by women to continue to do their job (Farley, 2004). The use of "chemical dissociation" (Plant et al. 1989) such as alcohol is frequently reported (Hammerman, 2004, p. 184).

Personal agency is also diminished by requiring the women to accept and obey all customers. In many brothels, women cannot turn down a customer for any reason, and in most cases, they must perform whatever acts he demands, otherwise they are hit, raped or fined (Farr, 2005, p. 38). Women become an inert object, and feel like merchandise, without dignity. They are self - alienated, akin to slaves. A woman stated (quoted in Hammerman, 2004, p. 124): "I became like a robot. Because a person who works every day from 3 p.m. to 5 a.m., everyday, everyday, everyday, she is already like a machine".

Trafficked women are traumatized individuals who are in a constant state of imminent danger (Farley & Barkan, 1998; Herman, 2003). They may perceive events as though they are observing their body from afar, or as though the whole experience is a nightmare from which they will soon awaken (Herman, 1992, p. 43). Most of these women feel they have been changed irrevocably, alienated, depersonalized, and have no sense of self. A local academic survey found that 26% of trafficked women to Israel suffer from post-traumatic stress disorder (Cwikel et al. 2004). Across widely varying cultures on five continents, the traumatic and post-traumatic consequences of prostitution are similar (Farley, 2006, p. 109).

**ISRAEL AND SEX SLAVERY IN A GLOBAL CONTEXT**

Many pushing factors facilitate the recruitment and the exploitation of trafficked women and girls. These include unemployment, the criminalization of the states and their economy, increased organized crime, and the promotion of western glamour in the media (Hughes, 2005b, p. 2).

Israel as a developed country with an advanced market economy and relative material affluence attracts this sort of trafficking because of its climate of tolerance, sexual permissiveness, and moral ambivalence toward prostitution, the many loopholes in the legal and criminal justice system, and because of demands for cheap and exotic prostitutes with about one million male "visits" in brothels per month. Interviews with trafficking victims conducted by the Hotline for Migrant Workers between 2000 and 2003 revealed that the clients of Israeli brothels come from every sector of society, with the overwhelming majority being "average men": Israeli Jews – secular, religious, and ultra-Orthodox (Ben-Israel & Levenkron, 2005).

Although woman-trafficking into Israel began around 1988, it is clear that prior to 2000, the Israeli authorities denied its existence. When the criminal justice system did acknowledge sporadic incidents, it saw Israeli society as the main victim of both prostitutes and pimps (Levenkron & Dahan, 2003).

Entering the country illegally was seen as a felony (easy to prove and prosecute), worse than forced prostitution (hard to prove or prosecute). During this period, the police did not investigate unless they were confronted with particularly serious circumstances, such as violence or prostitution of minors. Women who were arrested were deported as soon as possible, without being encouraged to testify against their holders or recruiters (Gershuni,
In the rare cases when pimps/traffickers were prosecuted, their sentences were lenient at best (Vandenberg, 1997; Levenkron & Dahan, 2003). Although the proportion of women testifying against traffickers before they are deported increased, in particular in the last three years, the fact remains that most trafficked women do not testify.

In other words, they have no significant status in the legal process, no agency and no voice.

**McWorld in the Promised Land: Women as Object and Merchandise**

McWorld is a term sometimes used to describe the spread of McDonald's restaurants throughout the world as the result of globalization, and more generally to describe the effects of international McDonaldization of services and commercialization as an element of globalization as a whole (Barber, 1996). For many reasons this term reflecting diffuse, available, cheap fast-food applies to cultural perceptions of sexual slavery. The phenomenon of trafficking in women for sex to Israel between 1988 and 2006 was normalized and reframed in an economic sexist discourse not only by the legal system, but by society in general.

**Sex Work as a Natural Phenomenon**

Prostitution tends to be perceived in Israel and elsewhere as functional and beneficial for a healthy society (more room for sexual fantasies, exoticism, diversity or excitement). Support for this attitude comes from a naturalistic view of male sexuality and needs. Prostitution is seen as a safety valve for male "natural" sexuality which allows men to relieve themselves: "prostitution decreases rates of violence in society. Prostitution is a service like any other service" (an attorney quoted in Hammerman, 2004, p. 62). It is lauded as a "safety valve" for men's sexual energies, a receptacle for their lust (MacKinnon, 2001, p. 1396) and as a necessary evil that protects young women from rape and shields marriage and the family from men's sexual appetites (Pateman, 1988, p. 190). A pimp stated: "every time the rapist comes to my parlor, probably a girl [outside] is spared" (State of Israel, 2005, p. 164).

The press habitually normalizes the problem of women-trafficking by advertising these activities. Despite the fact that this activity is today illegal, it remains a very lucrative business for the press as well (Levenkron 2007a) because advertisements can be published openly as long as euphemisms for prostitution are used (massage or health clubs, discrete apartments etc.). As Donna Hughes aptly pointed out, one cannot imagine the open advertising of illegal drugs as long as slang terms for the drugs are used (2005a). In this kind of culture of normalization and denial, the trafficking of women and girls is likely to increase and escape the attention of the general public. This normalization makes use of specific neutral and euphemistic jargon: bordellos are depicted as "discreet flats," "parlors," or "massage clubs," and the women are not prisoners or victims, but "masseurs," "top models," or "call girls" and recently also "ladies who want it all the time". As one writer noted, the cruelty of prostitution intensifies when "it is presented as something else, when the context has been radically altered, and its cruelty is exhibited as something humorous or sexy" (Millett, 1994, p. 158). Victims are particularly shocked by these euphemisms and by the
denial of cruelty: "it is a sense of being fooled, of having one's own perception called into question, ridiculed" (ibid).

**Prostitution as an Economic Phenomenon**

Prostitution is seen by radical feminism as an integral part of patriarchal capitalism. Men can buy sexual access to women's bodies in the capitalist market as part of "freedom of contract" (Pateman, 1988, p. 189). The natural growth of the number of brothels in Israel before 2006 was attributed to increases in the law of "supply and demand". Israeli tax officials share this perception of trafficking as an ordinary business when they do their best to implement policies of collecting taxes from brothels on a regular basis (Vandenberg, 1997, p. 28). An attorney quoted in Hammerman (2004) rationalized his arguments by stating that prostitutes are sold in auctions, and this is no different from other normative forms of business: football players are also sold by their clubs. This attitude is cynical at the best when it pretends to co-opt the liberal ideals of democracy, free choice, free will, autonomous actors, free markets and self-fulfillment that characterize today's world of transnational capital and global marketplaces (Bishop & Robinson, 2002). Football players are not abused and ravaged day after day.

**Sex Workers as Merchandise**

The theme of prostitution as a basic human need, "one expression of a natural appetite" (Pateman, 1988, p. 198), like food, appears in many statements from the public. A reporter for an Israeli men's magazine was duly impressed: "What can I tell you? You've got to hand it to organized crime for really being organized. They (the pimps) learned from Domino’s Pizza how to take orders. They asked me…with mushrooms? Without? I asked them…if it's not too much, a natural blond, tall, with a basic command of Hebrew” (quoted in Levenkron and Dahan 2003, p. 68). Male interviewees revealed that the code word for many young, single, attractive and successful men who use the services of prostitutes is "ordering in pizza," the easiest, cheapest and simplest way to satisfy physical needs (cited in Shamir, 2005, p. 103). It saves time and effort and requires no prior preparation and no emotional involvement. In Hebrew the term *hafuz* (literally hurried) can refer even to a fast food company, or to a delivery service, or to a "quickly". Clicking this term in Hebrew shows that the first ten entries in Google all refer to escort and pornographic sites (see for example www.hafuz.co.il).

In this very pervasive culture of consumerism, the "objectivized" woman has no name, no identity, no soul, and her suffering has no voice. The sex industry "turns out" a woman or girl by eradicating her identity, erasing her sense of self, and any belief that she is entitled to dignity and bodily integrity (Leidholdt, 2003). She becomes flesh for rent. She feels she is not only merchandise but as a very cheap product. For example prostitute stated: "We are exported from the Ukraine because we are the cheapest product. We are an export" (quoted in Vandenberg, 1997, p. 56). This degrading attitude toward foreign prostitutes and internalized by many of them is fueled either by a sexist attitude toward the female body, or by a general public atmosphere of xenophobia toward the newcomers from "Russia". In reaction to waves of immigration from the FSU, "Russians" are seen as "others", having no bonds to Judaism,
the Zionist ethos, or to societal values in general, and are accused of eroding the traditional Jewish family, importing negative behaviors such as prostitution, abortion, divorce, single parent families, heavy drinking, gangs and organized crime, Satanic cults, Neo-Nazi gangs etc. (Amir & Horowitz, 2003; Amir & Binyamin, 1992; Cavaglion & Sela-Shayovitz, 2005; Leshem & Shuval, 1998).

**REACTIONS TO TRAFFICKING IN WOMEN: 2000-2006**

There has been a slight change in the public and political attitude toward sexual slavery since 2000-2001 following a highly critical report by Amnesty International, and the conclusions of the U.S. State Department investigation of human trafficking around the world. Both based their reports on claims of local NGO and human rights organizations such as Amnesty International and stressed that the State of Israel "failed to take minimal steps to prevent, investigate, prosecute or punish the people who are responsible for the violation of human rights of trafficked women" (Amnesty International, 2000, p. 9; see also U.S. State Department, 2001).

In the wake of the ensuing uproar, a parliamentary inquiry committee was set up, headed by a woman, Knesset (Parliament) Member Zehava Galon. In 2001, the Israeli Parliament enacted laws against trafficking in humans in general and in women in particular for the purpose of prostitution. These new laws provided harsh punishment for traffickers, up to sixteen years imprisonment, and defined procedures pertaining to the treatment of arrested women before their deportation. Access to safe houses (a shelter was opened in 2004), health services, the right to legal advocacy and other services were also stipulated in this legislation.

The most comprehensive abolitionist anti-trafficking law passed its final reading in the Israeli Parliament in October 2006 (Prohibition of Trafficking in Persons, Legislative Amendments Law-2006). Approved by a majority of MPs, it both expanded the definition of trafficking and defined protection for victims. By meeting the minimal standards of combating trafficking of women, Israel temporarily avoided the threat of economic sanctions from the U.S. As a result of these legal steps, researchers have reported a few gradual positive changes. Social activists, members of NGOs, and women's support groups were seen as "able to operate without any counter-resistance from the cabinet and political parties in the Parliament" (Amir & Amir, 2004, p. 160), "creating opportune conditions for massive mobilization and co-operation" (p. 161). Moreover legal experts stressed that "Israel has experienced a sea change in regard to its attitude toward trafficking, in general, and victims of trafficking, in particular" (Gershuni 2004, p. 138).

In fact, the government of Israel, by complying with the directives of the U.S. State Department was forced to acknowledge _de jure_ the existence of a social problem and appeared to take the allegations seriously, at least concerning trafficking of women. However, _de facto_, there is persistent laxity by the criminal justice system in the prosecution and in the punishment, and some sort of tolerance among the public in general (Levenkron & Dahan, 2003; Levenkron, 2007b).

Since 2006 the trafficking of women from the Former Soviet Union States to Israel is allegedly disappearing. As a police officer stated (cited in Levenkron, 2007b):
In the past year, you don’t see it anymore. There is no activity around brothels. The phenomenon has decreased dramatically... I talk to a lot of people. People ask, “Where did all the pretty whores go?” I don’t know if there are even a few hundred, maybe there are a hundred [victims of trafficking]... We see there is a reduction. It’s a fact that they [the traffickers] are afraid.

**Good News, Statistical Manipulation or "Business as Usual"**

This statement should be viewed with caution, in particular when coming from police officers and un-official "manipulated" crime reports (Best, 2001). This claim of victory is reminiscent of the term coined by Thomas Mathiesen, "action function": law enforcement agencies, with their own political agenda, may reassure people that something is successfully being done about the problem. But again figures can be "churned" (Statistical Commission, 2004). It is more plausible that the traffic is only out of the public eye, and has adopted new forms of concealing women in parlors, without "red lights" on the street. In other words, the phenomenon has not disappeared but is becoming less detectable and more invisible. Information from 13 websites for local sexual escort services indicates a mechanism of concealment not of disappearance. On these sites, the girls' pseudonyms are both secular and modern Hebrew (Michal, Li'at, Sivan) and cosmopolitan names like Lee, Lory, Sunny, Milly, July etc. These are mostly names that do not indicate their real nationalities. A quarter of the sites do not provide any information about the girls, except their location (mostly in the Tel Aviv metropolitan area), the agency's cell phone numbers and more rarely the prices. Most of the other information relates to sexual performance (bi-sexual, oral, orgies etc.), body size (height, weight and breast size), age, country of origin and language. A more in-depth analysis of these sites indicates that with the exception of one Pole, one Japanese woman and one Brazilian, the pattern seems to be that the activity is 75% "Russian" and 25% Israeli (or old established immigrants). For the "Russians", sometimes termed "Europeans", their country of origin can also be identified by searching for their spoken language. In this case Russian always appears as the second or third spoken language after Hebrew or English. Two thirds of the agencies provide escort services for call girls outdoors ("outcall"). One third provides escort services in "luxurious" or "discrete" apartments with fewer than ten girls.

These sexual escort sites suggest there may be an upgrading of trafficked prostitution into better quality of service, merging with local call-girls and using better facilities, and the decentralization of these women in many locations in the affluent northern urban area of Tel Aviv with less visible "delivery" outdoor (outcall) services. Therefore, is more plausible that the "pretty Russia whores" have not vanished from Israel but "VIP discrete ladies" have simply disappeared from the streets.

**A Skeptical Conclusion**

Has this "vanishing act" been the result of legal and public awareness, or rather a general atmosphere of denunciation and condemnation which studies on prohibition laws on "commercialized vices" have shown not to deter lucrative businesses? As stated, probably there is no vanishing act at all but a shift toward an "upgraded" form of sex consumption,
where the demand for almost one million sexual contacts by "average men" can find new less visible avenues. A few recent TV documentaries have shown that foreign sex workers still operate in the country in a more discrete and disguised way (see for example Channel 2 Keshet, "Undercover", 1st February, 2009).

As stated by Young (1999, p. 135-6), claims of vanishing should therefore be related to a "culture of congratulation" disseminated by the crime control industry, claiming that the policy of "zero-tolerance" toward sex trafficking has been achieved.

It is more plausible that the "decrease" in prostitution or more likely in its visibility, is not a consequence of the war against it, but is related to the fact that like any other lucrative operation in the global market, traffickers may have partially moved to safer and more lenient venues. Alternatively, the present recession may be a result of an economic fluctuation in the global market.

It is also plausible that there has been some decrease of sex trafficking, not as a result of a zero-tolerance war against prostitution, but as a byproduct of the general negative attitude towards illegal migrant workers in general who are perceived as one of the causes of unemployment (Kemp & Raijman, 2008). The state was sued to implement Prime Minister Ariel Sharon's promise to expel 50,000 illegal migrant workers by the end of 2003 and deport aliens working unlawfully in Israel to encourage "Israelis to become integrated in the labor market" (Hotline & Kav La'oved, 2003, p. 13). In fact, to date (2008), the Immigration Administration has taken vigorous measures of arrest and expulsion, which also includes sex workers.

Another contingency can be related to the war against terrorism. The active military supervision and patrol of the Egyptian borders for security reasons and the fear of terror attacks, as well as measures taken to prevent smuggling of drug, tobacco, stolen cars and weapons may also have led to a drop in the supply of trafficked women (see for example: www.knesset.gov.il/mmm/data/docs/m01886.doc). It remains to be seen, however, whether these contingent factors will have an impact on "general consumption", public attitudes and formal policies.

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Chapter 3

VICTIMIZATION OF INDIAN MIGRANT WORKERS IN SOUTH EAST ASIA

Savarimuthu Samuel Asir Raj and Karuppannan Jaishankar

ABSTRACT

South East Asia is one of the major regions which attract migrant workers from India. Migrant domestic workers from India to South East Asia encounter wide range of human rights abuses in the workplace, including extremely long hours of work without overtime pay; no rest days; incomplete and irregular payment of wages; psychological, physical, and sexual abuse; poor living conditions; restrictions on their freedom of movement and ability to practice their religion; and in some cases, trafficking into situations of forced labor. This chapter examines the issues of victimization of Indian migrant workers who suffer in South East Asia especially in two countries, viz., Singapore and Malaysia and the role of Indian government to ameliorate the gravity of the situation through bilateral and multilateral means in international relations.

INTRODUCTION

Globally, it is estimated that at least 200 million workers are employed legally or “illegally” in a country different from that of their birth. Many developed countries remain dependent on migrant laborers and professionals to fill gaps in job markets, develop new areas of production or services, and maintain labor-intensive activity (Boyd, 1989). Developed countries encourage immigration of workers and professionals and even undertake recruitment of foreign labor as a means of extracting higher profits, to drive downward wage levels and also as a means to control labor unions. The unskilled and semi skilled migrant workers become one of the most vulnerable persons in the international arena and in majority of instances migrant workers are mistreated, become victims of chauvinism, xenophobia, bias, and increasingly criminalized (Boyd, 1989).

Migration becomes a tempting and necessary option for many South Asians because of a combination of "push factors" such as lack of prospects at home and "pull factors" like
pervasiveness of demand in other countries. In South Asia including many parts of India, the incomes are seasonal, daily wages are dismally low at below US $1 and overall the per capita income levels in South Asia on an average remain well beneath the high-income countries of Asia. Such income disparities impel South Asian workers - male and female- to turn into migrant labor (Kanapathy, 2005; Wickramasekera, 2002). This incongruity of incomes between South Asia and South East Asia encourages South Asian countries to become a labor-sending countries and South East Asian economies as labor-receiving countries (Kanapathy, 2005). The persistently large income gap between most developing Asian economies and high-income countries, as well as rising intraregional income disparities, provide a powerful economic underpinning for expanding Asian migration flows (ADB, 2008).

The economic reform which India undertook has made it experience remarkable aggregate growth rates in the beginning of this century. With a spatial shift in global capitalism, India has also emerged as one of the new economic powers in Asia. But given the uneven nature of development, unlike China, the country continues to have massive numbers of very poor people in urban as well as rural areas (Singh, 2008; Wickramasekera, 2002). This mass poverty and low per capita income limits the potential for growth of its internal markets. As a result India has sought to export its surplus skilled and unskilled labor to many countries including those in Asia such as Singapore, Malaysia and the Middle East.

This chapter focuses on the travails of Indian migrant workers in Singapore and Malaysia and it uses the operational definition of "migrant worker" as “a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” described by the Office of high Commissioner of Human Rights (2006, para 1).

**MIGRATION OF INDIAN WORKERS TO SOUTH EAST ASIA**

The skills, education and language proficiency of the Indian worker, makes India a major source country for highly skilled and semi skilled migrant workers. According to a Special Report on South Asia, (Migration News, October, 2008), India in 2005 sent 549,000 migrants who remitted $27 billion. Expansion of such overseas employment assists in relieving domestic unemployment, augment remittances and provide for flow of money in rural areas. The remittances sent by this surplus labor has made India the world’s top recipient of remittances touching US$ 17.4 billion in 2003, up from almost US$14 billion in 2002, and over US$ 11 billion in 2001 (Maimbo, 2005). According to the International Labor Organization (ILO) (2008):

Migrant workers send remittances to their home countries …, usually from relatively modest earnings. Migrant worker remittances represent the second biggest international monetary trade flow, exceeded only by petroleum exports. For many countries, remittances represent greater sources of foreign exchange than total foreign direct investment or foreign aid (ILO, 2008, para 3).

For India, the remittances over the past thirty years have financed much of India’s balance of trade deficit, have thus reduced the current account deficit and have even led to wealth and asset creation. India therefore, is keen to expand this export of surplus labor
further and is looking to the General Agreement on Trade in Services (GATS) as one of the ways to achieve this (World Bank, 2008).

The Indian migrant worker prefers to work in the South East Asian countries as they are geographically close to home. India has been having cultural relations with South East Asia for more than two thousand years and precedes the Christian era. These intercourses have fostered a continuous migration of population from India to South East Asia and trade for over two millennia. Many among the Indian Diaspora maintain strong links with India by way of pilgrimages, tourism, business, marriages, and other social commitments and the geographical proximity helps the community to maintain close cultural ties with India. When many South East Asian economies were thriving, a demand for skilled and unskilled labour from India was stimulated by the existence of this diaspora.

For the Indian worker (Read Tamil Nadu), language is not a major impediment since Tamil is one of the official languages in Singapore and Malaysia. In addition to language, India, Malaysia and Singapore share certain cultural heritages (religion, social life, food, etc) as Indians form a percentage of the population. Moreover, the presence of a diaspora facilitates the legalities for entry, work and other requirements particularly for Malaysia and Singapore compared to other destination countries of South East Asia and Western countries.

THE VICTIMIZATION OF INDIAN MIGRANT WORKER IN SOUTH EAST ASIA

India as the second most populous country and a developing country is treated with certain caution by authorities of developed nations and countries with higher per capita income. Unlike the worker of a developed nation, Indians confront two specific problems - the first pertaining to the legal process of migration and the second related to their living and working conditions. Many countries restrict Indian workers and have “imposed quotas, visa controls, work permit systems, and foreign worker levies, keeping them on a transient basis, subject to repatriation during periods of economic downturn” (Asian Development Outlook, 2008, para 10).

India itself inhibits women below thirty years to leave the country in search of domestic labor but this move has actually increased the number of women going abroad illegally (Kannan, 2006). Such regulations aid unscrupulous recruiters and traffickers to illegally recruit by providing misinformation or deception regarding jobs that do not exist overseas. This commercial and lucrative business has spawned a recruitment industry of intermediaries in both sending and receiving countries, who overcharge, demand payment of additional unnecessary and unlawful fees; forge fake identities for applicants; fabricate travel documents and undertake illegitimate and the unlawful activity of trafficking and smuggling of migrant workers (Wickramasekera, 2002). Though these types of recruiters are mostly unregistered small enterprises, there are also some large companies which indulge in recruiting potential migrant workers without license issued by the government and have largely been “responsible for various malpractices and growth of irregular undocumented migration in the region” (Wickramasekera, 2002, p.17).

Quite frequently the recruiting agencies conduct inappropriate training programs charging exorbitant training or examination fees. Recruiting agencies very often do not
explain the terms of contract or provide insufficient information regarding the terms and conditions of work (Kuppusamy, 2007). Without the pre-departure counseling, seminars or orientation, the workers arrive at the destined country uninformed about the contract. Sometimes those being recruited as domestic workers suffer being locked up, maltreated, exploited, sexually harassed or abused during training programs or orientation. Female migrants, construction workers, and other unskilled workers risk withholding of travel documents in spite of payment of excessive travel fees collected at the airport (Kannan, 2006). The final insult that the migrant worker has to undergo is hazardous travel and abandonment at the airport by recruiting agency or by the employers. When caught by authorities for illegal entry with fake travel documents the migrants face arrest, brutal treatment, and detention at the airport of a country they are unfamiliar with (Kuppusamy, 2007). Even legitimate Indian workers sometimes confront withholding of travel papers or documents by airport officials in the receiving state. They are subjected to extortion or collection of exorbitant fees by customs or airport personnel (Kuppusamy, 2008b).

The travails of the Indian migrant worker do not end even after legitimate entry. Outsourcing companies in Malaysia hire unskilled or semi-skilled such as construction workers and female domestic workers from India on behalf of 'principal firms', including multinational corporations. According to George (2005) contract substitution is a danger the worker come to terms with. After the arrival of the contracting worker, the employer changes the clauses of the contract and lack of assistance on the translation or clarification of the terms of contract written in a foreign language which is not understood by the migrant worker. On arrival these workers are placed in various locations such as an oil palm plantation, a chicken farm or a construction site to do temporary work. This deception coerces the migrant worker to work even before the execution of working papers. With no recourse to legal assistance being available freely and having fallen in debt for payment of the travel documents, the worker has no option but to submit to the changed conditions and exploitation. Forced to live in accommodation with poor living conditions, facing hazardous working conditions, physical abuse, psychological maltreatment and sexual harassment or abuse, the Indian migrant worker suffers in silence. Above all the worker has to put up with inordinate delay or non-payment of wages and other benefits specified in the contract (Kannan, 2006). Violation of minimum wage standards and forced over-time work without returns assails the workers hard as these laborers lack bargaining power and the threat of confiscation of passport and other legal documents forces the migrant fail to negotiate reasonable pay scales and fair working conditions with the contractors (Migration News, 2008).

**Singapore**

Historically, migrant labor has been the main stay of Singapore, as it has been heavily dependent on foreign workers for its economic progress. Modern Singapore lures Indian migrants as it is one of Asia’s richest nations on a per capita basis. Having over half-a-million foreign workers in a population of just four million, Singapore attracts Indian male migrant workers to work in the construction industry and also as cleaners and other unskilled jobs. India also contributes substantially to the approximately 160,000 domestic help (maids) who come to Singapore from South and South East Asian countries. Singapore’s Ministry of Manpower (MoM) issues the R Pass (R1 and R2) work permits for foreign workers. Semi-
skilled foreign workers who have acquired a degree of practical training are granted R1 pass while unskilled migrant workers are issued R2 pass but it is undesirable for R type work permit holders to bring their immediate family members into the country. Medical examination is compulsory for these categories of foreign workers. To control illegal immigration to guarantee the "good behavior and eventual repatriation" a payment of security bond equivalent to U.S. $2,950 is imposed on each employer with an understanding that the migrant worker must leave the country as soon as the work permit is cancelled or expires.

Domestic worker abuse in Singapore has been widely documented and according to Ken Roth of Human Rights Watch (2005):

Many domestic workers labor without pay for months to settle debts to employment agencies, work long hours seven days a week, or are confined to their workplace, ... Singapore’s refusal to extend ordinary labor protections to domestic workers is leaving them open to abuse (Human Rights Watch, 2005, para 3, 4).

Maids are euphemistically referred to as Domestic Foreign Workers (DFWs) and are generally treated more like slaves than free human beings. Confined to private homes as the work place, female migrant workers have to work long hours for low pay and are quite often subject to exploitation and cruel treatment. Many employers considered it normal to keep domestic workers housebound without any outside human contact which cannot "spoil them". These maids are expected to work for long hours, are not given a single day off, suffer grave abuses including physical and sexual violence, food deprivation, confiscation of religious items such as prayer garments and holy books and confinement in the workplace. Many attempt suicide by jumping off or falling from residential buildings. According to Human Rights Watch (2005), “At least 147 migrant domestic workers have died from workplace accidents or suicide since 1999, most by jumping.” Migrant domestic workers earn half the wages of Singaporean workers in similar occupations, such as cleaners or gardeners. Unpaid wages is a growing complaint.

To regulate demand and to coerce employers to keep a strict watch on the behavior and actions of migrant domestic workers, monthly levies are imposed: U.S. $118-174 payable to a central government fund. According to Human Rights Watch (2005), this amount is more than the wages of many domestic workers and “none of these funds, roughly S$360-531 million (U.S. $212-313 million), are earmarked for services geared toward migrant domestic workers”. The above instances reveal how Singapore gains from a guest worker program by getting sufficient supplies of cheap labor to do all the jobs no one else wants to do, without having to invest anything in the welfare of that labor force. For the worker, it is a period of hard (oftentimes demeaning or dangerous) labor with the ability to occasionally remit money back home, a constant sense of alienation and isolation heightened by an enforced separation from home and family and no legal rights to speak of.

The employer forfeits the bond if the domestic worker runs away and immigration regulations prohibit domestic workers from becoming pregnant. According to the Human Rights Watch (2005):

…these policies become incentives for employers to tightly restrict domestic workers' movements to prevent them from running away or having boyfriends. For example, some employers prevent domestic workers from having weekly rest days, forbid them from talking
to neighbors, and sometimes lock them in the workplace. Heavy debts and confinement at
home mean that some domestic workers cannot escape serious workplace abuses (Human
Rights Watch, 2005, para 11).

In spite of these measures there is little open dialogue about the living conditions and
rights of these workers both in the government-controlled media and in the general public
space.

Indian construction workers in Singapore also have to cope with appalling conditions
with hundreds of workers and they are forced to live in deplorable and cramped conditions in
dormitories, on triple-deck beds with smelly open rubbish containers and filthy toilets. The
common areas of dormitories such as the corridors, kitchen and toilets are found to be filthy,
and exit points in multi-storied buildings being precarious. Many workers found it difficult
to sleep with light and noise coming through the mesh wired windows. NGO activity and
advocacy for migrant labor in Singapore has a fleeting history which ceased with what is
known as the "Marxist Conspiracy Case". In May 1987, twenty two members of the Geylang
Catholic Center for Foreign Workers were detained under the Internal Security Act. Lobby
for migrant labor issues such as better wages, hours of work, against abuses including
physical and sexual violence, food deprivation and for more humane employment conditions
was construed as threatening state and national interests. In the years that ensued, religious
organizations, civil society groups and even socially conscious persons have been decidedly
hesitant to engage themselves in migrant labor question because of its "socialist overtones".

The Flor Contemplation case of 1995 involving a distressed Filipino domestic worker has
to a degree increased international concern on migrant labor conditions in Singapore and has
encouraged a gradual expansion in networking and advocacy for the migrant workers in
Singapore. Because of pressure from other governments, International Labor Organization
and outside NGO’s, the Singapore government has been compelled to introduce certain
reforms and to demonstrate that the government is engaged with the serious issues of
victimization of migrant labor. As a measure of confidence building orientation programs for
employers and domestic workers has been made obligatory, cases of unpaid wages and
physical abuse are prosecuted with seriousness, and an accreditation program has been
launched for employment agencies. Though migrant domestic workers are now permitted to a
single day off in a month, the Employment Act allows other Singaporean workers to a weekly
rest day (Ghosh, 2006).

Malaysia

There are an estimated 138,000 registered foreign workers from India employed in
Malaysia mainly in the service, agriculture, information technology and manufacturing
sectors (Malaysia Sun, 15th October, 2008). The ‘Trafficking in Persons Report’ published by
the US Department of State, The Office to Monitor and Combat Trafficking in Persons has
put Malaysia in Tier 3 in 2006 as one of the "worst offenders" as it failed “to make significant
efforts to bring itself into compliance with the minimum standards for the elimination of
trafficking in persons” “…primarily as a result of their failure to address trafficking for forced
labor among foreign migrant workers” (Trafficking in Persons Report, June 5, 2006, p.24). In
2008 it put Malaysia in the Tier 2 Watch list, as:
Economic migrants from countries in the region who work as domestic servants and as laborers in the construction and agricultural sectors face exploitative conditions in Malaysia that meet the definition of involuntary servitude. The Government of Malaysia does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. Malaysia is placed on Tier 2 Watch List for its failure to provide evidence of increasing efforts to combat trafficking, particularly its failure to provide protection for victims of trafficking. Malaysia lacks comprehensive anti-trafficking legislation that would enable officials to identify and shelter victims and to prosecute traffickers under a single criminal statute. The government continued to arrest, incarcerate, and deport foreign trafficking victims (Trafficking in Persons Report, 2008, p.58).

The report said, adding, that as a regional economic leader approaching developed nation status Malaysia has the resources and government infrastructure to do far more in addressing the issue of trafficking in persons:

perhaps in anticipation of the Tier 3 listing, Malaysia had rushed through in parliament in May 2008 a tough new Anti-Human Trafficking bill that metes out up to 20 years in prison for traffickers, provides shelter for trafficked children and women and treat trafficked persons not as illegal immigrants but as victims needing help and support. The bill protects victims and severely punishes people who trafficked, harbored or profited from the offence (Kuppusamy, 2008a, para 17, 18).

The case of R. Ganesh - a migrant worker from Tamil Nadu State in India is a typical case of victimization of migrant worker. According to Netto (2007):

Ganesh was allegedly subjected to daily beatings, deprived of food and sufficient rest, and chained and locked in a dark room. He was eventually dumped in a wooded area, but was found by villagers who sent him to hospital. He succumbed to his injuries. Pictures of his gaunt face, the horrendous bruises on his back and his protruding rib cage shocked Malaysians. In hospital, he was little more than a bag of blistered skin and bones. The shocking torture and death of an Indian national allegedly at the hands of his employers has highlighted the lack of protection and support networks for migrant workers in … (Malaysia). Ganesh's case, suggests that a poor regulatory framework and lack of a support network may have contributed to his ordeal and his inability to escape from his dire situation. In most cases, the balance of power in the relationship between employers and migrant workers is extremely lop-sided; most migrant workers are frequently at the mercy of their employers (Netto, 2007, para 2, 3, 4).

Though Ganesh’s case is an extreme one, most employers in Singapore and Malaysia deal with migrant workers by with varying degree of decency – some are extremely offensive, rude or exploitative towards their workers. Apart from restrictions such as permits which frequently stipulate or tie them to a single employer, a worker freedom of movement is often curtailed as their passports are usually held by the employers or agents, and this leaves them with little recourse to protection. In Malaysia one of the major deterrents for the worker who runs away from his employer is the RELA (Ikatan Relawan Rakyat Malaysia) or the uniformed volunteer vigilante group. Considered to be the People’s Volunteer Corps, RELA is provided insurance cover, weapons, uniforms, status and a commission of RM80 per alleged undocumented migrant they capture. Without passports or new work permits the
migrants are deemed to be undocumented or "illegal" migrants. RELA conducts night raids where migrant workers are brutalized and humiliated, robbed, dragged out of their beds, forced into trucks that take them away to certain detention centers which are usually crowded and where conditions are so poor that many detainees contract skin diseases and suffer from effects of a poor diet and lack of sufficient drinking water. Courts additionally impose a whipping sentence and those found guilty are eventually deported. It is a shattering experience for these workers, many of whom had taken loans ranging from US $ 2,300-3,800, often selling their homes and land to finance their trip.

Despite the fact that foreign labor provides a workforce at negligible cost to Malaysia, the state scarcely contributes to the reproduction of the foreign labor force by way of education, housing or healthcare. It does little to safeguard this workforce even though foreign workers with permits have a claim for entitlements and the protections offered by the Employment Act. With respect to the foreign workers, the role of Malaysian Trade Union Congress is indubitably ambivalent, at times recommending a ban of foreign workers and at other times proposing to represent them.

**ROLE OF INDIAN GOVERNMENT TO PROTECT MIGRANT WORKERS**

The major legislation governing labor migration from India is the Emigration Act of 1983 on Overseas Recruitment. It established "protectors of emigrants" (POE) offices and required Indians leaving for foreign jobs to obtain certificates from POEs before departure to ensure that they would not be vulnerable in their foreign jobs. However, 13 categories of persons are exempt from this POE emigration certificate requirement, including those with 10 or more years of schooling. India issues two types of passports, those for which an emigration check is required before departure and those that do not require an emigration check. Holders of "emigration check required" passports can nonetheless leave without a POE check for most countries, but need POE permission to travel to 18 countries, including the Gulf oil exporters and Malaysia and Libya.

Only in 2005, a new Ministry for Overseas Indian Affairs (MOIA) was created to take responsibility and deal with issues arising for this international migrant labor. Though the United Nations and its agencies such as the International Labor Organization (ILO) have attempted to bring about a comprehensive international legal framework for migration management, there is neither a bilateral and multilateral norms or standards which could be worked out into a coordinated comprehensive system that could be used as a framework for the protection of migrant workers or the management of the international labor management phenomenon. Only recently the India-Malaysia Memorandum of Understanding on recruitment and welfare of labor. This MoU will provide an institutional framework for cooperation in promoting orderly recruitment and deployment of Indian workers in Malaysia and Malaysian workers in India. The MoU lays down the responsibilities of employers, workers and recruitment agencies as also the procedures for the employment of workers. It provides for the establishment of a Joint Working Group, which will supervise its implementation and work out detailed modalities (Press release, 13th October, 2008, para 2).
Malaysia will station a labor attaché in Chennai, Tamil Nadu to facilitate the smooth intake of foreign workers from India. To address the problems of overseas blue-collar workers India has sought to:

(a) Establish a welfare fund for repatriated overseas workers in distress;
(b) Negotiating a Standard Labor Export Agreement with the host countries;
(c) Monitor and supervision of both the employment contracts, and the conditions of overseas workers by Indian Missions;
(d) Launch compulsory insurance schemes covering the risks faced by Indian overseas workers;
(e) Establish mechanisms for pre-departure counseling and provide legal assistance locally, and also institute training programmes for human resource development and skills upgradation (Ministry of External affairs, Report of the High Level Committee on the Indian Diaspora Chapter 38, p. 557)

CONCLUSION

Violations of rights emerge in every phase of a migrant workers employment cycle. The flow of migration can be distinguished between skilled labor (professionals, technicians, etc.) and unskilled labor. This distinction is decidedly significant in the labor market because the two groups receive differential treatment in host countries. The qualifications determine the bargaining power of skilled workers and they encounter fewer problems overseas. Most protection issues relate to unskilled migrant workers and for the Indian migrant worker the exploitation which begins in the hands of recruiters and traffickers in their countries of origin is relayed to their countries of destination since the host countries quite seldom have detailed national or regional level laws that deal specifically with migrant worker issues. Most often the Indian embassy officials were not trained to deal with such situations and so they do not provide sufficient attention to migrant workers’ complaints or grievances. Until recently the Indian government had not developed any specialized agencies to promote and protect migrant workers and had only a piece-meal proper approach towards the issues and problems faced by this highly contributing migrant laboring community. It is hoped that the new initiatives of Indian Government, such as, Ministry of Overseas Indian affairs and MOU’s with countries in South East Asia will prevent victimization of migrant workers and protect them.

REFERENCES


Chapter 4

THE PLEIGHT OF FEMALE MIGRANT DOMESTIC WORKERS IN THE GULF STATES

Janice Joseph

ABSTRACT

The Gulf Cooperation Council (GCC), Bahrain, Kuwait, Qatar, Oman, Saudi Arabia, and the United Arab Emirates (UAE), host approximately 10 million foreign/migrant workers, with the largest number in Saudi Arabia. Since the discovery of oil, these countries, lacking a local workforce, have been employing a large expatriate labor force. All foreign workers enter these countries as contract workers under the kafala, or ‘sponsorship’ system. Under this system, employers or other individuals sponsor workers to come from abroad for a period of two years. One type of migrant workers working in the countries is the domestic worker who makes up a significant percentage of migrant workers in this region. However, because of the domain in which they work – the household – domestic workers are not protected by national and labor laws and private homes are not supervised by labor inspectors since labor inspectors are forbidden from visiting private households. Because they lack legal and political protection, foreign domestic workers are subjected to numerous forms of exploitation and abuse, including physical, sexual and verbal abuse, labor exploitation, and human trafficking. This chapter discusses the plight of female migrant domestic workers in the Gulf states by examining how gender, race/ethnicity, immigrant status, and employment and their intersections affect the experiences of female migrant domestic workers in the Gulf countries. It specifically focuses the working conditions of these workers in these countries, and the legal and criminal justice response to foreign domestic workers who have been abused. Finally, recommendations are presented in the chapter.

This era of globalization facilitates the movement of individuals across the globe. The flow of migrants includes those who often leave their homes in search of a better life. In the past two decades, the six states of the Gulf Cooperation Council (GCC), Bahrain, Kuwait, Qatar, Oman, Saudi Arabia, and the United Arab Emirates (UAE), have experienced an influx of migrant workers who account for a significant percentage of the growing migrant
workforce in these countries. Presently, there are about 13 million foreigners comprising about 70 percent of the workforce in the six countries. Many of these workers are unskilled or semi-skilled and, in several cases, the number of foreign workers in the country exceeds the native population substantially.

One of the largest groups of migrant workers to the Gulf region has been female workers, and domestic workers constitute the largest category of female migrant workers (Human Rights Watch, 2004). These women encounter a wide range of abuses during recruitment and employment. Estimating the prevalence of abuse is difficult given the lack of reporting mechanisms, the private nature of work, the lack of legal protections, and restrictions on domestic workers’ freedom of movement. However, because of their separate identities, such as gender, ethnicity, class, and nature of their work, they are vulnerable to discrimination, exploitation and abuse.

Despite the interdependence of these identities, most studies of marginal groups have used a unidimensional approach by analyzing marginalization along one dimension. It is, however, important to apply an intersectional analysis when studying disempowered groups to understand the full diversity of their experiences. This approach addresses the multi-layered disadvantaged status of specific individuals and identifies a system of domination, based on subordination and inequality found in many societies. The intersectional analysis also examines the remedies necessary to combat the “additive” effects of multiple identities. In an attempt to fully understand the myriad of experiences of female migrant domestic workers in the Gulf region, it is imperative to view these workers as (complete) entities rather than atomized subsets of various groups.

This chapter examines how gender, race/ethnicity, immigrant status, and employment and their intersections affect the experiences of female migrant domestic workers in the Gulf countries. Specifically, it focuses on how these women experience gendered, racialized, and other identity-based forms of discrimination, exploitation and abuse in the Gulf states. The first part of the chapter examines the presence of migrant workers in the Gulf countries, with an emphasis on female domestic workers. This is followed by a discussion of the intersectional perspective. The third part of the chapter examines the intersectional dimensions of discrimination, exploitation and abuse against domestic workers in the Gulf countries. Finally, the chapter makes recommendations to address the situation of the female domestic workers in these countries.

**Migrant Workers in the Gulf Countries**

The demand for a large expatriate labor force in the Gulf states began in the early 1970s with the increase of petroleum production which requires both skilled and unskilled labor. As the standard of living improved for nationals, the opportunities in the service sector for migrant labor expanded. Currently, Saudi Arabia is the largest recipient of migrant workers, followed by the UAE. These migrant workers are primarily from South and Southeast Asia, especially the Philippines, Indonesia, Sri Lanka, India, Pakistan, and Bangladesh. To a lesser extent, migrant workers also travel from Egypt, Ethiopia, Sudan, and Seychelles (Human Rights Watch, 2004).
The Kafala System

All foreign workers migrate to the Gulf countries as contract workers under the kafala, or ‘sponsorship’ system. This system allows employers or other individuals to sponsor workers to these countries for a period of (generally) two years. Sponsors often use the services of recruitment agencies in countries to find workers. Under this system, the sponsor pays a fee to the recruiter, the workers’ wages, and provides the worker with airfare back to his or her home country (Shadid, Spaan, & Speckmann, 1992). The conditions for sponsorship may vary by country. Saudi Arabia, for example, characterizes the migrant workers as “workers by contract” and requires that both the sponsor and the workers must sign employment contracts in order for a work permit to be issued to workers (Human Rights Watch, 2004). In other Gulf countries, such as Kuwait, Bahrain, and the UAE, contracts may be written or oral and sometimes less than half of the workers signed contracts before they arrived in the host countries (Al-Najjar, 2004).

Since the sponsors are not necessarily the de facto employers of foreign workers, they can easily disassociate themselves from their sponsorship responsibilities if a worker complains or has the desire to return to his or her home country (Human Rights Watch, 2004). When the term of service has ended, or the migrant worker loses his/her job for any reason, he or she must find another employer, return home or be imprisoned for violating immigration laws if he/she remains in the host country without a sponsor (Shadid, et al., 1992).

Female Domestic Workers

In the past, domestic work was performed by the poorer local citizens in the country in the Gulf region but in the last two decades, migrants have replaced these local workers. The increasing number of Arab women in the labor force, the changing perceptions of female responsibilities and domestic work, the increased wealth of families, and the refusal of local workers to perform household work even if they are poor and unemployed have resulted in an increased demand for migrants in domestic work (Chammartin, 2004). In addition, the easy accessibility to migrant female domestic workers serves to perpetuate the traditional roles of women and helps to maintain the gender differentiation in the Gulf states (Momsen, 1999).

Recruiters often charge these women high fees to obtain employment visas and other necessary documents. The heavy fees incurred by them forces them to enter into debt with either the banks or relatives before leaving their homes. Because this practice has resulted in debt bondage, the workers have to work for a certain period of time in the host country without a salary as a means of repaying their loans (Human Rights Watch, 2004). This form of bonded labor often leads to slave-like conditions.

In addition to the debt bondage, labor recruiters force prospective female migrant domestic workers to undergo pre-departure medical testing for a range of health conditions, including pregnancy, human immunodeficiency virus (HIV) infection, elevated cholesterol levels, tuberculosis, and eye, speech and hearing tests in order to determine their fitness to work abroad. Some of these women are administered injectable contraceptives without their knowledge. Labor recruiters sometimes falsify documents by altering a prospective migrant’s passport to reflect a Muslim name because many of the employers in the Gulf states prefer
Muslim domestic workers. These false documents, however, make it difficult to locate families of these workers in the case of an emergency. In most cases, these activities are performed without the consent of the women (Human Right Watch, 2007).

Migrant female domestic workers working in the Gulf region may be classified into three groups with different living and working conditions, namely: "live-ins", "freelancers" and "runaways". Live-in workers often reside within the sponsors/employer's household, usually for two or three years. The sponsor is responsible for all the financial costs, including health insurance, clothing and food, as well as the airfare to return to her home country upon completion of the employment. The employer usually restricts the movement of the live-in domestic worker and confiscates her passport, thus making it impossible for her to leave the country. This household worker cannot change her employer unless the employer agrees and the authorities allow for a "release" to take place.

Freelancers live on their own and their working conditions are much less controlled than the live-in domestic worker. They either rent or stay in a room in a private home in exchange for services rendered. They often work on an hourly basis (around $4-5 per hour) for various employers and can withdraw their services as they wish. Some freelancers entered the Gulf countries as live-in contracts then became freelancers while others initially worked as freelancers by using the name of a sponsor who agrees in return for a fee, not to be their employer. Because sponsors rarely give the freelancers receipts, they are usually unable to prove that they have given money to sponsors who financially exploit them, but the freelancers are too afraid to contact the police.

The third category of domestic workers is the "runaways" who are former live-in domestic workers who have decided for various reasons to leave the house of their employer. They take refuge in embassies, non-governmental organizations (NGOs) or with compatriots who live on their own. As soon as she leaves her sponsor, the domestic worker becomes an illegal alien and can be deported. In general, the live-in and runaway migrant workers are not free to choose an employer without permission from the state authorities. Nor do they have the right to withdraw their labor from their sponsor/employer without being considered illegal and are, therefore, liable to arrest, imprisonment, and deportation. By contrast, while freelancers are bonded to a formal sponsor, they are free to choose their employer and are much less vulnerable to abuse and exploitation by employers and sponsors. In the Gulf region, however, most of the migrant female domestic workers are live-in workers (see Jureidini, 2004).

Domestic workers are placed on probation during the first three months of employment in the host countries. During this period, the employee or the employer can terminate the contract if either party is dissatisfied with the working conditions or the work performed. However, quite often if the worker refuses to work for a household during the probationary period because of abuse, she is forced to continue working for that employer because she has very little choice (al-Najjar, 2004).

Despite the fact that migration provides a great deal of benefits for migrant domestic workers, most foreign domestic workers experience inhumane conditions during their temporary employment in the Gulf states. These conditions could be attributed to the social and legal structures of the receiving these countries which discriminate against these women on the basis of gender, ethnicity, employment, migrant status and other social dimensions.
INTERSECTIONAL APPROACH

Traditionally, race/ethnicity and gender have been analyzed autonomously as a source of oppression. This kind of analysis results in “over-inclusion” and “under-inclusion” of one particular type of oppression. When the discrimination against a group of individuals is analyzed from a gendered perspective and the racial or ethnic implications are ignored, this approach is criticized as being “over-included” with respect to gender. On the other hand, the analysis of discrimination of a group is considered “under-inclusion” when it focuses solely on the perspective of race, despite its gendered dimensions (Crenshaw, 2000, pp. 4-5). In both cases, the full scope of a problem that is simultaneously a product of race and gender subordination is not effectively analyzed because gender and race/ethnicity, in combination, shape or structure the life course of an individual.

Intersectionality Theory

Proponents of the intersectional approach posit that the models of oppression within a society, such as those based on race/ethnicity, gender, religion, nationality, sexual orientation, class, or disability can simultaneously interact with each other, creating complex intersections at which two or three or more of these axes may meet. It addresses the way that specific acts and policies operate together to create further disempowerment. The intersectional approach provides a tool for analyzing the ways in which all forms of identity and distinction interact, and in different contexts. An intersectional approach to analyzing the disempowerment of marginalized women attempts to capture the consequences of the interaction between two or more forms of subordination (Patel, 2001).

Crenshaw’s concept of intersectionality was reintroduced by Patricia Hill Collins (2000) as part of her discussion on Black feminism. She replaced her previously coined term “black feminist thought” with the term “intersectionality.” She refers to the various intersections of social inequality as a form of domination based on race, class, and gender which are all interconnected. She argued that cultural patterns of oppression are not only interrelated, but are held together and influenced by the intersectional systems of society. Anderson and Collins (1995) asserted that if a person is a member of the lower class and a minority woman,
she will not experience simply the negative additive effects of being female, minority, and lower class. Rather, her experiences will result from how these forces intersect with each other through the social and economic structure.

It is clear that these distinctive social traits are integrative and overlapping and help to create a system of social divisions, stratification, and discrimination that affect people’s life experiences. Proponents of this approach suggest that the analysis of marginalized groups should examine the whole person rather than attempting to break individuals up into their component parts.

Since the intersectional approach is appropriate for understanding complex experiences of marginalized groups of individuals, it has been used in the analysis of minority cultures and identities (Knudsen, 2006), labor market (Browne & Misra, 2003) and disability and sexualities (Meyer, 2002; Lykke, 2005) and can be used to understand the complex experiences of female domestic workers in the Gulf region. The interrelated of identities as it relates to the female migrant domestic worker is shown in Figure 1. The figure shows that gender, race/ethnicity, immigrant status, and domestic work (type of job) are interrelated, and the combined effect of all these identities results in discrimination against female domestic workers in the Gulf region.

INTERSECTIONAL DISCRIMINATION AND FEMALE MIGRANT DOMESTIC WORKERS

When gender discrimination intersects with other forms of discrimination, feminist scholars refer to this as the intersectional approach to discrimination. It recognizes the unique experience of women who have been targets of discrimination based on multiple factors. It describes both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination (International Women’s Rights Action Watch Asia Pacific, 2006).

When the intersectional approach of discrimination is used to analyze the experiences of female domestic workers in the Gulf region, it focuses on the complexity of their discrimination, recognizes that their experiences of discrimination may be unique, and identifies how Gulf states respond to these workers (see Ontario Human Rights Commission, 2001). In many cases, female migrant workers may experience discrimination in the Gulf region in a completely different way than migrant men or native Arab women. Similarly, migrant workers may be treated differently from indigenous (national) workers. Likewise, these female migrant domestic workers may experience types of discrimination that would not be faced by other migrant women who are not domestic workers. This is because these female migrant domestic workers often experience distinctive forms of stereotyping or barriers based on a combination of identities. There are three identifiable areas of intersectional discrimination which the female domestic workers in the Gulf region experience. These are (a) targeted discrimination characterized by physical, psychological, and sexual abuse; (b) structural discrimination leading to exploitation; and (c) discrimination in the criminal justice system (see Figure 1).
Targeted Intersectional Discrimination

Intersectional discrimination sometimes results from abuses that are specifically targeted at women based on ethnicity and other identities. In employment, for example, racialized women are sometimes subjected to discriminatory actions specifically because they are not men and sometimes precisely because they are women. In effect, they may experience targeted discrimination because their ethno-racial and gendered profiles.
The rights of female migrant workers are compromised by the prevailing gender segregation in most Gulf countries where women’s personal status is dictated by Islamic law which requires that women have the permission of a father, husband, or male family member to travel outside the country. In addition, the prevalence and tolerance of domestic violence in many of the households makes female migrant domestic workers vulnerable to abuse because of their gender (Human Rights Watch, 2004).

Because of their race and ethnicity, the female migrant domestic workers are sometimes subjected to abuse as well. There is a disdain in the Gulf region for those who are visibly different from the national population. According to Jureidini (2004), anecdotal information indicates that the Arabic term *Abd* which denotes both a "black" person and a "slave" has been used by nationals of the Gulf countries to describe African and Sri Lankan migrant workers whom they consider to be physically inferior. It has also been reported that African and Asian diplomats and professionals have been mistaken as servants and were treated with contempt (Jureidini, 2004).

Although there are no official statistics on the nature and extent of the abuse of female domestic workers, there are a few studies that have highlighted their physical, psychological and sexual abuse in the Gulf countries.

Female migrant domestic workers often experience physical assault by their employers or their employers’ children. The physical abuse includes beatings, deliberate burning with hot irons, kicking, slapping, and hair-pulling. Employers sometimes assault the women with their hands, slippers, rubber hoses, vacuum cleaners, wires, chairs, wooden planks, broomsticks, knives, iron bars, and in one case, a cane. Many of these women suffer headaches, back pain, or loss of movement because of physical abuse (Human Rights Watch, 2007).

Many female migrant domestic workers also endure psychological abuse, including insults, threats of physical harm or death, name calling, and punitive cutting of hair (Human Rights Watch, 2007). Psychological abuse often accompanies physical abuse and takes place in an overall context of excessive workloads, sleep deprivation, and substandard living conditions. This treatment reinforces employers’ domination and control over domestic workers, making them less likely to resist or seek redress for abusive employment conditions. One of the most common forms of mistreatment that serves to reinforce the inferiority of domestic workers’ status in the household is the withholding of food or providing poor quality or rotten food (Human Rights Watch, 2006).

Sexual abuse is often used as another tool of control. Many female migrant domestic workers are sexually abused by their employer, family members (including children) or by other domestic workers living in the same house. The continuum of sexual violence ranges from propositions, threats of rape, sexual harassment to groping. The extent of the sexual abuse is unknown since many of the victims are reluctant to report their sexual abuse because of the taboos, stigma, and shame attached to such abuse. Consequently, many are forced to remain in their abusers’ home and are repeatedly sexually violated (Human Rights Watch, 2007). Human Rights Watch (2006) has collected the testimonies of domestic workers in several countries in the Gulf region and, in most cases, the victims endured sexual violence because they were fearful or were unable to escape their abuser.

One common form of sexual abuse is the trafficking of these women for the purpose of prostitution and other forms of sexual exploitation. Migration and trafficking are interlinked and women recruited into domestic work are sometimes trafficked into sexual slavery. In Saudi Arabia, for example, trafficking women, especially domestic workers, for the purpose
of prostitution, especially domestic workers, is practiced under the cover of migration (Sabban, 2004; Human Rights Watch, 2008). Human Rights Watch (2006) reported that, through corrupt government officials, unscrupulous labor agents and poor enforcement of the law, female migrant domestic workers may be deceived or coerced into sexually exploitative situations.

**Structural Intersectional Discrimination**

According to Makkonen (2002), intersectional structural discrimination involves the existence of a certain policy or practice that affects a particular group that is in a vulnerable social position because of various social factors. Female migrant domestic workers in the Gulf region suffer structural intersectional discrimination because they are not granted equal protection under the law.

The labor laws provide legal protection for workers in the Gulf region. It specifies the number of hours and days a migrant should work each week and employees who work in excess of forty-eight hours a week must be compensated for their overtime work. Under the labor law, workers are entitled to annual vacation, and vacation pay must be provided fully and in advance. The law also sets specific conditions under which an employer may unilaterally cancel a worker's contract without compensation. The labor law protects workers from a variety of employer-related abuses, including contract violations, physical abuse, providing misleading information, and unfair treatment (Human Rights Watch, 2006).

Unlike other types of employment, domestic work in many of the Gulf countries is considered the natural extension of women’s role in the family and society. Domestic workers are, therefore, not protected by the labor laws because they are not considered “employees.” Even where domestic workers are covered by the general labor standards, there are often discriminatory rules that exempt them from certain rights, such as being entitled to overtime, holiday pay or working for only 10-12 hours a day. In addition, laws and regulations either prohibit or restrict migrants’ participation in independent trade union activities, and there is also a lack of monitoring of work-place conditions for domestic workers (Satterthwaite, 2004). Moreover, because the *kafala* (sponsorship) system of individual sponsorship allows the expatriate workers to enter and work in these countries only with the assistance or explicit permission of their sponsor or employer, the conditions of employment are, therefore, based on the discretion of the employer.

Disregard for the labor and human rights of domestic female domestic workers is directly linked to the status of women who are often expected to provide service to the family for free. Employment discrimination is also compounded by racial and ethnic discrimination because many of the domestic workers are migrants of different races and cultures. Consequently, female migrant domestic workers encounter a wide range of human rights violations in the workplace, including extremely long hours of work without a guaranteed minimum wage or overtime pay; no rest days; poor wages; unsafe working conditions; lack of proper health care; and job insecurity. The lack of legal protection of domestic workers leaves these workers little recourse against exploitative work conditions (Human Rights Watch, 2006).
Discrimination in the Criminal Justice System

Many of the cases of abuse are never officially reported to the criminal justice system due to the domestic workers’ fear of reprisal from the employer or deportation. These crimes are also underreported because these victims are either unaware of their rights, not prepared to file charges or cannot afford the legal representation (Jureidini, 2001). In addition, the criminal justice system, a mechanism for reporting and remediying discrimination against these domestic workers, revictimizes them because of their gender, race, and migrant status. The criminal justice system tends to use discriminatory strategies of ‘undercriminalizing’ the perpetrators and ‘overcriminalizing’ the victims.

Undercriminalization of Perpetrators

How society responds to the victimization of women is based on that woman’s status in society. Thus, certain women are not protected by the criminal justice system from crimes that threaten them. Female domestic workers who experience abuse encounter numerous obstacles to the investigation and prosecution of perpetrators of abuse. The victimization of the domestic workers is often treated with indifference by the criminal justice system. In many cases, the police officers either fail to investigate the reported abuse, refuse to believe the workers or forcibly return them to their employers (see Human Rights Watch, 2008). Strobl (2008) conducted a study on domestic workers and female police officers in Bahrain and found that these officers showed contempt for housemaids who reported their abuse. She reported that these policewomen made little attempts to comprehensively investigate the housemaids’ claims of abuse but instead questioned their credibility. Strobl also found that although ‘housemaids’ are treated as members of the family for which they work, their cases of abuse are never prosecuted in the shari’ah courts where all other family-related matters are litigated. Consequently, many of the perpetrators are able to escape being labeled as criminals because the criminal justice system does not take the domestic workers’ accusations of abuse seriously.

Overcriminalization

In most cases, domestic workers who file criminal complaints against their employers are subjected to intensive scrutiny and charged with making false charges. Women who are sexual abused may be charged with moral crimes, such as fornication, adultery, or prostitution, if they report the sexual abuse to the authorities. For such a crime, they can be imprisoned for months and received several dozen lashes. Domestic workers, who become pregnant because of rape, are at risk for prosecution because of her illicit sexual relations outside of marriage (see Human Rights Watch, 2008). Workers who run away because of

\[1\] I am using the term “undercriminalizing” to indicate that perpetrators are either prosecuted for lesser offenses or not prosecuted and convicted for any of the serious offenses against female domestic workers. On the hand, the term “overcriminalizing” suggests that the victims are arrested, prosecuted and convicted for minor offenses or for no offenses at all; thereby criminalizing them.
abuse are considered criminals and, if they are caught, they are imprisoned or deported (Chammartin, 2005).

Strobl (2008) identified four major typologies of housemaids who are criminalized for minor offenses. They are the thieving housemaid, who is accused of stealing from her sponsor; the runaway housemaid, who runs away from her sponsor and is using illegal employment to support herself; and the indiscrete housemaid who acts inappropriately in the homes of the sponsor, such as being caught with a man in the sponsor’s home. The violent housemaid, although rare, is accused of engaged in violence against her sponsor. While most of the perpetrators of abuse against domestic workers are never prosecuted, these domestic workers are, in many cases, criminalized and incarcerated for minor contract violations or for the abuse and exploitation of their employers (Strobl, 2008). For the cases that go to trial, domestic workers endure months or years before the proceedings are concluded. They are seldom given a fair hearing, legal counsel, an interpreter, and written judgments about their cases or convictions (see Human Rights Watch, 2008).

In general, the criminal justice system displays differential justice towards female domestic workers who are abused and exploited. It is clear that the criminal justice system in the Gulf states “assists in the maintenance of inequality through a process of criminalization whereby the law is selectively applied in a manner detrimental to those groups and persons most disadvantaged in unequal relations” (Danner 1996, p. 31). The system clearly labels many victimized domestic workers as criminal while the privileged male citizens of these countries, who violate the rights of these women, are seldom prosecuted and convicted for their abuse against these workers.

**RESPONSE OF THE GOVERNMENTS IN THE GULF REGION**

Several of the governments in the Gulf region have taken steps to address the abuses of migrants. These include the passage of new legislation, creation of new bodies, panels, and agencies to investigate and deal with these abuses.

In May 2004, Kuwait passed the first law in the region that mandated specific conditions for domestic workers. The law stipulated that a minimum wage, weekly rest-day, and payment of overtime should be given to foreign domestic workers (Asian Migrant Centre, 2005). The Sri Lankan Manpower Welfare Association of Kuwait (SLMWAK) and Association of Licensed Foreign Employment Agencies in Sri Lanka have signed a memorandum of understanding in which they promised to create a method to ensure the safety and welfare of migrant workers (Samath, 2008). Qatar has drafted a law that protects domestic workers' rights. The law mandated that the employers pay wages on time and give their workers a paid day off every week and three-weeks' holiday a year. There will also be a new mechanism where employers and their employees could settle their disputes. The draft law was approved by Qatar's Advisory Council, and is now awaiting the approval of the emir (BBC News, 2008).

The UAE has established a religious program campaign which is designed to teach migrant workers “Islamic values” and to train employers how to treat and respect migrant workers (Asian Migrant Centre, 2005). The Ministry of Interior of Kuwait, in cooperation with other ministries, plans to establish a Domestic Workers Company to address the
problems of domestic workers. This company will protect the rights of both the housemaids and their sponsors. The new company will be responsible for the arrival, residence and work of housemaids from their appointment until their departure (Arab Times, 2008). The Saudi Arabian government expressed its determination to put an end to the reported cases of abuse meted out to domestic workers (Al Hakeem, 2008).

As unemployment among nationals in the Gulf region began to grow, and in an attempt to decrease the reliance on so many migrant workers, several countries in the Gulf region have developed policies that would reduce the number of migrants in their country and the region. This is referred to as localization, nationalization, indigenization or de-Arabization of the labor market (Kapiszewski, 2006). In 2004, Bahrain proposed a five-year limit on migrant workers staying in any GCC country (Asian Migrant Centre, 2005). The Saudi Arabian government has embraced the concept of “Saudization,” which is a strategy which emphasizes the training of Saudi workers to replace foreign workers in Saudi Arabia. The goal of Saudi Arabia is to nationalize 80% of its workforce by 2013 (Pakkiasamy, 2004).

These reforms by some of the governments in the Gulf region, though important, are not enough. What are needed are strategies and policies that would prevent the exploitation and abuse of domestic workers.

**PREVENTION OF EXPLOITATION AND ABUSE OF FEMALE DOMESTIC WORKERS**

Since abuse and exploitation of domestic workers in the Gulf region is a multifaceted problem, strategies for the effective prevent this abuse need to be multifaceted. No single intervention can address the complexity of the issues affecting female migrant domestic workers. Measures to protect these victims from exploitation entail a combination of crisis interventions and long-term healing and societal reintegration.

**Recommendations**

**Receiving Countries**

Because domestic work falls outside labor legislation in many countries, domestic workers are unable to access their rights. The devaluing of domestic work as legitimate work combined with the privacy of the home results in exploitative living and working conditions, so it is imperative that these governments provide their workers with decent working conditions. The countries in the Gulf region should implement labor, legislative, immigration, and criminal justice reforms to protect domestic workers from serious abuse by:

- Passing legislation recognizing domestic work as legitimate work and ensuring that domestic workers have the same rights as other workers with respect to written contracts, minimum wage, overtime, weekly day of rest, limited workday, rest periods during the day, national holidays, and vacation. By including them in the labor laws, government would set a standard of treatment that will be similar for workers in other sectors and reduce the exploitation of domestic workers.
• Eliminating all legislation, laws, and policies that discriminate against women on the basis of gender, race/ethnicity, and other identities.
• Creating laws and policies that take into account the multiple identities of women, different racial and ethnic groups, migrant workers, and domestic workers.
• Providing a written or oral contract setting out the terms and obligations of domestic workers in the workplace that are agreed upon by the employer and the domestic worker. This will ensure that the terms and conditions of work are respected by both parties.
• Empowering migrant female workers by allowing these workers to participate in unions and form their own non-profit groups. The non-profit groups will provide a voice for these voiceless women, and the unions would represent them in any labor disputes.
• Ensuring that the fundamental rights of migrant female domestic workers are respected. These include the right to humane treatment, basic needs, security of employment, adequate wages, and health care.
• Providing access to justice to those migrant domestic workers who are abused and exploited. This will entail successfully prosecuting sponsors, employers, and employment agents who violate the rights of domestic workers. The courts should also provide civil remedies, including monetary damages to migrant domestic workers who are abused.
• Reforming or abolishing the kafala sponsorship system so that temporary workers may not be obligated to a particular employer. This will ensure that workers can change employers without losing legal status or having to obtain permission from their original employer (Human Rights Watch, 2008).

**Sending Countries**

Sending countries rely heavily on the financial benefits of the exportation of their labor forces to the Middle East. Remittances from overseas workers could reach $100 billion annually (see Waldman, 2005), and these remittances are vital sources of income for many of these countries. These countries, however, have a responsibility to their labor force that is being exported. They should, therefore:

• Regulate labor agencies and recruitment agencies in an attempt to reduce exploitation of potential migrant workers. They should impose substantial penalties on labor agencies and agents who violate these regulations (see Human Rights Watch, 2005).
• Establish guidelines and mechanisms for regular and independent monitoring of labor agencies, including unannounced inspections (see Human Rights Watch, 2005).
• Improve victim services at embassies and diplomatic missions in the Gulf regions by providing more resources including adequate staffing, access to legal aid, health care, trauma counseling, and shelter (see Human Rights Watch, 2005).
• Enhance pre-departure training programs for domestic workers by providing them with information on language requirements and mechanisms for filing complaints against employer who abuse them (see Human Rights Watch, 2008).
• Collect and investigate complaints about nationals working at labor agencies in the countries of employment by creating procedures that allow domestic workers to
Janice Joseph

register this information at foreign missions in the countries of employment and upon return (see Human Rights Watch, 2008).

- Develop a system for freeing domestic workers who are working under slave-like conditions and are unable to escape. This should be done in conjunction with local law enforcement, foreign diplomatic missions, and NGOs as necessary. Providing all domestic workers with mobile phones, access to multilingual hotlines (including text message hotlines), and implementing time-bound protocols for response could be useful in this endeavor (see Human Rights Watch, 2008).

REFERENCES


Chapter 5

WORKING IN THE SHADE:
IRREGULAR MIGRANT WORKERS IN THE NETHERLANDS

Mariska Kromhout, Joanne van der Leun and Henrieke Wubs

ABSTRACT

Irregular labour migration to the Netherlands is strongly linked to regular migration flows, such as regular labour migration, family migration, and asylum. Since the early 1990s, Dutch governments have tried to reduce the number of irregular migrants through several laws, regulations, and policies aimed at excluding irregular migrants from welfare state provisions and expulsing them from the Netherlands. Recent estimates indicate, however, that a substantial number of illegal immigrants, both Europeans and non-Europeans, still reside in the Netherlands. These migrants manage to find low-skilled, low-paid jobs in sectors like the hotel and catering industry, the construction industry, the agricultural and horticultural industries, the retail trade, and the temporary employment sector. Some also work in the sex industry or make their living out of income-generating crime. The circumstances under which they work and live are sometimes reminiscent of exploitation, both in- and outside the sex industry, but evidence of this is still weak. The involvement of irregular migrants in criminal activities seems to be limited; moreover, it mostly involves minor offences.

FOREWORD

Societal attention for illegal migration or irregular migrants comes and goes in the Netherlands. Newspaper reports usually react to incidents or new data concerning law enforcement. Meanwhile, illegal labour is silently accepted by many. As a result, irregular labour migrants constitute a special category of migrant workers in the Netherlands. Their position in society in general, and on the labour market in particular, depends in part on
policies of the Dutch government. This position differs in many respects from that of legal labour migrants.

To distinguish between both groups, ‘irregular’ migration is often defined as: 1) leaving or entering a country, and crossing borders without the consent of the authorities; 2) crossing borders using false identity- and/or travel documents; 3) remaining in a country after having lost one’s right of residence (see Heckmann, 2004; Schrover, Van der Leun, Lucassen, and Quispel, 2008). The latter category includes remaining in a country after the expiration or withdrawal of visa or of temporary or long-term residence permits, as well as remaining after having exhausted all legal remedies against the refusal of an asylum request. Many irregular migrants have left their countries of origin to better their lives. Finding work is therefore crucial to them (Engbersen et al., 2002; Leerkes, Van San, Engbersen, Cruijff, & Van der Heijden, 2004; Staring et al., 2005).

In the Netherlands, irregular migrants are often called ‘illegal’ migrants. Several authors have made objections against the use of this term, because migrants themselves can never be illegal, only their activities can be regarded as such. Because of the association of illegality with criminality, it has often been proposed to replace the term ‘illegal’ with words such as ‘undocumented’, ‘unauthorised’, or ‘irregular’ (for a summary of this debate see Koser, 2005). However, these alternatives generate their own problems (Schrover et al., 2008; also compare Ngai, 2004). In this chapter, we will use the terms ‘irregular’ and ‘illegal’ interchangeably.

The need to avoid detection and attention is a fact of life for irregular immigrants. Information may therefore be unreliable and social myths may flourish. However, since the mid 1990s, empirical research in the field of irregular migrants has been rapidly expanding in the Netherlands. A recent research summary by the Research and Documentation Centre (WODC) of the Dutch Ministry of Justice (Kromhout, Wubs, & Beenakkers, 2008), which underlies the present chapter, has made the outcomes more accessible. In this chapter, we will draw on the available studies to provide insight into the backgrounds of irregular migrant workers in the Netherlands, their position on the Dutch labour market, and the risks they run of being exploited. We will also briefly discuss the involvement of irregular migrants in crime and prostitution. As irregular migration is often linked to regular migration, we will start with a description of regular and irregular labour migration to the Netherlands since World War II.

**HISTORY**

After the Second World War, the Netherlands for some time has been a country of emigration. Since the 1960s, it has become an immigration country rather than an emigration country (Wetenschappelijke Raad voor het Regeringsbeleid, 2001). Labour migration to the Netherlands was regulated by law for the first time in 1934, and has continued to be regulated by law, subordinate legislation, and different kinds of regulations ever since that date. After World War II, international treaties between Western countries, treaties between the countries

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1 The most recent population data can be accessed at the website of Statistics Netherlands (CBS): www.cbs.nl/statline. On 1 January 2008, 19.6 per cent of the Dutch population was foreign-born and/or had at least one foreign-born parent. If we limit ourselves to non-Western immigrants (first and second generation), 10.7 per cent of the population belonged to this category. These figures pertain only to those who have been officially registered in one of the Dutch municipalities.
of the European Community and its predecessors, and later on European Union treaties, have supplemented the national legislation. These treaties allowed nationals of the states involved full access to these states’ labour markets, whether or not after a period of restricted access. Other bonds between the Netherlands and non-Western countries, such as (former) colonies and labour recruitment countries, enabled labour migration to the Netherlands as well (De Lange, 2007). Based on the existing literature and her own research, De Lange (2007) distinguishes several flows of migrants to the Netherlands, who were granted access to the Dutch labour markets between 1945 and 2006. We will shortly discuss them below. Although not always explicitly mentioned by De Lange, during the whole of this period, Antillean migrants, who hold Dutch passports, also migrated to the Netherlands (Wetenschappelijke Raad voor het Regeringsbeleid, 2001).

1945-1960

Until 1960, labour migration to the Netherlands was relatively limited, while emigration exceeded immigration. For the most part, the migrants who had access to the Dutch labour market were persons displaced as a result of the Second World War and refugees from Hungary after the uprising of 1956; Indonesian and Moluccan migrants, who came after the independence of the former colony Indonesia in 1949; migrants from Surinam (a Dutch colony until 1975) and the Netherlands Antilles (part of the Kingdom of the Netherlands until now); and labour migrants from European countries such as Belgium, Germany, and Italy (De Lange, 2007).

1961-1975

In the 1960s, labour migration from neighbouring countries such as Germany and migration from Indonesia, Surinam, and the Netherlands Antilles continued. The Dutch government admitted a number of refugees and Chinese as well. Furthermore, it actively recruited migrants from Italy, Spain, Portugal, Turkey, Greece, Morocco, Yugoslavia, and Tunisia for low- and unskilled jobs in the Dutch industries. Along with those who were selected to come as ‘guest workers’, even more came to the Netherlands spontaneously, without work permits. Between 1963 and 1975, the authorities issued many work permits to such irregular labour migrants, who had obtained a job after their arrival in the Netherlands. After 1969, however, this number dropped substantially as a result of a new requirement, applicable to migrants from many countries, to obtain a temporary visa before travelling to the Netherlands. This requirement de facto created the ‘illegal’ labour migrant. Such illegal migrants still came to the Netherlands. In 1975, a limited number received a work permit in the context of a regularisation scheme (De Lange, 2007).

1976-1990

Like other European countries, the Netherlands substantially reduced the numbers of recruited labour migrants after the first oil crisis of 1973. Instead, family reunification and
family formation constituted the main legal channels of migration from outside the European Community to the Netherlands from the mid-1970s to the end of the 1980s. Former guest workers started to bring their relatives to the Netherlands, or to form families with nationals from their countries of origin. Some of these family migrants entered the Dutch labour market. In the first years after the independence of Surinam in 1975, Surinamese labour migrants also had access to the Dutch labour market. This also applied to migrants from European Community member states and to people who were granted asylum status (refugees and persons in need of subsidiary protection). Insofar as official labour migration took place, it increasingly concerned high-skilled migrants from the USA and Asia, instead of low-skilled labour migrants from the former recruitment countries (De Lange, 2007).

1991-2008

In the 1990s, labour migration constituted only a small part of the total immigration to the Netherlands, partly as a result of restrictive government policies on labour migration. Nationals of EU member states, family migrants, and those with asylum status continued to enter the labour market. The government regularised a small group of irregular labour migrants who had always paid taxes.

At the end of the Nineties, shortages in specific sectors of the Dutch labour market started to increase. Subsequently, regulations were eased to benefit sectors such as the IT- and health sector. In October 2004, the Dutch government introduced a high-skilled migrant workers scheme for migrants who earn incomes above specific levels (De Lange, 2007). However, in sectors such as agriculture and the construction industry, the demand for low-skilled labour migrants has increased as well. In part, this demand has been met by illegal immigrants (De Lange, 2007; Van der Leun & Kloosterman, 2006). Furthermore, the Netherlands has received many regular labour migrants from countries that joined the EU on 1 May 2004, especially from Poland (De Lange, 2007). Since the EU enlargement of 1 January 2007, regular labour migrants from Romania and Bulgaria have come to the Netherlands as well. However, until 1 May 2007, employers still needed an employment permit if they wanted to hire nationals from most of the new member states (Arbeidsinspectie, 2008). Mid-2008, this was still the case for employers wanting to employ Romanian or Bulgarian workers. Since 2006, the Dutch government has been redesigning its migration policies to enable immigration under specific conditions for low- as well as high-skilled migrant workers (see the policy document ‘Toward modern migration policies’, Lower House of Parliament, 30 573, no 1).

Although regular labour migration has been discouraged for a long time, irregular labour migration has continued (Van der Leun & Kloosterman, 2006). Furthermore, failed asylum seekers who remain in the Netherlands add to the number of illegal residents in the Netherlands. In the 1990s, the number of asylum seekers in the Netherlands varied between 20 300 and 52 600. Since 2000, the numbers have dropped. In 2007, 9 700 asylum seekers lodged an asylum claim in the Netherlands (Sprangers & Nicolaas, 2008). Many of them are not granted asylum status and are obliged to leave the Netherlands on their own initiative. For various reasons, only a small number is actively expelled (Kromhout, in press). As a result, a

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2 The numbers include first asylum applications as well as second or following asylum claims.
number of failed asylum seekers remains in the Netherlands irregularly (see Van der Heijden, Van Gils, Cruijff, & Hessen, 2006). Below, we will report the findings of the most recent attempt to estimate the number of irregular migrants residing in the Netherlands.

**RECENT ESTIMATES**

In the Netherlands, there are no official registrations of irregular migrants; neither can we fall back on census data. However, the Netherlands has quite a rich experience of estimating the numbers of foreigners illegally residing in the country (Sikkel, Van der Heijden, and Van Gils, 2006). Estimates are based on information primarily resulting from the control exercised by government authorities, especially the Aliens Police and the Labour Inspectorate. The most recent estimate of the presence of illegal immigrants, applying to the period April 2005-April 2006, was conducted by Van der Heijden et al. (2006). They estimated that 88,116 irregular migrants from non-European countries had resided in the Netherlands during that period. With a reliability interval of 95%, the number of illegal residents may add up to anywhere between 62,320 and 113,912. For European irregular migrants, the estimate was 40,791, with a 95% reliability range from 12,000 to 70,000. It is likely that the latter number has dropped since 2005 as a result of the recent enlargements of the EU. Furthermore, between 2007 and 2008, a regularisation programme has been carried out for a specific group of about 27,500 asylum seekers, some of whom had already exhausted all legal remedies (Lower House of Parliament, 31 018, no 33).

Regarding the countries of origin of the irregular migrants who were detained by the Aliens Police, it appeared that most detainees from European countries had the Bulgarian or Romanian nationality. Earlier research has shown that before the enlargement of the EU of 1 May 2004, a number of Polish labour migrants stayed and worked in the Netherlands illegally (Engbersen et al., 2002). Of the non-European migrants apprehended between April 2005 and April 2006, most came from Asia (including the Middle East), and Central and Southern Africa (Van der Heijden et al., 2006). It is unclear to what extent this distribution also applies within the population of illegal residents as a whole.

Leerkes et al. (2004) estimated that 40% of the irregular migrants in the Netherlands lived in one of the four metropolitan police regions between 1997 and 2003. Most of them lived in relatively poor and multi-ethnic districts. In a number of rural areas, a relatively large group of irregular migrants was present as well.

**LEGAL POSITION AND POLICY CONTEXT**

In recent decades, the Dutch government has tried to combat irregular labour migration in several ways. The measures taken aimed at preventing the illegal entry of migrants, excluding them from the labour market and social benefits, and apprehending and expelling them from the country. One of the most important legislative measures has been the so-called Linking Act (Benefit Entitlement and Residency Status Act) of 1998, by which social benefits and

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3 The estimates are made using the so-called ‘capture-recapture’ method, in which the Poisson regression model is applied (see also Van der Leun and Ilies, 2009).
provisions were made inaccessible for illegal residents (Van der Leun, 2006). The government made exemptions for access to ‘necessary’ medical care, legal aid, and education for children (Fahrenfort et al., 2001). Furthermore, the Aliens Act 2000 was implemented in 2001, which comprises the statutory obligation of irregular migrants, including failed asylum seekers who have exhausted all legal remedies, to leave the Netherlands of their own accord at the risk of being expelled. This Act also expanded the powers of enforcement of the Aliens Police to apprehend irregular migrants (see Boekhoorn, Speller, & Kruijssen, 2004). The Identification Act of 1994 and the Expanded Identification Act of 2005 stipulated the obligation to carry proof of identity. According to the current Aliens Employment Act and subordinate regulations, employers are obliged to acquire an employment permit for labour migrants from outside the European Economic Area (EEA) and for specific countries within the EEA (see Arbeidsinspectie, 2008; De Lange, 2007).

These and other legal instruments have been supplemented by measures, like raising the fines for employers who make use of illegal employees, increasing the level of supervision by the Labour Inspectorate and the Aliens Police, expanding the capacity for the detention of irregular migrants, and attempts to increase the number of expulsions of irregular migrants from the Netherlands (see the policy document on return of aliens of 2003, Lower House of Parliament, 29 344, no 1; the policy document on illegal residents of 2004, Lower House of Parliament, 29 537, no 2; and the letter to the Lower House of Parliament of June 2008, Lower House of Parliament, 19 637, no 1207). Furthermore, a number of relatively limited regularisations have been carried out since the 1970s (De Lange, 2007; Lower House of Parliament, 31 018, no 33).

Despite all of these measures, a substantial number of irregular migrants still survive in the Netherlands, finding their way around rules and regulations by making use of their networks and parallel institutions in society. Below, we will describe how they manage, according to the most recent studies.

**SOCIAL POSITION**

The possibilities for irregular migrants to survive in a society from which they are formally excluded are largely determined by their social networks. Regarding their family situation, qualitative research carried out among irregular migrants in the Netherlands showed that they form a heterogeneous category. Some of them are single, while others have partners, either in the Netherlands or in their country of origin, or in another country. Some have children, again in the Netherlands or elsewhere (Engbersen et al., 2002). A number of single irregular migrants turn out to be underage. Others are women who have left their partners within three years after their migration to the Netherlands, and have lost the residence permit that was dependent on their relationship (Braat, 2004).

For some irregular migrants, family members (other than spouses or partners) legally residing in the Netherlands are a resource: they may provide, or help in finding housing, or jobs. Family members may also be instrumental in the actual migration of irregular migrants, by signing a so-called ‘guarantor’s declaration’ in the process of acquiring tourist visa. This seems particularly true for irregular labour migrants from countries such as Turkey, China, Morocco, and Surinam. At least initially, they fall back on ethnic communities that have been
developing in the Netherlands for several decades. In contrast, irregular labour migrants from the north of Africa and former parts of Yugoslavia and the Soviet Union seem to organise their migration much more independently. A third category of irregular migrants consists of failed asylum seekers, some of whom may be labour migrants in disguise. Many of them have reached the Netherlands with the help of smugglers. Their ethnic communities are still relatively small and have fewer possibilities to assist them (Engbersen et al., 2002; Staring, 2001; Staring et al., 2005).

Illegal residents who are not, or to a lesser extent, accommodated by family members or acquaintances may rent a bed, a room, or an apartment in the private sector (Benseddik and Bijl, 2004; Engbersen et al., 2002; Leerkes et al., 2004). Some live in houses owned by housing corporations, mainly through subletting (Leerkes et al., 2004). Other forms of accommodation include shelters for the homeless or for rejected asylum seekers (Böcker and De Heer, 2006; Rusinovic et al., 2002). According to several studies, many irregular labour migrants rent accommodation in the private sector. Landlords often are legally residing migrants, sometimes from the same country of origin. Irregular migrants who rent in the private sector live in rather poor circumstances: the properties often are subject to overdue maintenance, a lack of hygiene and overcrowding. One of the respondents who was cited in Benseddik and Bijl (2004) said, for instance: “Seven of us lived in a house with two rooms. New residents came and went. You often didn’t know who was a resident and who was a visitor. (...) You couldn’t cook, take a shower or sleep quietly” (p.144). The residents accept these conditions out of sheer necessity (Benseddik and Bijl, 2004; Leerkes et al., 2004).

Regarding the possibilities to find employment through ethnic social networks in the Netherlands, several studies have shown that especially Turkish, Bulgarian, and Chinese illegal migrants find jobs through their ties with well-established ethnic communities (Engbersen et al., 2002; Leerkes et al., 2004).

**LABOUR MARKET**

In the Netherlands, a dense web of state regulations concerning the (minimum) wages, hours of work, fringe benefits, work environment, health issues etc., protects regular labour. Certain jobs are priced out of the formal market because of regulations that drive up the labour costs above the level of labour productivity. Such a high level of labour market regulation unintentionally contributes to the demand for informal labour. This is chiefly, but not exclusively, the case in the service sector, where the substitution of labour by capital is hard to realise (Van der Leun and Kloosterman, 2006). Research among employers in various sectors has indicated that they employed irregular migrant workers mainly for two reasons: a shortage of motivated legal workers and reduction of costs (Benseddik and Bijl, 2004; Groenewoud and Van Rij, 2007). It is likely that their advantage also lies in the flexibility of the illegal workforce, and their willingness to work under unfavourable conditions without complaining or reporting ill.

Zuidam and Grijpstra (2004) estimated that between 65 000 and 91 000 irregular migrants were working on the Dutch labour market in 2004. In 2007, the Labour Inspectorate found 2894 migrant workers for whom the employer had failed to acquire an employment permit. Among them were EU citizens, like Romanians and Bulgarians, who had the right to
be self-employed in the Netherlands, but not the right to work as employees if their employers lacked an employment permit. For the most part, the migrants worked in the hotel and catering industry, the construction industry, the retail trade, the agricultural and horticultural industries, and the temporary employment sector. In 2006, the number was 5,478. The Inspectorate attributes this reduction to the fact that on 1 May 2007, the requirement of an employment permit for workers from countries like Poland was dropped. It also points to the increased level of supervision and the high fines for employees who infringe upon the Aliens Employment Act. Notable reductions have taken place in (Chinese and other) catering establishments and in the agricultural and horticultural industries, whereas in the construction industry employers were found to be using illegally employed workers of other nationalities than before (Arbeidsinspectie, 2008). It should be noted that the data generated by the Labour Inspectorate are biased by the fact that it carries out most of its intensive inspections in those sectors that are regarded as high-risk sectors.

Without exception, all available studies demonstrate that irregular migrants primarily work in low-paid and unskilled jobs (Engbersen et al., 2002; Kloosterboer, Potmis, Wedad, & Terlemis, 2002; Van der Leun, 2003). Some receive wages below those that were initially agreed. A Bulgarian migrant cited in Kloosterboer et al. (2002) said: “They say: how much we give you, that’s what you get. You people work illegally and there’s nowhere you can complain anyway” (p. 22).

Illegal immigrants also appear to work below their level of qualifications. Upward mobility is severely lacking. Over time, it even seems that undocumented workers have become more vulnerable. Jobs have become more volatile and uncertain as a result of the shadier modes of provision. Illegal immigrants are hired, for instance, by gang masters or intermediaries whom they hardly know. Hourly wages seem to have decreased (Van der Leun & Kloosterman, 2006). One of the reasons for this decrease in income probably is the fact that intermediaries skim off part of the profit and sometimes even withhold salary from the workers. Another reason may be that wages are generally lower in the sectors and segments to which illegal labour seems to shift, like, for instance, the restaurant and catering sector.

In terms of labour conditions, we cannot be conclusive. It is very well possible that illegal immigrants working in private households are often better off in this respect than people working in the meat-packing industry, for instance. On the other hand, the lack of transparency and the increasing vulnerability of the workers concerned may also lead to further exploitation.

CRIME

Unlike the situation in other European countries (e.g. Belgium, France, or Germany), illegal residence as such is not punishable in the Netherlands (Adviescommissie voor Vreemdelingenzaken, 2002). Although it has been regularly discussed in Dutch politics, successive cabinets have argued that penalisation would create the unwanted side effect of prolonging people’s illegal residence. Nevertheless, based on the Aliens Act 2000 rather than on criminal law, increasing numbers of irregular migrants have been detained. From a legal point of view, this detention is an administrative, not a penal matter. Since the late 1990s, between 15 000 and 20 000 illegal migrants have yearly been confined in police stations,
penitentiary institutions, or detention centres, and these numbers are rising. Beside the fact that illegal immigrants are currently detained more often than in previous years, the average length of detention has also increased significantly. Roughly, half of those detained are actually expelled. Many others are released with an order to leave the Netherlands (Engbersen, Van der Leun, & De Boom, 2007; Van Kalmthout, 2007).

According to the studies cited, most illegal migrants confined in detention centres have not committed any crimes, while others have mainly committed minor offences. Between 1997 and September 2003, most of the irregular migrants who were apprehended by or handed over to the Aliens Police, were suspected of illegal residence or (to a much lesser extent) of summary offences. During the same period, however, both the number and the percentage of irregular migrants arrested on suspicion of committing minor offences increased. This mainly involved theft and the possession of false papers (Leerkes et al., 2004). This development seems to have been the result of stricter law enforcement as well as a change in residence strategies of illegal immigrants (Engbersen et al., 2007), for whom survival without documents has become ever more difficult (Van der Leun & Kloosterman, 2006).

Leerkes (2006, 2007) distinguishes three types of crimes that occur among illegal residents in the Netherlands: ‘residence crime’ (including identity fraud), ‘subsistence crime’ (including theft and drug dealing), and crime that is related to drug addiction. Other studies point out that some irregular migrants already committed offences in their own countries (‘import crime’), while the criminal activities of others arise from contacts with criminal networks in the Netherlands (e.g. Van San, Snel, & Boers, 2002).

**PROSTITUTION**

Unlike the situation in most other countries, in the Netherlands, prostitution is a legal sector of employment. The government lifted the general ban on brothels in 2000. The new law permits forms of prostitution in which adult prostitutes are voluntary engaged. On the other hand, the legislator’s goal is to diminish exploitation and human trafficking in the sex industry by regulating the sector (Daalder, 2007). Ever since this change of law, women from countries within the European Union are allowed to work in the Netherlands as a prostitute. However, Bulgarian and Romanian women, whose countries have joined the EU on 1 January 2007, cannot work as a prostitute for an employer, but have to be self-employed. Persons from outside EU countries are not allowed to work in the Dutch prostitution sector at all (Lower House of Parliament 28 684, no 119; Lower House of Parliament 25 437, no 20).

Since the implementation of the new law and an accompanying system of authorisation, illegal prostitution has not ceased to exist (Biesma, Van der Stoep, Naayer, & Bieleman, 2006; Brants, 2003; Goderie & Boutellier, 2006; Goderie, Spierings, & Ter Woerds, 2002). Undocumented migrant women work as prostitutes in licensed as well as unlicensed (which means illegal) businesses. Some of these women are victims of cross-border human trafficking, others fell victim to human traffickers after their arrival in the Netherlands, while a third group came to the Netherlands on their own initiative, with the aim of working in the sex industry.
Little is known about the number of illegal prostitutes in the Netherlands. What we do know is the number of victims of human trafficking reported to the Foundation against Trafficking of Women (Stichting tegen Vrouwenhandel, 2007). Between 2001 and the end of 2006, 1 513 victims were reported from countries outside the EU. Registrations related to a specific government regulation for victims of human trafficking provide another indication. By virtue of this regulation, victims may apply for a residence permit under particular circumstances. In 2006, 180 persons did just that. It is assumed that the figures from both sources constitute a major underestimation (Dettmeijer-Vermeulen et al., 2007; Korvinus, Van Dijk, Koster, & Smit, 2004). Among the undocumented prostitutes are adults and minors, both male and female, but we lack a recent estimation of their numbers (Goderie et al., 2002; Stichting Amsterdams Oecumenisch Centrum / Deutsche Hilfsverein, 2004; Van Horn, Bullens, Doreleijers, & Jäger, 2001). The available literature suggests that prostitutes without papers mainly work in the less visible forms of prostitution, which take place in the escort industry, in private houses and via Internet mediation, and in ‘grey sectors’ like saunas and swingers’ clubs (Goderie & Boutellier, 2006; Goderie et al., 2002).

**EXPLOITATION**

Until 1 January 2005, Article 273-f of the Dutch Criminal Code, which concerns human trafficking, exclusively referred to trafficking for the purpose of exploitation in the sex industry. Since that date, the article pertains to all kinds of exploitation, including the removal of organs. However, the article does not clearly define exploitation. It is outlined in explanatory documents that ‘exploitation’ in this clause relates to excessively degrading, slavery-like circumstances in employment or service relationships, in which human rights are at stake. The legislature has left it up to the courts to define the exact scope of the new condition (Dettmeijer-Vermeulen et al., 2007). Until February 2008, only four investigations of exploitation not taking place in the sex-industry have lead to confiscation. In one of these cases, the court qualified the situation of bondage and infraction of the physical and psychological integrity of the victims as trafficking of human beings. In the other cases, the defendants were found innocent. During the writing of this chapter, the appeal of the prosecutors was still being awaited. The National Rapporteur on Trafficking in Human Beings in the Netherlands was expecting that the scope of the article on exploitation other than sexual exploitation will become clearer through future jurisprudence (Dettmeijer-Vermeulen, Boot-Matthijssen, Van Dijk, De Jonge van Ellemeet, & Smit, 2008).

The social and financial constraints faced by irregular migrants increase the risk that they fall victim to exploitation, inside as well as outside the sex industry. Researchers have encountered various forms of exploitation of illegal prostitutes, which vary from pimps 'protecting' a girl for money, to slavery-like situations. The most serious cases of exploitation were found in street prostitution and escort services (Goderie et al., 2002). Goderie and Boutellier (2006) reported deprivation of freedom (women were forced to work every day, except in cases of illness), a lack of housing, sleeping at the workplace, and deception regarding the objectives of the trip to the Netherlands. A young Russian woman cited in Goderie et al. (2002) said: “I knew I was going to work in the sex industry, but I didn’t know it would be like this. Not being allowed to decide your own working hours, and having to
hand over almost all of your money” (p.57). Goderie and Boutellier (2006) also observed, although less often, financial exploitation and the use of sexual or other forms of violence to force women into prostitution.

Based on their analysis of the literature on irregular labour migration outside the sex industry, Van der Leun and Vervoorn (2004) have concluded that slavery-like exploitation is rare in the Netherlands. Residents whom they considered to be most at risk from exploitation were those dependent upon their employer or intermediary in several respects, like work and housing (see e.g. Leerkes et al., 2004). Although slavery-type exploitation may appear to occur infrequently, studies among illegal workers in the region of The Hague showed that working conditions of irregular labour migrants left a lot to be desired: they were working without employment contracts, were sometimes underpaid, and suffered from periods of unemployment and debts (Benseddik and Bijl, 2004; Kloosterboer et al., 2002). According to Dettmeijer-Vermeulen et al. (2007), most exploitative labour conditions occur in the catering industry, household help, temporary employment, and agri- and horticulture. Combinations of sexual and other forms of exploitation are also found. An investigation of cases showed that minors, too, sometimes find themselves in work situations that are reminiscent of exploitation. In most cases, this concerned exploitation in the sex industry (Van den Borne & Kloosterboer, 2005).

**CONCLUSION**

Irregular labour migrants have come to the Netherlands as the illegal counterparts of several types of legal migrants, who were granted access to the Dutch labour markets since the end of World War II. Especially since the early 1990s, the Netherlands has been actively dealing with the issue of irregular migrants.

Policies targeting illegal immigrants have become much more restrictive over time. They emphasise the protection of public provisions as well as the apprehension and expulsion of illegal residents. Nonetheless, the most recent estimates indicate that a substantial number of irregular migrants continue to live in the Netherlands, although their number has probably dropped as a result of the recent enlargements of the EU.

Many of these migrants still succeed in finding housing and jobs, by making use of their social networks and parallel institutions in society. However, the circumstances under which they often live and work leave a lot to be desired, and sometimes come rather close to exploitation, both in- and outside the (licensed) sex industry. The challenge facing irregular labour migrants is to earn a living in the face of ever-tougher supervision by the authorities. Some irregular migrants resort to petty crime, while others seem to have already been part of criminal networks in the first place. Employers have their own reasons to make use of irregular workers.

The challenge for policy makers is how to prevent exploitation on the housing and labour markets on the one hand, and to combat crime and inconvenience on the other. As illegal immigration into the EU continues, these issues will stay on the agenda of European governments for some time to come.
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