

# The Occupation of Labor

Employment of Palestinian  
Workers in Israel

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## Employment of Palestinian Workers in Israel

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# Introduction

Palestinian workers from the Occupied Territories started entering Israel in the late 1960s, and their entry was regulated in 1970 by a cabinet decision that equalized their conditions of work to those of Israeli workers.<sup>1</sup> The provisions of the collective bargaining agreement for the construction industry, which was imposed on all employers in this field by way of an expansion order, apply to all people working in the construction industry.<sup>2</sup>

However, there is a significant gap between the security and benefits apparently granted to the workers and the reality on the ground. Employment practices are harmful, violation of workers' rights is common, and government regulation is centralist and only exceptionally intervenes in employment relationships. Not only does it not offer the oversight and protection it was meant to guarantee, but by its very operation it gnaws away at workers' basic rights.

This report will present the significant changes in the employment of Palestinian construction workers in Israel since 2016. Some of the changes have already been implemented; others have been reported but have not, to date, been expressed in significant change on the ground. The changes originating in government decisions are joined by changes originating in civil society pressure and legal proceedings in general, and in motions filed by Kav LaOved, specifically.

These changes relate primarily to four fields: the steep rise in the number of permits granted to Palestinian construction workers in Israel; a new model that will help protect workers' rights, especially preventing forced labor; changes in payment and tracking procedures and in the tracking of workers' entitlement to benefits, and ensuring that social benefits that had been denied in the past will be granted in future.

The timing of this report is especially important: For the first time in forty years, a reform in the employment of Palestinian workers in Israel has been proposed – and repeatedly delayed. After forty years of being bound to the employer on whose behalf a permit had been issued to a Palestinian worker, in late 2016 a government decision was passed that would terminate this practice of fettering. Binding a worker to their employer is an arrangement that was stricken by the Supreme Court more than a decade ago in the context of migrant workers (High Court of Justice 4542/02 Kav LaOved vs. Government of Israel), but the government chose to interpret this decision as not applicable to

1. Decision II/ 1 of the Security Cabinet (8 October 1970).

2. State Comptroller Annual Report 65 I "Ministry of Interior, Administration of Border Crossings, Population and Immigration, Employment of Palestinian Workers in the Construction Industry in Israel", 485 (hereinafter: State Comptroller's Report or Comptroller's Report), p. 517.

Palestinian workers, who remained bound to the employers for whom they had received a permit, even after that monumental decision. This system of binding workers-to a particular employer created an industry running on dark capital at the workers' expense, which is the industry of payments for permits, also known as brokerage fees: Half of the Palestinian workers spend an unimaginable part of their monthly wages (between a third and half of their wages) on payments for a permit to work in Israel. As we stated above, the decision to reform the system was made late in 2016, but at the publication of this report, this has been repeatedly delayed, with no explanation given.

**While the termination of the practice of binding workers to their respective employers has been repeatedly postponed, the number of Palestinian workers in Israel is rising:** As of this writing, the 2018 quota for Palestinian workers was set at 95,000. In practice, 78,000 of these permits were used; of these, some 10,000 are for workers inside the industrial parks in the Occupied Territories, the others for work within the 1967 border. The Israeli Government estimates that over the 40 years since 1978, more than 600,000 Palestinian workers have been employed in Israel with permits, solely within the 1967 border (there is no information or record of the number of Palestinian workers employed by Israeli citizens in the Occupied Territories). According to information from the Palestinian Authority's Central Bureau for Statistics, the number of Palestinians employed in Israel in practice in 2017 came to 128,000, as of the third quarter of 2017.<sup>3</sup>

The title of this report, "The Occupation of Labor", expresses the overarching perception of employing Palestinian workers in Israel as reflected in this report. More than half a million workers have been brought to work inside Israel over decades, a process serving two main interests: upholding "industrial peace" in the Occupied Territories and an increasing dependency on the Israeli economy; and establishing a particularly marginalized stratum of workers in the Israeli market, which is bound absolutely to permit-holding employers, while the entity charged with overseeing the employers and ascertaining that they do not abuse these workers sends its long arm into their pocket (negligently or intentionally) and ceaselessly erodes their fundamental rights.

3. [http://www.pcbs.gov.ps/portals/\\_pcbs/PressRelease/Press\\_En\\_9-11-2017-LFS-en.pdf](http://www.pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_9-11-2017-LFS-en.pdf)



## The Political-Economic Background of the Employment of Palestinian Workers in Israel

The critical and academic discussion of this issue of Palestinian workers in Israel focuses on two political contexts of this employment: the national security (or geopolitical-ethno-national) context of the Israeli-Palestinian conflict on the one hand, and the economic-political context of the relationship between capital and employers and workers, and the transition from a welfare state to a neo-liberal free-market system on the other.<sup>4</sup> These contexts have characterized the employment of Palestinians in Israel since its beginnings, and characterize it today as well.

4. Adriana Kemp and Rebeca Rajman, *Ovdim ve-zarim* (Van Leer Jerusalem Institute/Hakkibutz Hameuchad Publishing House, 2008) (hereinafter: Kemp & Rajman), p. 45.

**On the level of national-security policy**, considerations are strategic and relate to security:

managing the conflict and perceiving Palestinians as an enemy to be deterred or pacified.<sup>5</sup> In the past, employment of Palestinians in Israel was intended to create an integrated market and lead to the dependence of the Palestinian market on Israel.<sup>6</sup> After the first Intifada led the Israeli leadership to abandon this strategy, a new strategy of separation was adopted.<sup>7</sup> In the context of the labor market, the Intifada prevented the regular entry of Palestinian workers into Israel, due to the many closures and due to calls for boycotting Israel by the Intifada leadership.<sup>8</sup>

However, even the Intifada did not stop Palestinian workers from entering Israel. Some of those who supported continued employment of Palestinians in Israel partially founded their arguments on moral grounds (Israel's moral responsibility after having enjoyed the benefits of the Palestinian workforce for many years, and its responsibility for the fact that the Palestinian economy is not independent), but more prominently on pragmatic reasons: concern about the negative effect that poverty in the Occupied Territories might have on the peace process.<sup>9</sup> The quotas rose and fell over the years. Quotas fell after the Second Intifada from 2004 to 2008, and were later increased again.<sup>10</sup>

Quota changes reflect conflicting interests in Israel. In the early 2000s, these struggles were apparent in internal discussions, which included requests by the Ministry of Economy for higher quotas and the reduction requested by security entities.<sup>11</sup> The Ministry of the Economy itself was divided between the demand for increasing quotas, to benefit contractors and manufacturers wanting cheap Palestinian labor (or the brokerage fee deriving therefrom) and the desire to protect the Israeli labor market from cheap competition. Similarly, there were conflicting interests between the Israeli army's "Civil Administration" of the Occupied Territories which wants a larger number of work permits to reduce tensions and poverty in the Occupied Territories, and the ISA (the Shin Bet), which on the one hand wishes to reduce the movement from the Occupied Territories into Israel, in order to reduce

5. Ibid., p. 45; Macro Center for Political Economics, *The Work Conditions of Palestine Wage-Laborers in Israel* (2017) (hereinafter: Macro Report), p. 43. from an abstract by the International Labor Organization (ILO). See also Shiri Shalev, "Arab Work" – The Mechanism of Paying Wages to Payment Workers Employed in Israel (Final Paper for LL.M., Tel Aviv University – Buchman Faculty of Law, 2017) (hereinafter: Shalev), pp. 16–17.

6. Kemp & Rajzman, pp. 44, 56. See also the State Comptroller's Report, p. 491.

7. Ibid.

8. Kemp & Rajzman, p. 55

9. Guy Mundlak, Power-Breaking or Power-Entrenching Law-The Regulation of Palestinian Workers in Israel, 20 Comp. Lab. L. & Pol'y J. 569 (1998) (hereinafter: "Mundlak"), p. 585

10. Yael Berda, The Bureaucracy of the Occupation in the West Bank: The Permit Regime 2000–2006 (2012) 82 (hereinafter: "Berda"), pp. 94–95.

11. Ibid., p. 95.

security risks, but on the other hand also wishes to permit such movement, in order to perform espionage and recruit collaborators.<sup>12</sup>

The map of interests can shift over time, but it may be used to learn about the different interests that have recently promoted or halted changes. At present, the primary interest expressed by the security entities relating to the employment of Palestinians in Israel is improving the quality of life on the West Bank, reducing unemployment and disquiet, obtaining calm by way of employment, and incentivizing Palestinians to refrain from harming their relationship with Israel.<sup>13</sup> The wages from labor in Israel generate some 40% of the Palestinian economy's income,<sup>14</sup> support the workers' families, and reduce the high level of unemployment. The association between rising employment and improvement of economic conditions and political calm was also cited in a World Bank report.<sup>15</sup> Another interest involved in the dispute is the international community's expectation that Israel support the Palestinian economy.<sup>16</sup>

**The political context of the occupation and the movement of Palestinian residents is also expressed in bureaucratic barriers against exercising workers' rights.** Thus, for example, workers who were injured, and consequently had their entry permit to Israel canceled cannot get an appointment for medical care without stating a specific date and time, and they cannot obtain a single-entry permit without these details.<sup>17</sup> Similarly, barriers have been reported that prevent residents of Gaza from receiving monies accrued to them: an original power of attorney document was required, which the residents of the Gaza Strip could not sign, both because of the limitations on movement between Israel and the Gaza Strip and the barriers from meeting with an attorney and to the conveying of documents.<sup>18</sup> Political and security considerations were also raised in response to the claims by the State Comptroller about flaws in the conveyance of monies for healthcare services and social benefits for workers which are withheld from wages in Israel but not conveyed to the

<sup>12.</sup> Ibid.

<sup>13.</sup> See, among others: Roni Singer "Checkpoint Set-up Is Delaying the Entry of 33 Thousand West Bank Workers", Calcalist (hereinafter: Singer); Danny Zaken, "The Uprising That Never Happened: Dependence on Israel Blocked the Intifada, Globes 30 December 2017

<https://www.globes.co.il/news/article.aspx?did=1001217392> (hereinafter: Zaken).

<sup>14.</sup> Zaken.

<sup>15.</sup> Ibid.

<sup>16.</sup> Shalev, p. 15, referring to the Eckstein Report

<sup>17.</sup> Ibid., page 19.

<sup>18.</sup> Gisha. The Gisha organization contacted the Population Authority with a request that they drop the demand for an original power of attorney document as a condition for handling applications from Palestinian workers from the Gaza Strip to withdraw the funds collected on their behalf –

<http://gisha.org/he/legal/8151>

Palestinian Authority responsible for providing these services. Another aspect of this problem is the functioning of the Palestinian Authority, which was said not to have provided documentation needed for money transfers.<sup>19</sup>

**A term that helps understand the framework of employing Palestinian workers in Israel is control: control of movement, control of workers' income, control of the Palestinian Authority, which that can be translated into a means of applying Israeli political pressure on the Palestinians.**<sup>20</sup>

This control that Israel has of Palestinian workers is double: capitalist and colonial.<sup>21</sup>

Issuance of personal entry permits has become a central tool in the management of Palestinian workers in Israel.<sup>22</sup> The result is a shift from Israeli control of the movement of Palestinians as a collective to the separate control of each and every individual,<sup>23</sup> and privatization of control and enforcement to the employer, who is now required to oversee their workers and report suspicions of a security risk.<sup>24</sup> Binding the worker to an employer, which involves the violations of their rights as workers and as persons, is part of the privatization of enforcement.

This control can be translated into more accurate strategies, and Israeli organizations have reported about the denial of permits as a means for collective punishment of villages where terror suspects have been apprehended

The economic-political aspect often seems peripheral to the security context, but it has constituted part of the background of decisions presented as security decisions (and seemingly also constitutes part of decisions made recently). Before the June 1967 War, the Histadrut (General Organization of Workers) raised its wage demands, and the difficulty of meeting these demands led the economy into a recession. After the war, the Ministry of Finance saw the possibility of allowing additional workers to enter the market as a way of weakening the Histadrut and thus of strengthening the economy.<sup>25</sup>

Historically, the entry of Palestinian workers has made it possible to reduce labor costs in the agricultural and construction industries.<sup>26</sup> The first Intifada and the closures of the early nineties, which made worker entry harder, formed the basis of the demand to allow the entry of migrant workers. But

<sup>19.</sup> State Comptroller's Report, p. 534.

<sup>20.</sup> Mundlak, p. 608

<sup>21.</sup> Mundlak, 616.

<sup>22.</sup> Berda, p. 58.

<sup>23.</sup> Ibid., page 57.

<sup>24.</sup> Ibid, pp. 97, 101.

<sup>25.</sup> Mundlak, p. 575

<sup>26.</sup> Shlomo Swirski and Noga Dagan-Buzaglo, The Occupation: Who Pays the Price – The effects of the occupation on Israel's society and economy (Adva Center, 2017), p. 44

the demand for migrant workers rose even before the Intifada, by employers who felt that even the costs of employing Palestinian workers were too high,<sup>27</sup> and hoped to lower them by allowing migrants into the market. This was despite the fact that in the early nineties, the average wage of Palestinian workers was lower than 40% of the average wage of Israeli workers.<sup>28</sup> Personnel companies also pushed to permit migrant workers, motivated by the desire to collect brokerage fees. Simultaneously, after the Intifada and the lifting of the closures, employers managed to obtain a record number of permits for Palestinian workers to enter Israel; the economic need surpassed security considerations.<sup>29</sup> The fact that the number of migrant workers in all industries who entered Israel during peak years was higher than the number of Palestinians in all industries who entered Israel during peak years, and also the choice to change the composition of the work force but not the nature of work in the construction industry indicated that there were considerations beyond those of security.<sup>30</sup>

Another aspect of the political-economic context of the employment of Palestinian workers is that of **unionization**.

**Palestinian construction workers are protected by collective agreements and expansion orders in the construction industry, and over the years, tens of millions of shekels were deducted from their wages and redirected to the Histadrut as union fees. The Histadrut offers the workers individual consultation, but not organizational assistance against entities such as the Ministry of Finance and the Payment Department of the Population and Immigration Authority**

(more on this department below).<sup>31</sup> There is no individualized help beyond a parity committee in cases of disputes between a worker and an employer. The Histadrut has decided not to admit Palestinian workers as labor union members, and has invested less efforts in representing them, as compared to Israeli workers.<sup>32</sup> Thus, the Palestinian workers lacked the mechanisms of protection and unionization which could balance their market weakness.<sup>33</sup> In 2008 the Histadrut signed an agreement with the

<sup>27.</sup> See Kemp & Rajman, pp. 52, 54.

<sup>28.</sup> Kemp & Rajman, p. 53.

<sup>29.</sup> Mundlak, 581.

<sup>30.</sup> David Bartram, Labor migration policy and the governance of the construction industry in Israel and Japan, 32 Politics & Society 131–170 (2004) (hereinafter: Bertram), p. 144

<sup>31.</sup> Kav LaOved, Hanna Zohar and Shir Hever, State Theft – Israel Owes Palestinian Workers Billions of Shekels (2010) (hereinafter: State Theft), p. 6.

<sup>32.</sup> Mundlak, p. 593

<sup>33.</sup> Ibid, pp. 592, -593.

Palestinian General Federation of Trade Unions (PGFTU), with the goals of dialogue, negotiations, and joint initiatives for the promotion of workers.<sup>34</sup> However, the communication between the organizations is flawed, and the Histadrut is of the opinion that the PGFTU does not fulfill the roles that it had promised to take on.<sup>35</sup> On its own part, the Histadrut has only transferred to the PGFTU an amount far lower than the union fees collected during the relevant period.<sup>36</sup> Although the Histadrut collects money from the workers, there is no notable organized activity to protect their rights.

The difficulties in obtaining effective protection from the trade unions fit into a larger picture. **It is argued that when it comes to Palestinian workers in Israel, organizations that could have helped empower them, such as state intervention or labor laws, actually weaken them further.<sup>37</sup>**

The dynamic of issuing work permits to various groups as part of power struggles is reflected in the permitting of Palestinian workers in order to weaken the Israeli workers and reduce the costs of their employment, in permitting migrant workers as a show of strength versus the Palestinians,<sup>38</sup> and in changing the quotas of Palestinian workers versus migrant workers. Another group has recently joined this dynamic. A government decision from early 2018 included increasing the quota of Palestinian workers, while making some of the permits contingent on the success and pace of the expulsion of asylum seekers from Israel – one new work permit for a Palestinian worker for every two asylum seekers expelled.<sup>39</sup>

Another example of the complexity of relations between the rights of Palestinian workers and Israelis is visible at the crossing points between the Occupied Territories and Israel. The rights of workers stationed at the crossing points depend on the movement and operation of the crossing points. The privatization of the crossing points and the outsourcing of the personnel managing the crossing points is accompanied by a reduction of state responsibility and the violation of unionization and social benefits.<sup>40</sup> Early in 2017 the Land Crossing Authority workers too industrial action to improve their working conditions and to promote direct employment as Ministry of Defense employees; these actions included closing the crossings to pedestrians, by which the entry of Palestinian workers into Israel was prevented.<sup>41</sup>

<sup>34.</sup> State Theft, p. 6; Macro Report, p. 30

<sup>35.</sup> Macro Report, p. 30.

<sup>36.</sup> State Theft, p. 6.

<sup>37.</sup> See Mundlak p. 615 (about labor laws), Shalev p. 55 (about state intervention).

<sup>38.</sup> Kemp & Rajzman, p. 57

<sup>39.</sup> Government decision 3431, Section 8(viii).

<sup>40.</sup> Shira Havkin, Policy Paper – Privatization of Israeli Checkpoints in the West Bank and in the Gaza Strip (Hazan Center for Social Justice and Democracy of the Van Leer Jerusalem Institute, 2014), p. 14

<sup>41.</sup> Yuval Azulai "Crossing Point Workers will prevent the passage of 70 thousand Palestinians", Globes, 2 December 2017 <http://www.globes.co.il/news/article.aspx?did=1001214057>

The dynamic between the political-security and political-economic aspects is also expressed in the formation of employment relations and in the aspect of binding workers to individual employers. Thus, it is argued that issuing a permit for work with a specific employer is required in order to deploy employers as an oversight arm of the security authorities;<sup>42</sup> this is despite the fact that the scope of oversight, documentation, and security checks at the crossings obviates the need for such control. With regard to migrant workers in Israel (some of whom work in the same industries as the Palestinian workers, i.e. agriculture and construction), it has been argued that the privatization of state control and the transfer of responsibilities to employers is one of the causes of the binding of workers and of forced labor.<sup>43</sup>

The positions of government entities about the economic and social significance of employing Palestinian construction workers in Israel may seem inconsistent or difficult to explain. **Thus, for example, in 2016, the Minister of Finance proposed canceling the tax credit for Palestinian workers in Israel.** Several justifications were given for the proposal: Palestinian workers in Israel earn more than their colleagues in the Occupied Territories; it was argued that the World Bank recommended the reduction of Palestinian employment in construction in Israel in order to encourage the development of investment and human capital in the areas controlled by the Palestinian Authority (at a Knesset hearing, the explanation was given that the intention is to encourage employment in skilled professions in the West Bank),<sup>44</sup> and the step could reduce the gap between the cost of employing a Palestinian and an Israeli worker.<sup>45</sup> The Ministry of Finance representative mentioned an additional purpose at the Knesset hearings: conveying an additional sum to the Palestinian Authority, and apparently also budgeting the required upgrade of land crossings between the West Bank and Israel, a 300 million NIS project that had not been fully budgeted by the government.<sup>46</sup>

**42.** Kav LaOved, How much do Palestinian workers in Israel pay, and for what? 1 May 2014 <http://www.kavlaoved.org.il/wp-content/uploads/2014/06/%D7%A2%D7%9C-%D7%9B%D7%9E%D7%94-%D7%95%D7%9C%D7%9E%D7%94-%D7%9E%D7%A9%D7%9C%D7%9E%D7%99%D7%9D-%D7%A2%D7%95%D7%91%D7%93%D7%99%D7%9D-%D7%A4%D7%9C%D7%A1%D7%98%D7%99%D7%A0%D7%99%D7%9D-%D7%A1%D7%95%D7%A4%D7%99.pdf> (hereinafter: Kav LaOved 2014), p. 3.

**43.** Adriana Kemp & Rebeca Rajman, Bringing in State Regulations, Private Brokers, and Local Employers: A Meso-Level Analysis of Labor Trafficking in Israel, 48 International Migration Review 604–642 (2014), p. 616.

**44.** A letter from Minister of Finance Moshe Kahlon to Rabbi Moshe Gafni, Chair of the Knesset Finance Committee (28 June 2016) (hereinafter: the Kahlon Letter); Minutes of Meeting #625 of the Finance Committee, 20th Knesset, 3 (23 January 2017) (hereinafter: Finance Committee 2017), pp. 8, 19.

**45.** Kahlon letter, Section 5.

**46.** Finance Committee 2017, pp. 12, 15.

This proposal was blocked due to opposition, from both the left and right, during the Knesset hearings. These hearings, and media publications that dealt with them, exposed the difficulties in the proposal. Thus, for example, Knesset members pointed out that the proposal contained internal contradictions: increasing the construction industry quotas on the one hand, and raising the tax burden in order to reduce the attractiveness of employment in Israel, on the other.<sup>47</sup> Additionally, Ministry of Finance representatives ignored the fact that it was likely that the amounts earned by Palestinian workers would flow into the West Bank economy in any event. Knesset Members on the left objected to raising taxes on workers employed for many hours at a low wage and to the significant gaps between the income of workers who would perform the same work (MK Ahmed Tibi proposed that the goal of transferring money to the Palestinian Authority could be met by transferring the funds that had been withheld and not paid).<sup>48</sup> Knesset Members on the right objected to transferring funds to the Palestinian Authority, which funds they claimed would serve to encourage terrorism.<sup>49</sup> Following a request by Committee of the Interior chair, MK Tibi made inquiries with the Palestinian Finance Minister, who stated that the request to cancel the tax credit had not come from his office.<sup>50</sup> The World Bank representatives also had reservations about the positions ascribed to them, and they explained that although they had supported the tax raise (by the Palestinian Authority, not by Israel), they praised Israel for increasing the quotas of Palestinian workers. They did so because this would help the Palestinian labor market in the short term and also provide Israel with a source for competitive labor.<sup>51</sup> The term “a source for competitive labor” represents, in its own right, a particular economic-political position, which fits in with the government’s attempt to reduce the cost of labor and offer low-cost alternatives to Israeli workers. The data presented by the World Bank about the amounts that are expected to be added to the treasuries of the Palestinian Authority and of Israel are different from those presented by the Finance Ministry’s Knesset representatives.<sup>52</sup>

<sup>47.</sup> Ibid, p. 12 (speech by MK Trajtenberg).

<sup>48.</sup> Minutes of Meeting #444 of the Finance Committee, 20th Knesset (8 August 2016) (hereinafter: Finance Committee 2016), p. 5 (speech by MK Tibi); Finance Committee 2017, 9 (speech by MK Rosenthal), 15, (speech by MK Khenin).

<sup>49.</sup> Finance Committee 2017, 10 (Speech by MK Smotrich), 11 (speech by MK Forer).

<sup>50.</sup> Amira Hass, “The defenders of the Palestinian laborer were found in the Jewish Home”, Haaretz, 27 January 2017 [https://www.haaretz.co.il/news/politics/.premium-1.3442552?&ts=\\_1485699468442](https://www.haaretz.co.il/news/politics/.premium-1.3442552?&ts=_1485699468442)

<sup>51.</sup> Ibid.

<sup>52.</sup> Ibid.



## Dramatic and Steady Rise in the Number of Palestinian Workers

The employment quotas for Palestinian workers in Israel were reduced between 2000 (after the beginning of the Second Intifada) and 2011, but since 2012 they have started rising, with the most significant growth being in the construction industry.<sup>53</sup> At the end of 2015, Palestinian workers constituted 18% of the workforce in this industry.<sup>54</sup> Most Palestinian construction workers are employed in “wet work” (framing, plaster, tiling, scaffolding work) and constitute the majority of

<sup>53.</sup> Gilad Natan, OECD Expert Group on Migration SOPEMI Annual Report International Migration – Israel 2016–2017 (Ruppin Academic Center, 2017), p. 63/ (hereinafter: “OECD Report”)

<sup>54.</sup> Shalev, p. 20. Referring to the 2016 Nation Builders’ Association Report.

people employed in this segment of the construction industry,<sup>55</sup> which is considered to be the one with the highest attrition rate.

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## A central change in the employment of Palestinian construction workers in Israel is expressed by a dramatic growth of the quotas – from 32,500 in 2013 to 58,100 in 2017, and in 2018 the quota was for 65,100 workers inside the 1967 borders

(in the West Bank Settlements, Israelis may employ Palestinian construction laborers without any work permit). It has been claimed that in recent years, as part of the desire to provide a response to the housing market crisis, a significant percentage of these permits is allocated for work in residential construction.<sup>56</sup>

Alongside the increased quota in the construction industry, another change that has affected the number of Palestinians working in construction was the change of definition of older residents allowed entry without needing a permit, from a lower limit of 60 to 55 years of age.<sup>57</sup> According to information obtained by Kav LaOved, this change created a group of older workers whose stay in Israel is permitted but who do not have a work permit, which makes them especially vulnerable. These people are not counted by the authorities, and the Israeli public is generally only exposed to their existence when they die or are seriously wounded in workplace accidents.

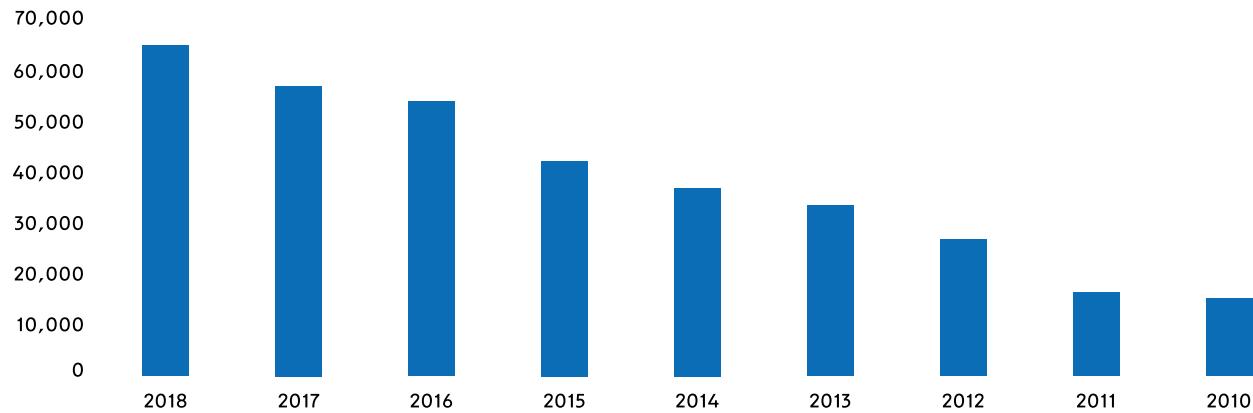
55. See, for example, YNet editorial with the Minrav construction group, "What are the solutions for the construction manpower shortage?" 7 April 2016, Ynet; Rotem Strategy, PMO and Ministry of Construction and Housing, "Presentation to the Committee to Inspect the Problem of Foreign Workers – the Issue of Construction Workers", February 2014, p. 7.

56. Thus, for example, 28,100 of the permits at the end of 2017, nearly half of the permits for the construction sector. The government decisions on this subject explicitly state the need to retain quotas for employment in residential construction; see for example Decision 1236 of the 34th government, "Strengthening the economic cooperation by employing Palestinian workers in Israel" (8 March 2016), which is available here (in Hebrew): <http://www.pmo.gov.il/Secretary/GovDecisions/2016/Pages/dec1236.aspx> (hereinafter: Government Decision 1236), Section 8.

57. See the COGAT Order, "Status of permits for Palestinians to enter Israel, leave abroad, and move between the Judea and Samaria Region and the Gaza Strip", 21 March 2015, which is available here (in Hebrew): <http://gisha.org/UserFiles/File/LegalDocuments/procedures/old/21.3.15.pdf>

## Changes in construction industry quotas since 2010

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Graph data refer to the end of year quota. Quotas are not used in full; in the past two years, the construction industry used approximately 90% of the quotas.<sup>58</sup>

Most Palestinian construction workers return to their homes at the end of every workday. Such a significant increase of quotas also requires changes in the crossing arrangements between the West Bank and Israel, expansion of checkpoint activities, construction, and added staffing.<sup>59</sup> Thus, in mid-2016, a joint plan by the Finance and Defense Ministries was published for improving crossing operations at a cost of 300 million NIS.<sup>60</sup> The plan is meant to be performed over 3 years (between 2017 and 2020) and reduce waiting times by 30 to 50%.<sup>61</sup> This program has not yet even begun to be implemented, and now it seems that the state is seeking to finance it out of the workers' own pockets: In 2016 the Minister of Finance asked the Knesset Finance Committee to approve Income Tax Order (Credits for Residents of the Region), 5776-2016. The purpose of the proposal was to reduce the tax credit points awarded to Palestinian workers or in other words: to increase the rate of tax paid by Palestinian workers. Among other reasons, the change was explained in that the treasury revenue resulting from increased taxation of the labor of Palestinian workers would be used for "expanding

<sup>58.</sup> OECD report, pp. 66–68 and especially Table 46; Gilad Natan, OECD Expert Group on Migration SOPEMI Annual Report International Migration – Israel 2017–2018 (Ruppin Academic Center, 2018), table 51.

<sup>59.</sup> Singer, ibid. [https://www.calcalist.co.il/real\\_estate/articles/0,7340,L-3681526,00.html](https://www.calcalist.co.il/real_estate/articles/0,7340,L-3681526,00.html) (hereinafter: Singer)

<sup>60.</sup> Yoav Zeitun and Moran Azulai: "Yaalon's heritage: Improving conditions for Palestinians at the crossings" Ynet 19 May 2016 <https://www.ynet.co.il/articles/0,7340,L-4805374,00.html>

<sup>61.</sup> Ibid.

and upgrading the crossings." The minister's request was met with sweeping objections by the Knesset Finance Committee. In the first hearing, held on 8 August 2015, the committee chairman MK Moshe Gafni said that "we have a first and foremost moral question here," and demanded additional review. At the next hearing, which was held on 23 January 2017, the Minister of Finance restated his position. Committee members of all factions objected to authorizing the order. In the discussion, the committee chairman said that "we must be wary of hurting Palestinian workers. It gives us a bad reputation."<sup>62</sup> The order to tax Palestinian workers to for expanding the crossings was not approved by the Knesset Finance Committee. A year and a half later, someone came up with another idea: In July 2018 the government announced that it was considering using the monies that had not been transferred to Palestinian workers for sick leave for renovating the crossings.<sup>63</sup>

**62.** The Minister of Finance's request from the Chair of the Knesset Finance Committee on 28 June 2016, asking to approve the order: [http://fs.knesset.gov.il/20/Committees/20\\_cs\\_bg\\_365408.pdf](http://fs.knesset.gov.il/20/Committees/20_cs_bg_365408.pdf)

The Knesset news release, "The Finance Committee refused to approve a Finance Minister order designed to raise taxes on employing Palestinians in the construction industry", 23 January 2017

<http://main.knesset.gov.il/News/PressReleases/pages/press230117-0.aspx>

Zvi Zrachia, "A vote on a tax rise for Palestinian workers was postponed –

the Ministry of Finance was sent away to do its homework", The Marker 23 January 2017

<https://www.themarker.com/news/1.3427851>

**63.** Or Kashti, "The state is considering using the hundreds of millions of shekels collected from Palestinians to upgrade checkpoints," Haaretz, 17 July 2018.

# Movement of Palestinian Workers in Israel: Between Security Paranoia and Denial of Liberty

15

The movement of Palestinian workers inside Israel is regulated as part of a complex conception, derived in part from security paranoia and in part from the intent to form a regimented, unfree class of workers. It goes without saying that Palestinian workers are required to have work permits, with which they stand at the crossings for long hours every day (and we will go into further detail about this, below). But even after they have received a work permit, which includes meticulous background checks to ascertain that they are not a security risk, and after they have crossed the security check stage, even then their movements inside Israel are entirely regimented, and they are not allowed to leave the bounds of their work site. The workers are driven to their work site by the employer, after they have passed through the checkpoint, which is part of the terms of their employment in Israel. They are driven back to the checkpoint under those same terms. **Even people who stay overnight in Israel with an overnight permit (nearly 20 thousand Palestinian workers) are not allowed to leave their workplace-residence, and their employer is supposed to serve as the long arm of the authorities and deny them any free movement.** The significance of this in forming a marginalized



stratum of workers cannot be overstated: The workers cannot verify or exercise their rights with aid organizations (Kav LaOved has a fieldwork department, which meets with workers in the West Bank, outside of Israel, to help them exercise their rights and provides them with information); the Histadrut represents them, but they cannot attend Histadrut institutions unless a special permit was arranged for them to attend, for a parity commission meeting (a construction industry procedure dealing with internal arbitration between an employer and a worker). The 20 thousand workers overnighting in Israel cannot go to a doctor, because this, too, involves free movement, and also because they do not have medical insurance that would cover a simple medical exam in Israel. Free time away from work for other needs is, if course, entirely out of the question.

The travel and regimentation of the workers start at 3 or 4 a.m. at the crossings into Israel. The crowding of the crossings and the requirement to undergo a security examination, every day anew, take a lot of time. The workers leave their homes at 2-3 a.m. and return only very late in the evening. The actual workday, including the commute, is nearly twice as long as the time spent working on-site, which is the only time for which the worker is paid. The time that Palestinian workers have to spend in transit has been mentioned as a problem that must be solved in a report of the International Labor Organization about Israel.<sup>64</sup> Kav LaOved has recommended putting in place an expedited, automatic procedure that would allow for a swift crossing by regular workers.<sup>65</sup> The Civil Administration has recently adopted a quicker method to scan the fingerprints of workers passing through the Qalandia crossing into the Atarot Industrial Park, which makes the crossing more efficient.<sup>66</sup>

Alongside the waste of time, the daily crossings involve a significant expense. The employers provide transportation for part of the journey or reimburse part of the expenses, but a full reimbursement of the travel expenses does not happen. The estimated travel costs for a worker is approximately NIS 500 per month,<sup>67</sup> which is a significant expense for people earning low wages.

**64.** Macro Report, p. 51.

**65.** Kav LaOved The number of workers is doubling, but who takes care of workers' rights and security? 5 April 2016 <http://www.kavlaoved.org.il/%D7%AA%D7%92%D7%95%D7%91%D7%AA-%D7%A7%D7%95-%D7%9C%D7%A2%D7%95%D7%91%D7%93-%D7%9C%D7%94%D7%97%D7%9C%D7%98%D7%AA-%D7%94%D7%9E%D7%9E%D7%A9%D7%9C%D7%94-%D7%A2%D7%9C-%D7%94%D7%A8%D7%97%D7%91%D7%AA-%D7%94/> (hereinafter: Kav LaOved 2016)

**66.** COGAT A day in the life of a Palestinian laborer in Israel, 10 May 2017 [http://www.cogat.mod.gov.il/he/Our\\_Activities/Pages/A-Day-in-the-Life-of-a-Palestinian-Worker-5.10.17.aspx](http://www.cogat.mod.gov.il/he/Our_Activities/Pages/A-Day-in-the-Life-of-a-Palestinian-Worker-5.10.17.aspx)

**67.** Alaa Khatib, "Israeli treasury looks to scrap Palestinian day workers' tax breaks", Local Call, 11 August 2016 [Published in English on +972 Magazine at <https://972mag.com/israeli-treasury-wants-to-scrap-palestinian-day-workers-tax-breaks/121316/>] <https://mekomit.co.il/-להורייד-במקס-לען-נקודות-זכוי-במס-לען/>

The price of a very long workday exceeds the difficulty, fatigue, and lack of spare time. **There are those who correlate fatigue and workplace accidents in the construction industry,<sup>68</sup> which is the most lethal of the industries in Israel.** Long and exhausting workdays also make it harder for workers to demand their rights, independently or in an organized manner.

One possible solution, for some of the workers, could be **increasing the number of permits that allow overnighting in Israel.** There are currently 19 thousand permits for Palestinian workers that include spending the night in Israel.<sup>69</sup> A solution including overnighting in Israel entails serious difficulties, and it sometimes seems to have been constituted in a pattern of control of workers: Workers who currently receive permits for overnight privileges in Israel are required to remain at the place where they sleep, and a “security trustee” is required to oversee them there.<sup>70</sup> The trustee is also required to hold the workers’ ID papers, an action that would normally be deemed withholding identification papers, and is known to be one of the methods used in cases of slavery and human trafficking.<sup>71</sup> The significance of such oversight is that workers are constantly under the employers’ supervision, which increases their isolation and could make it hard to monitor violations of rights and to complain to an external entity, be it on behalf of the state or on behalf of workers’ rights organizations. Close control of workers’ movements has been recognized by the Ministry of Justice as markers of forced labor or slavery.<sup>72</sup>

**68.** Minutes of meeting #77 of the 20th Knesset, 263 (16 December 2015).

**69.** See COGAT procedure, “Status of unclassified permits for the entry of Palestinians into Israel, their crossing between the Judea and Samaria Region and the Gaza Strip and their departure abroad,” updated as of 14 March 2018.

**70.** Macro Report, p. 25.

**71.** In this matter see, for example, the instructions of the Population and Immigration Authority itself – Hanna Kupfer, Policy Planning Department, Human Trafficking: Updated trends, means of location, identification, and handling (March 2018) [https://www.gov.il/BlobFolder/reports/human\\_trafficking\\_0318/he/human\\_trafficking\\_booklet\\_0318.pdf](https://www.gov.il/BlobFolder/reports/human_trafficking_0318/he/human_trafficking_booklet_0318.pdf), pp. 10-11.

**72.** The Ministry of Justice and CIMI, Guidelines for identifying the victims of slavery and forced labor <http://www.justice.gov.il/Units/Trafficking/MainDocs/A%20Toolkit%20for%20Identifying%20Victims%20of%20Forced%20Labour%20and%20Slavery.pdf>, p. 40.



## A Regimen of Absolute Binding of a Worker to an Employer and the Payment of Sky-High Brokerage Fees

The most significant damage to workers is due to the fact that the permit for employment in Israel is recorded under the name of a specific employer, and the Palestinian worker is only allowed to work for that particular employer. If the worker leaves the employer of record, he loses the permit to work in Israel. This arrangement binds the worker and makes him completely dependent on the employer. A similar arrangement for the employment of migrant workers was described by the Israeli High Court of Justice as “a form of slavery in modern dressing”<sup>73</sup> and ordered illegal more than a decade ago.

<sup>73.</sup> High Court of Justice 4542/02 Kav LaOved vs. the Government of Israel (Published in ARSH [?], 30 March 2006), paragraph 4 of Justice Cheshin’s verdict.

In practice, the legal binding of workers does not mean that work is in fact done for the employer of record. Issues with the permit allocation mechanism, the arbitrary distribution of work permits that discriminate between established and new contractors,<sup>74</sup> and abuse of the workers' dependence on employers have led to trade and profiteering in permits,<sup>75</sup> such that in many cases the employer of record has transferred workers to another employer, one who did not receive a permit to employ them directly.<sup>76</sup> The employer of record collects a fee for transferring the worker, and the cost is rolled over onto the worker, who is required to pay high amounts to brokers. That is another way in which the binding of workers hurts them. Kav LaOved estimates that in practice, more than half the Palestinian workers do not work for the employer to whom they are assigned in their work permit, and the entire chain — from the registered employer down to the worker's employer in practice — costs the worker thousands of shekels every month.

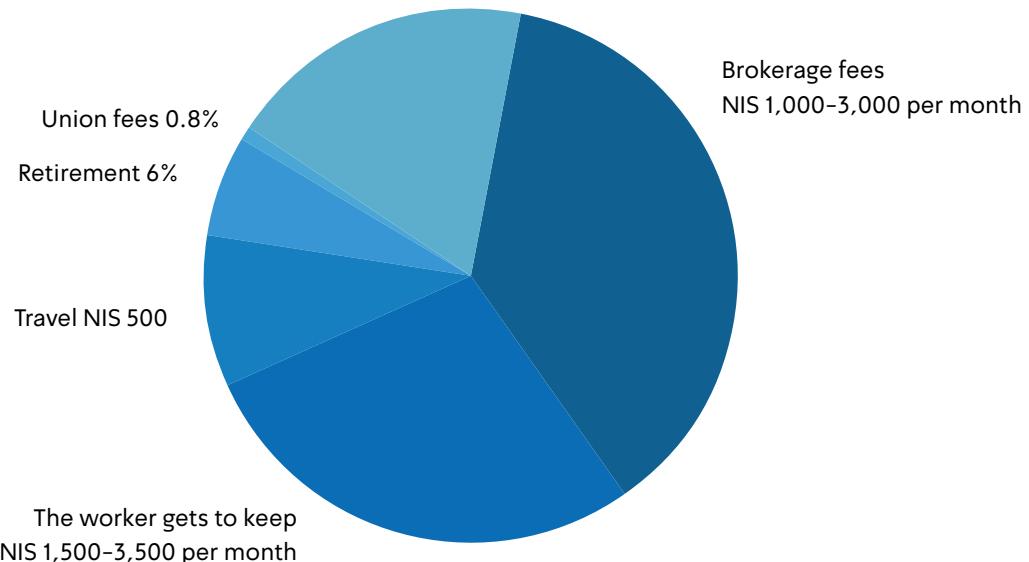
**Collecting brokerage fees** is prohibited, but in practice, significant amounts are collected illegally. A 2014 Kav LaOved survey shows that between 25 and 30% of the workers pay brokerage fees in amounts ranging between NIS 1,350 and 2,300 — between one quarter and one third of their monthly wage. The exact amount depends on the number of intermediaries and entities involved.<sup>77</sup> 2018 data, which have not yet been collated, demonstrate that the percentage of Palestinian workers paying brokerage fees has almost doubled, rising to up to nearly 50% of the workers. Additionally, the brokerage fees have skyrocketed, and the most recent reports are about brokerage fees ranging from NIS 2,000 to 3,000.

74. State Comptroller's Report, pp. 499–502.

75. Or Kashti, "The Treasury: Palestinian laborers are systematically exploited and pay thousands of shekels to work" Haaretz 21 July 2017 <https://www.haaretz.co.il/news/education/premium-1.4279431> (hereinafter: Kashti 2017)

76. Ibid.

77. Kav LaOved, How much do Palestinian workers in Israel pay, and for what? 1 May 2014 <http://www.kavlaoved.org.il/wp-content/uploads/2014/06/%D7%A2%D7%9C%D7%9B%D7%9E%D7%94-%D7%95%D7%9C%D7%9E%D7%94-%D7%9E%D7%A9%D7%9C%D7%9E%D7%99%D7%9D-%D7%A2%D7%95%D7%93%D7%99%D7%9D-%D7%A4%D7%9C%D7%A1%D7%98%D7%99%D7%A0%D7%99%D7%9D-%D7%A1%D7%95%D7%A4%D7%99.pdf> (hereinafter: Kav LaOved 2014); see also Kashti 2017.



It should be noted that in the 2014 State Comptroller's Report, the continued purchase of permits by employers who held permits in the past was criticized as a practice that the Comptroller deemed to be arbitrary and discriminatory.<sup>78</sup> This criticism highlights a certain tension between the rules of administrative and labor law. The administrative preference is for a periodic review and redistribution of the permits, whereas in terms of protecting worker rights and preserving the employment relationship, it can be appropriate to prefer the continuity of employment with the same employer (assuming that he does not violate the worker's rights). If the arrangement binding each worker to an employer is changed, we can assume that this change would also include a significant change in granting permits to employers.

Two 2016 government decisions presented an outline for changing the arrangement. The first decision included appointing an interdepartmental team that would include representatives from the Housing Office and from various government ministries, which would propose regulating the policies in subjects such as guaranteeing the payment of wages to Palestinian workers, preventing the collection of commissions and brokerage fees, and appointing a regulator for Palestinian workers' employment issues.<sup>79</sup> A significant part of these roles has been the responsibility of the Payment Department until now; we will expand upon this in the next section of this paper. The second decision

<sup>78</sup>. State Comptroller's Report, p. 499.

<sup>79</sup>. Government Decision 1236.

adopted the principles of the arrangement proposed by the team.<sup>80</sup> This is a dramatic change, the primary significance of which is that work permits are to be provided to workers, who could then seek an Israeli employer in the sector for which they received a permit -- in other words, with any employer who holds a permit to employ construction workers.<sup>81</sup> The government decision also created a model that would make it possible for workers to seek work in Israel: a worker with a permit would be allowed to enter Israel for 7 days once every three months, to look for work.<sup>82</sup> The government decision further determined that the employer would be required to employ a worker for at least one month, at the scope of at least one full time job.<sup>83</sup>

Providing workers with permits and freer access to the Israeli labor market could reduce dependence on middlemen, but would not eliminate them entirely. It should be further considered that the transition to free mobility of workers between employers within the industry is an alternative that makes oversight of the employers more difficult. It is likely that increasing the workers' contractual liberty will reduce the violation of rights, but not do so to an extent that would obviate the need for oversight.

The decision also instructed the Population and Immigration Authority (in coordination with the Ministry of Labor, Welfare, and Social Services, the Ministry of Finance, the Ministry of Justice, and the Coordinator of Government Activities in the Occupied Territories (COGAT) to define by the end of May 2017 a set of procedures that would make it possible for workers to transition between employers in the construction industry,<sup>84</sup> but these procedures have not yet been determined. In January 2018, the government decided to defer the change in the permit allocation scheme until October 2018.<sup>85</sup> At the time of this writing, the steps that had been decided more than a year ago have not yet been implemented, and the expected timeline for terminating the binding of workers remains vague and unknowable. It is hard to believe that the delays are accidental; enormous financial pressure is exercised by the dark funds obtained from marginalized workers against this reform and for the time being it has managed to stave it off, despite the government decision.

**80.** Decision 2174 by the 34th government Decision, "Increasing the scope of employment in Israel of Palestinian workers from the Judea and Samaria region, streamlining the allocation of work permits, and guaranteeing fair working conditions for Palestinian workers" (18 December 2016) (hereinafter: "Government Decision 2174"), Section 7.

**81.** Government Decision 2174; Government Decision 1236.

**82.** Government decision 2174, Section 3(vi).

**83.** Ibid., Section 3(v).

**84.** Government decision 2174, Section 4.

**85.** Government decision 3431, Section 9.

The change in the employment model of Palestinian construction workers will be accompanied by a system of training and testing for Palestinian workers who wish to work in construction in Israel. Workers with construction experience in Israel will be deemed to have undergone the selection process.<sup>86</sup>

Another possible aspect of the change is that it is possible that the handling fees currently paid by the workers will be conveyed not to the Histadrut Haclalit but to the Histadrut Haleumit (National Labor Federation), a competing labor organization.<sup>87</sup> It should be noted that it has been demonstrated in the past that the Histadrut Haleumit has not operated as a representative of workers but rather, has represented the interests of employers and manpower corporations, at the expense of migrant workers in the construction industry.<sup>88</sup> Under these circumstances, there is some concern that the ‘managing’ of Palestinian construction workers by the Histadrut Haleumit would not ensure the protection of their rights but rather, will violate them.

The possibility of **employment via corporations** (similar to the employment model of migrant workers in Israel) was proposed and rejected. **Advantages** of using corporations as employers are the relatively small number of employers (a small number of corporations, in contrast with many contractors), who are easier to oversee, easier transportation solutions from the West Bank into Israel, and more flexible employment and responsiveness to changing requirements of the various contractors. **Disadvantages** include the addition of another player and the requirement of further oversight, regulation, and costs, as well as all the usual disadvantages associated with employment through contractors in terms of working conditions and social benefits, as opposed to the preferable model of direct employment, and a decreased flexibility in the choice of employer and transitioning from one employer to another. The addition of costs is problematic in terms of the desire to reduce residential housing costs and from the aspect of upholding workers’ right to benefits. Even if it is legally possible to require corporations to collect the costs from the employer, the results in other fields make it clear that at least some of these costs will be incurred by the worker.

**86.** Ibid., Section 3(I).

**87.** Amitay Gazit, “Who will clip the coupon on the change of the Palestinian laborers’ employment method?”, Calcalist, 31 May 2016.

**88.** Inter-Organizational Hearings (National) 62655-11-14 Histadrut Haovdim Haleumit – Histadrut Haovdim Haclalit Hahadasha et al., 6, 7, 56-57 (published in Takdin, 27 November 2016).



## A Government Department Established to Protect Workers has Become Detrimental to Their Rights

The Payment Department was established by a 1970 government decision, which regulated the employment of Palestinian workers in Israel. It was established as a department of the Employment Service (under what was then the Ministry of Labor and later became the Ministry of the Economy). It was decided that the employer would pay the department the wages and social benefits, and the department would transfer the wages to the worker.<sup>89</sup> In 1994, it was decided that the Payment Department would stop paying the wages, and it would handle only the transfer of the social benefits; the wages would be paid directly by the employers to the workers.<sup>90</sup> In 2002, the department was

<sup>89.</sup> Kav LaOved 2014. State Comptroller's Report, pp. 485, 516.

<sup>90.</sup> State Comptroller's Report, p. 516.

moved from the Ministry of the Economy to the Population and Immigration Authority. Some see the transfer of the department from a ministry that understands labor relations and labor rights to another government department as part of the cause of the difficulty in assuring the entitlement to benefits that the department was supposed to protect, in accordance with the government's decision.<sup>91</sup>

The State Comptroller detailed administrative problems in the conduct of the Payment Department, including operating without authority, lack of transparency, and not operating in good faith. The Payment Department operates within the Population Authority, a government ministry without the knowledge and capacity to oversee the department's operations.<sup>92</sup> The flaws in the conduct of the Payment Department and the irregularities of its operations and of the procedures guiding it make matters difficult not only for the workers, but also for the Israeli employers, who must operate through it.<sup>93</sup>

Without going into the historical or administrative details that led to this situation, there is no disputing the fact that the Payment Department is by now an organization whose function is – to put things mildly – very faulty. The State Comptroller has found in 2014 that the Payment Department had failed in doing its job and that its continued existence should be reexamined.<sup>94</sup> The State Comptroller's Report and Kav LaOved data about the department's operations show not only that the Payment Department does not fulfill the supervisory role of guaranteeing the workers' entitlement to benefits, but rather has become a focus and cause of grievous violations in its own right. In contrast, proper functioning of the department would make it possible to guarantee workers' rights and labor conditions, and it has been argued that the Payment Department is necessary in light of the Equalization Levy and the complexity of transferring funds from Israel to the Palestinian Authority.<sup>95</sup>

The Payment Department has not ascertained that workers receive all the benefits to which they are entitled, including the payment of minimum wage. As the entity issuing pay stubs, the department itself has operated in a manner that violates workers' rights. Thus, the department calculated workers' wages based on arbitrary formulas rather than on the actual number of hours worked, which led to some workers receiving less than minimum wage.<sup>96</sup> The pay stubs issued did not include all the information which must be included in pay stubs,<sup>97</sup> were not given to the workers themselves, and

<sup>91.</sup> See Shalev, p. 53.

<sup>92.</sup> State Comptroller's Report, p. 531.

<sup>93.</sup> Berda, pp. 96-103.

<sup>94.</sup> State Comptroller's Report, p. 490.

<sup>95.</sup> Shalev, p. 55. Quoting the words of Itzik Gurevitz, Deputy Director General Nation Builders' Association and Head of the Funds and Economy Department.

<sup>96.</sup> State Comptroller's Report, p. 521.

<sup>97.</sup> Ibid., page 522.

had issues relating to all the social benefits under the department's responsibility — holiday pay,<sup>98</sup> seniority information (based on which various benefits are calculated),<sup>99</sup> travel fee reimbursement,<sup>100</sup> convalescence pay,<sup>101</sup> holiday pay,<sup>102</sup> severance compensation,<sup>103</sup> and overtime payment.<sup>104</sup> Data gathered by Kav LaOved in recent years shows that in many cases, the information reported on the pay stubs was fictitious, and the employers withheld funds based on the reported information, rather than transferring them to cover the workers' benefits. The next section will deal with some of the amounts collected, and what happened to them.

The artificial separation between the employer who is responsible for paying the wages, and the entity that transfers the social benefits and pay stubs gives rise to the concern that employers may have paid their workers some of their wages in **cash without reporting these payments, thus saving themselves the expense of paying full social benefits (and the worker not having to pay tax on the full payment received).**<sup>105</sup> **Thus, benefits that are calculated based on wages, such as pensions, severance compensation, and payment after a workplace accident are calculated based on lower wages than those paid in practice.**<sup>106</sup>

The arrangement for employing Palestinian workers in Israel was supposed to prevent this problem: the employer was required to employ the workers in full time positions, report all the days worked, and a minimal number of work days was established for each month. However in practice, the Payment Department made it possible for employers to report fewer than the minimal number of days worked per month, regularly.<sup>107</sup> In doing so, the department violated the collective agreement in the construction industry, as well as its duty of protecting workers' rights.

**The Proposed Change:** There are already certain steps that reduce the Payment Department's involvement in regulating the benefits to which Palestinian workers are entitled and move toward the direct management of such benefits between the employer and the worker. Thus, for example, a transition from a model of withholding payments for a sick leave fund managed by the Payment Department to requiring employers to pay sick leave benefits directly to the workers, as is customary

<sup>98.</sup> Ibid., page 518.

<sup>99.</sup> Ibid., p. 523.

<sup>100.</sup> Ibid., page 530.

<sup>101.</sup> Ibid., page 525.

<sup>102.</sup> Ibid., p. 524.

<sup>103.</sup> Ibid., p. 527.

<sup>104.</sup> Ibid., page 529.

<sup>105.</sup> Ibid., p. 520.

<sup>106.</sup> Kav LaOved 2014.

<sup>107.</sup> State Comptroller's Report, pp. 517-519.

for Israeli workers, and reporting the accumulation of sick leave in the pay stub. The government decision of March 2016 directed the interdepartmental team to examine, among other options, the possibility of paying the wages online to the Payment Department or as per its instructions.<sup>108</sup> The stated intent was to transition to the direct on-line payment of wages and social benefits by the employer into the worker's bank account, which makes it easier to oversee and keep track of, in order to ascertain that payments meet the requirements of the law.<sup>109</sup> The possibility of establishing an external auditing system that would review the operations of the Payment Department was also mentioned in the government's decision.<sup>110</sup>

The media reported an intention of canceling or changing the purpose of the Payment Department and leaving it solely in charge of oversight and enforcement.<sup>111</sup> However, it is not clear what practical steps were taken or are expected to be taken in the near future.

What is clear, and has already been backed up by several decisions taken recently, is that the change of the Payment Department's purpose is not expected to include actual accountability for forty years of failure. In all the changes that are currently in the works, including the ones that we will expand upon in the next chapter, the Israeli government is considering a full disengagement from the protection of workers' rights, which would require providing the workers with information about their rights or an informed and responsible transition of this responsibility to the employers. An example of this is a change that happened about a year ago, when the Payment Department stopped requiring employers to withhold funds to cover the annual vacation funds for Palestinian workers. These withholdings amounted to 4% of the wages over the years, and the amounts accumulated were paid out to the workers every summer. To begin with, as Kav LaOved has warned repeatedly over the years, this allocation was too low and not sufficient to compensate for an annual vacation as required by law. However, the cessation of the withholding of annual vacation funds was not backed up with information to the workers (in particular, that they would no longer be given this annual payment and would specifically have to ask their employers for a vacation), and ended up leaving the workers without the funds for a vacation and without a vacation in practice. Kav LaOved ended up distributing leaflets about the change at the crossings and answer the workers' many questions about this. The Payment Department, which had collected the withholdings and transferred them

<sup>108</sup>. Government decision 2174, Section 5. Also see Amitay Gazit, "Emerging: an agreement to bring 4,000 constructions workers from China and a change in the employment model of Palestinians", Calcalist, 18 December 2016 [https://www.calcalist.co.il/real\\_estate/articles/0,7340,L-3703989,00.html/](https://www.calcalist.co.il/real_estate/articles/0,7340,L-3703989,00.html/)

<sup>109</sup>. Government decision 2174, Section 5.

<sup>110</sup>. Ibid.

<sup>111</sup>. Kashti 2017.

to the workers for dozens of years, disengaged from its responsibility for these benefits and left the workers without this very basic protective right. In the next chapter we will consider some additional protective rights and benefits that the Payment Department violated carelessly, and where legal motions against its negligence and dysfunctionality demonstrated yet again the tendency to disengage from accountability and responsibility, and to appropriate the funds already collected for benefits that never made it to their intended recipients.

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## Palestinian Workers' Social Benefits were Paid into State Coffers for Decades

This chapter will expand upon the conduct of the Payment Department that have the gravest impact in terms of the social benefits of Palestinian construction workers in Israel. This chapter presents significant changes, originating not in government decisions but in two legal actions brought by Kav LaOved. The first issue we will deal with is the payment of retirement pensions. The second part of the chapter will deal with the payment of sick leave benefits. The final part of the chapter will deal with the right to medical care and with payments in cases of workplace accidents.

Like other social benefits, the payment of retirement pensions and sick leave funds to Palestinian workers is done via the Payment Department. As mentioned in the previous chapter, there is a significant gap between the amounts collected from employers and workers and the amounts eventually paid to the workers. These problems have been discussed extensively in the past, in reports and in legal proceedings. This report will briefly present the background, and then focus on recent changes.

The payment of retirement pensions is a typical and inculpatory example of the violation of the social rights of Palestinian workers in Israel, which has been going on for many years. Retirement insurance was funded through payments withheld both from the employers' payments and from the wages of Palestinian workers. However these amounts, which are estimated to have accrued from 1970 to 1994 to more than USD 10 billion<sup>112</sup> and which now are at the amount of approximately one billion NIS,<sup>113</sup> are managed without transparency, in blatant disregard of standards of good governance, and in a manner that does not serve the purposes for which the retirement pension regulation was originally intended.<sup>114</sup> It also transpires that the calculations on which the retirement pension was based are incorrect, and were founded on data not relevant to the Palestinian population.<sup>115</sup>

The Payment Department manages the amounts withheld for retirement pension as capital savings rather than as retirement savings, eliminating significant elements that ought to be part of retirement insurance such as disability benefits and survivor benefits.<sup>116</sup> Worse than that, contrary to the common policy of encouraging retirement savings (as expressed in the government's policies regarding the retirement savings of Israeli workers), the Payment Department encourages Palestinian workers to make a one-time withdrawal of the entire amount accumulated for their benefit, rather than save it towards an old-age pension. Moreover, the amount for the bulk withdrawal is calculated such that the redemption values actually received by Palestinian workers are very low and "not generous", as the State Comptroller defined it,<sup>117</sup> while the real amount accumulated is obscured, and bureaucratic obstacles are used to prevent accruals to be paid out as retirement insurance.<sup>118</sup> The Payment Department hides information from Palestinian workers, and no relevant information is published in Arabic.<sup>119</sup> While requests for one-time early withdrawals are handled quickly and efficiently, requests to receive the pension funds in the form of a stipend are handled slowly, only once per quarter, and no information is given to workers about the status of their requests.<sup>120</sup>

<sup>112.</sup> Macro Report, p. 26. Referring to a Jadaliyya Institute publication.

<sup>113.</sup> See Motion to the High Court of Justice 7399/15 Kav LaOved vs. the Government of the State of Israel (November 2015, available here (in Hebrew): <https://docs.google.com/viewerng/viewer?url=http://www.kavlaoved.org.il/wp-content/uploads/2015/11/%D7%A2%D7%AA%D7%99%D7%A8%D7%94-%D7%A1%D7%95%D7%A4%D7%99-1.pdf&hl=en> (hereinafter: Pension Fund Appeal), Section 138.

<sup>114.</sup> Pension Fund Appeal.

<sup>115.</sup> State Comptroller's Report, pp. 534–535.

<sup>116.</sup> Pension Fund Appeal, Sections 70–77.

<sup>117.</sup> State Comptroller's Report, p. 528.

<sup>118.</sup> Pension Fund Appeal, Sections 33–50.

<sup>119.</sup> Ibid., Sections 51–58.

<sup>120.</sup> Pension Fund Appeal, pp. 13–14.

The State Comptroller's Report notes that the Comptroller's office was informed that workers prefer a one-time withdrawal of the accrued amount due to the instability of the relationship between Israel and the Palestinian Authority and due to their lack of faith in institutions.<sup>121</sup> Even if this explanation is correct, the conduct of the Payment Department certainly does not encourage faith in institutions, and it does not make it possible for workers to learn about their rights and to understand the implications of the decision to make a one-time withdrawal.

In late 2015, Kav LaOved filed an appeal with the High Court of Justice, demanding that all the retirement monies would be managed as a retirement savings plan, with all the rights inherent to it, transparently, in compliance with standards of good governance, and in a manner that would allow workers to understand them and exercise their rights.<sup>122</sup> Further to this appeal, drafts of new procedures were published for public comment; these procedures would regulate the management of the pension fund administration and clarify the workers' rights. These procedures include a procedure for disability benefits, for withdrawal of monies at redemption value, benefits for the survivors of a worker who has passed away, and benefits for the survivors of a pension recipient.<sup>123</sup> The state further announced its intent to publish a procedure that would regulate the actuary balance of the fund, and a contract with an organization that has experience in the field of retirement savings. According to the state's announcement, this procedure was expected to be published by the end of February 2018.<sup>124</sup> The state also announced that the workers will be sent an annual report, which will be attached to their pay stubs, as well as additional steps to inform workers of the implications of withdrawing accumulated retirement funds.<sup>125</sup> The state also announced its intent to employ an occupational physician who would help examine applications for disability benefits, a procedure that has not existed before.<sup>126</sup>

The new procedures constitute a certain improvement as compared to the existing situation, but the road to create them was replete with obstacles. Thus, for example, new regulations were initially phrased in a manner that required a ten-year eligibility wait before a stipend could be received in case of a qualifying event – a demand that does not exist in the pension funds of Israeli workers. Only after a position paper was published and a sharply-worded response was filed with the High Court of Justice was this term changed, and the qualifying period was canceled except in the exceptional case

<sup>121.</sup> State Comptroller's Report, p. 528.

<sup>122.</sup> Pension Fund Appeal.

<sup>123.</sup> Pension Fund Appeal, Updated Notice from the Respondents, 13 November 2017.

<sup>124.</sup> Ibid., Sections 10–11.

<sup>125.</sup> Ibid., Sections 12–13.

<sup>126.</sup> Ibid., Sections 16–17.

of a minuscule wage, an exception that also exists in comparable regulations.<sup>127</sup> The annual report for the workers about their pension rights has not yet been produced, and the new regulations, written after four decades in which retirement funds were managed without any regulation or clear rules at all, are still a most deficient set of regulations, which makes it hard to know how they will resolve the many questions that will arise in the future. The state is expected to publish updates about its administration of the monies as a pension fund, and primarily about issuing the annual report to workers about their own money, in their own language, late in 2018. Many years will pass, even if all these steps are taken, before workers develop trust in the organization that manages their retirement funds for them, and only the next generation of Palestinian workers in Israel can, one may presume, be assured of a true retirement insurance.

### **Sick leave benefits**

Similar to payments of retirement funds and other social benefits, **large amounts were paid to the Payment Department over the years in order to ensure that sick leave for Palestinian workers would be paid for, but only 1.5-2% of these workers actually received sick leave benefits**, both due to the lengthy and cumbersome process required to receive it, and due to the lack of even minimal information about this benefit and the conditions in which this right can be exercised. Unlike Israeli workers, who receive sick leave benefits directly from their employers, employers of Palestinian workers have been required to withhold fixed amounts to a sick leave payment fund, and the workers must apply to the fund in order to receive sick leave benefits. Thus, for example, in 2015, 53 million sheqels were paid into the fund, but only 878 workers (out of 55 thousand) exercised their right to payment of sick leave. The State Comptroller found that some 168 million sheqels collected for sick leave benefits were not used for this purpose, and transferred to the coffers of the Israeli Ministry of Finance instead.<sup>128</sup> Overall, between 2009 and 2017, the fund accumulated an amount of NIS 330 million that was transferred from the Payment Department to the Ministry of Finance.<sup>129</sup> In 2018, according to a brief filed in response to an appeal to the High Court of Justice, not a single Palestinian worker enjoyed the benefit of receiving sick leave benefits, despite hundreds of applications filed with the Payment Department. The fund did not include some of the benefits that it is required to include, such as injury benefits,<sup>130</sup> which are benefits that have great importance in the construction industry, where there are many accidents.

<sup>127</sup>. Ibid., Appellant's response to the Respondent's Notice, 14 November 2017.

<sup>128</sup>. State Comptroller's Report, p. 533.

<sup>129</sup>. Letter from Anette Kleiman, Ombudsman and FOIA Officer at the Ministry of Finance, to Kav LaOved attorney Michal Tadjer, 6 March 2017.

<sup>130</sup>. Appeal to the High Court of Justice 5918/16 Kav LaOved vs. the Government of Israel (of 18 July 2016) (hereinafter: Sick Leave HCJ Appeal), paragraph 32.

**The Flaws in the Procedure:** A main flaw is that instead of sick leave benefits from the employer directly, a worker must address the fund in a clumsy, lengthy, and discouraging process. On top of the inherent difficulties of a fund administrated by the Payment Department, the Department put additional obstacles in the worker's way. Thus, for example, the number of sick leave days accumulated is not indicated on the pay stub.<sup>131</sup> Only two clerks at the Payment Department were responsible for all the social benefits of tens of thousands of workers, including payment of sick leave benefits.<sup>132</sup> Even those who took the effort of contacting the department had to wait many months to receive the sick leave benefit.<sup>133</sup> Well-founded applications were denied with no explanation. No explanation was given for the payment of sick leave for fewer days less than applied for, based on appended medical confirmations.<sup>134</sup> There are testimonies from people who suffered serious, long-term illnesses (for at least a few weeks) who were rejected or received a very low amount, without an explanation and without being able to appeal.<sup>135</sup>

In July 2016, Kav LaOved filed an appeal requesting that several faults in the administration of the fund be corrected, including the publication of the benefits due to Palestinian workers and the way they can be exercised, extra benefits in case of workplace accidents and other benefits, equalization with rights in other industry funds, indication of the number of days of sick leave on pay stubs, administration of the fund based on a binding code of regulations, equalization of the rights of Palestinian workers to the rights of Israeli workers, and transfer of funds withheld in excess to the sick leave fund to purposes that would promote the health and welfare of Palestinian workers.

The state responded to the appeal in early 2017.<sup>136</sup> The response stated that preparatory work had begun on this topic and had not yet been completed. A decision was made that new pay stubs would be issued, which would include the withholding for sick leave benefits and would allow workers to keep track of these amounts.<sup>137</sup> The response further stated that within the framework of the preparatory work, the Population and Immigration Authority was considering a change (the nature of which was not specified) in the manner of making sick leave benefits,<sup>138</sup> and was also contemplating what to do

<sup>131.</sup> Sick Leave HCJ Appeal, paragraph 47.

<sup>132.</sup> Or Kashti, "The Oppression of the Palestinian Laborers: The State has collected 200 million shekels, but does not pay for sick leave", Haaretz, 18 November 2016  
<https://www.haaretz.co.il/news/education/.premium-1.3126192>

<sup>133.</sup> Shalev, p. 38.

<sup>134.</sup> Sick Leave HCJ Appeal, paragraphs 56–57.

<sup>135.</sup> Ibid., pp. 12–14.

<sup>136.</sup> Respondent's Response in Sick Leave, HCJ Appeal of 12 February 2017.

<sup>137.</sup> Ibid., para. 21.

<sup>138.</sup> Ibid., para. 22.

with the funds already collected.<sup>139</sup> The response made it clear that changes would be made, that an updated procedure would be published in Hebrew and in Arabic, and the state's representatives asked for a period of 6 months to provide an update.<sup>140</sup>

In late 2017, following this appeal, the Population and Immigration Authority announced that it intends to change the system: collection of withheld amounts by the fund will be terminated, and employers will make payments for sick leave directly to their workers.<sup>141</sup> It also announced that employers who still have a permit will be reimbursed for sick leave benefits made for workers whom they still employ, after deduction of sick leave benefits made. Workers would retain the balance of sick leave time which they have accumulated with their current employer. The announcement made it clear that funds collected in excess would not be returned, and an interdepartmental team is examining possible uses for them to benefit Palestinian workers lawfully employed in Israel, and the team's recommendations will be conveyed to the government.

In January 2018, Kav LaOved wrote the Population and Immigration Authority a letter, in which it warned that the new model does not provide a response to all the problems, including to the various benefits included in concurrent funds, and that the termination of the withholding of monies for the fund must be assured not to violate the workers' benefits, and that workers must be informed of the benefits to which they are entitled and have them clarified to them, after the many years in which the workers did not even know about their entitlement to these benefits.<sup>142</sup>

In July 2018, a hearing was held on the subject of sick leave benefits. Ahead of this hearing, the state announced that it is considering using the hundreds of millions of shekels accumulated (among other reasons, because they had not been paid out to workers as required by law) to renovate the crossings, "modernize the system of permits to enter Israel," or form an "actuary balance" in the Palestinian workers' pension fund, which had also been managed in a disgraceful manner, as stated above. The judges at the hearings had reservations about these ideas, and the state announced that it would establish an interdepartmental team to discuss the use of the funds, and that Kav LaOved would be able to express its position to that team.

<sup>139.</sup> Ibid., para. 26.

<sup>140.</sup> Ibid., paras. 27–28.

<sup>141.</sup> Population and Immigration Authority, "Ending Collection and Disbursement of Sick leave benefits for Palestinian workers Lawfully Employed in Israel", Publication from 11 September 2017, updated 25 December 2017. [https://www.gov.il/he/Departments/policies/request\\_for\\_opinion\\_regarding\\_payment\\_and\\_charging\\_of\\_sick\\_days](https://www.gov.il/he/Departments/policies/request_for_opinion_regarding_payment_and_charging_of_sick_days)

<sup>142.</sup> Letter from attorney Michal Tadjer of Kav LaOved to the Population and Immigration Authority – Payment Department, of 8 January 2018.

**As result of the petition and the following media publication of the funds hidden deep within the treasury, major bodies began to take interest in the issue of the sick payment theft.** The "Builders of The Land Association" requested to join the petition, with the sole interest of retrieving the stolen funds to the employers; The Farmers' Association submitted a joining request as well, and "Kav LaOved" were contacted by other interest-takers in using the funds including the General Organization of Workers in Israel and representatives of the Palestinian Authority. It seems that none of these bodies are interested in the fate of the paid (or to be exact, unpaid) sick pay funds in relation to the workers themselves, and in the planned reform which is not expected to improve workers' access to a basic right which has been deprived of them for forty years.

In October 2018, "Kav LaOved" submitted an argumented position to the team. Representatives of the General Organization of Workers, the "Israeli builders association" which represents the contractors, and additional bodies, also appeared in front of the team. "Kav Laoved" was the only body, to the best of our knowledge, which voiced a position according to which workers must be allowed to realize the right they were not able to, and must be given additional compensations that are included in parallel funds (work injury pay completion, payment in cases of inability to work, and more). It seems the state's representatives seek uses for the funds that will help them to patch up budget holes, without actual examination, and obviously without actually taking responsibility, of decades-old neglect.

## Medical Benefits and Care after Workplace Injuries

Sick leave benefits are not the only significant issue affecting the health of Palestinian workers.

The percentage of Palestinian construction workers injured in workplace accidents is high, the percentage of workers receiving injury benefits is low, and the right of injured workers to medical care is violated.

## Workplace Injuries

The construction industry is the most lethal industry in Israel, and beyond the fatalities, many accidents lead to serious injuries. In 2014-2016, respectively 37%, 43%, and 47% of construction industry fatalities were Palestinian construction workers.<sup>143</sup> In the first half of 2018, almost half of the construction industry fatalities were Palestinians. The situation is similar in non-lethal accidents.

<sup>143</sup> Macro Report, p. 32, refers to the data collected by the Coalition for Combating Construction Accidents; the data for 2016 is from Kav LaOved, The Coalition for Combating Construction Accidents Reports: 48 workers were killed on construction sites in 2016", 6 January 2017  
[הקוואליציה-למאמבוק-בתאונות- בניין- מדוחת-/  
http://www.kavlaoved.org.il/48-בתאונות- בניין- מדוחת-](http://www.kavlaoved.org.il/48-בתאונות-בניין-מדוחת-למאמבוק/)

According to Kav LaOved data, more than half of the people injured in the construction industry are Palestinian workers.<sup>144</sup> But only 5% of the construction workers who receive workplace injury stipends are Palestinian.<sup>145</sup> There is an enormous gap between the half of people injured and the 5% of people receiving injury benefits. This data is even more concerning in light of the fact that the injuries sustained by Palestinian workers (and specifically, in the construction industry) are more serious than those of Israeli workers, and the recovery time needed before they can return to work is longer.<sup>146</sup>

**The low percentage of Palestinian construction workers who receive injury benefits reflects, among other things, a bureaucracy that makes the realization of their benefits difficult.** Most injured Palestinian do not file claims for injury benefits. The reasons for this are lack of knowledge, concern about losing workdays, concern about additional interactions with the authorities, and occasional cases where an employer has failed to fulfill their obligation to report and submit forms needed to make it possible for a worker to receive injury benefits.<sup>147</sup>

### Medical Care

Although most Palestinians working in construction in Israel have permits and pay into the National Insurance and Health Insurance systems (the “Health Stamp” entitles them to medical care with no payment at the point of service only within the Palestinian Authority), they are not entitled to medical care in Israel.<sup>148</sup> This is also true in cases where emergency care is needed, for example, due to a heart attack while they are in Israel. Moreover, they are only entitled to first aid in cases of workplace accidents if their employer has provided them with a special document, National Insurance Institute Form BL/250 for providing medical care to persons injured in the workplace. This policy has many very serious possible implications due to the resulting delay in the provision of first aid and the lower level of care available in the West Bank, as compared to the medical services available in Israel.<sup>149</sup>

<sup>144</sup>. Kav LaOved 2016. The percentage of Palestinian fatalities (some 40%) of all workplace accident fatalities also indicates an immense gap between the number of people injured and the numbers receiving injury benefits.

<sup>145</sup>. Macro Report p. 32, referring to the National Insurance Institute data.

<sup>146</sup>. Noga Kedman, Violation of the Right of Palestinian Workers Employed in Israel to Medical Care (2015) [הפטעה-זכות-טיפול רפואי-של-עובדם-פאל](http://www.kavlaoved.org.il/) / (hereinafter: Kedman), p. 14.

<sup>147</sup>. Ibid., page 16.

<sup>148</sup>. Ibid., page 4.

<sup>149</sup>. Ibid., page 15.

**As long as such a worker is not recognized by the National Insurance Institute as having actually been injured at the workplace, they must finance the remaining medical care out of pocket and will only be eligible for reimbursement after the injury is recognized as a workplace injury.<sup>150</sup>** The procedures for receiving reimbursements for healthcare expenses are cumbersome and impose difficulties on injured workers who do not have access to information and do not receive explanations about how to apply for the benefits to which they are entitled.

A Palestinian worker's "Health Stamp" does not cover medical care in case of workplace injury. If a worker presenting for medical care in the West Bank reveals that they were injured in a workplace accident in Israel, they will be required to pay for the medical care, in the hope that they will be reimbursed; but if they do not disclose this in order to avoid having to pay for medical care at the point of service, the medical documents will not indicate that their injury was incurred in the workplace, leaving them ineligible for reimbursement by the National Insurance Institute.<sup>151</sup> Many people cannot pay healthcare costs without immediate reimbursement, and for this reason they forego necessary medical care.<sup>152</sup>

Another barrier derives from the institution empowered by the National Insurance Institute to examine the reimbursement applications for medical expenses. A worker must send the receipts, along with the medical documentation specifying the care for which payments were made, to the Clalit Health Services Workplace Injuries Department. Clalit takes four to six months to inspect the receipts and approve them for payment. And as if this delay is not enough, the National Insurance Institute has empowered a private company to oversee the work of Clalit Health Services and to confirm or reject receipts that Clalit has approved for payment. This company's handling takes about two additional months. Workers submit receipts detailing their expenses to Clalit (a procedure that will require the involvement of some intermediary, be it from Kav LaOved or from a private attorney who will charge a percentage as a handling fee), and most of them receive only very partial and unexplained reimbursements after six to eight months (and sometimes longer), if they receive anything at all. It should be emphasized again that Palestinian workers are not eligible for free healthcare during the period before they are recognized as having suffered a workplace injury, despite the clear need for care and rehabilitation immediately after an accident.<sup>153</sup>

<sup>150.</sup> Ibid., page 16.

<sup>151.</sup> Kedman, p. 18

<sup>152.</sup> Ibid.

<sup>153.</sup> A letter from Kav LaOved's attorney Michal Tadjer and ACRI attorney Roni Pelli to Mr. Meir Spiegler, Director General of the National Insurance Institute, 12 March 2018.

The health fees withheld from the workers are not transferred to the Palestinian Authority, but rather to the Israeli Ministry of Finance, and they are not dedicated to care of the workers. The amounts withheld for occupational health services do not reach their intended destination, either.<sup>154</sup>

### Bureaucratic Obstacles

Palestinian construction workers face multiple bureaucratic obstacles that interfere with the exercise of their benefits that were mentioned in various contexts in the previous chapter. These obstacles include a lack of transparency, a lack of information accessible to the workers in their own language (and in many cases, the lack of information in any language), the absence of reports about their rights in the ways in which they are available to Israeli workers (such as a detailed pay stub or an annual retirement benefits report). The lack of awareness of eligibility to benefits such as retirement pensions, vacations, and sick leave benefits transpires from various sources.<sup>155</sup>

Even workers who attempt to realize their benefits are hindered by delays and long waits, bureaucratic obstacles, the lack of transparency, cumbersome bureaucratic requirements,<sup>156</sup> and a lack of explanation of Payment Department decisions in a manner that seems arbitrary. The many difficulties preventing Palestinian workers from exercising their rights rise to the level of a "bureaucratic denial of rights": administrative practices that deny the rights of people who appeal to the authorities and deter them from demanding those rights.<sup>157</sup>

The Payment Department is a sluggish bureaucracy; it is neither transparent nor flexible, and for various reasons, some of which due to positive developments, the rules and obligations for employers sometimes change suddenly. This can make employment harder and more expensive, or require additional expenses, which are then rolled over onto the workers. The need for certainty and stability in terms of rights and obligations, and for good governance by the Payment Department is also expressed by employer representatives.<sup>158</sup>

Lately, the various obstructions were joined by a new, significant one: on 17.9.2018, the Supreme Court passed a verdict on the petition submitted by "Kav LaOved" in cooperation with "Adalah – The Legal Center for Arab Minority Rights in Israel", and "ACRI – The Association for Civil Rights in Israel" against regulations known by the media as "The Jordan Valley Regulations". The minister for justice, Ayelet Shaked, set the regulations in place in order to fight a phenomenon mentioned by the minister publically as a "Lawsuits' Intifada". These regulations, which came into force (without any prior

<sup>154.</sup> Ibid, pp. 22-24.

<sup>155.</sup> Ibid., p. 7, referring to the Bank of Israel; Macro Report, p. 27.

<sup>156.</sup> See for example Kedman, pp. 15, -19.

<sup>157.</sup> Eyal Peleg, *The Poverty Challenge of Administrative Law* (2013), p. 259.

<sup>158.</sup> Shalev, p. 44, referring to Gurevitz (see footnote 45); see also Berda, p. 96-103.

preparation) on September 2016, require any labor court registrar or judge to order the deposition of a financial guarantee by a non-Israeli citizen plaintiff in cases of labor court suit. **The meaning of this is that a Palestinian worker who wishes to sue his or her employer in Israel's regional labor court will be required, in most cases, to deposit a guarantee of thousands of shekels, as a precondition for the court to hear his or her plea.** During their two years existence, the regulations have been leading to the deletion of dozens of lawsuits in labor courts, most of them submitted by Palestinian workers. In "Kav LaOved", we tracked the numbers and the workers' identification during the first year of the regulations' enactment, and these were the results: Palestinian workers submitted 53% of the suits deleted for the lack of financial guarantees (their percentage among non-citizen workers who submit claims in labor courts is not higher than 20%). Palestinian workers also made the majority of the plaintiffs whose employers requested the court to order a guarantee deposit by them, 51%. As part of the four hearings held at the Supreme Court as part of our petition, more and more details were exposed: among other things, it became known the minister for justice set the regulations in place without substantial factual basis, basing them solely on employers' complaints, all of them made by farmers from the Jordan Valley region. It is worth noting that the workers in the Jordan Valley make only 1% of the sum of Palestinian workers in Israel; the regulations prevent access to labor courts from all of them. The minister for justice has not checked the reality of 99% of the Palestinian workers and their employers; she has not contacted organizations representing Palestinian workers, nor trade unions. During the hearings, it turned out that even among the few complaining employers, none of them could point at a single lawsuit made by a Palestinian worker in labor court, which was proven a "false suit" — the phenomenon the regulation was created to fight. Despite all of this, the supreme court rejected our petition, and concluded that "indeed, the regulation changes the basic presumption towards the ordered deposit of guarantees by non-citizen plaintiffs, and in this sense — as the state admits — contains a certain injury to the right to access court. However this injury is reasonable and proportionate." Another major bureaucratic obstruction to Palestinian workers' path to their protective rights was approved by the Supreme Court and received legal authorization.<sup>159</sup>

The exploitation of workers by employers and brokers is not merely a private phenomenon; it occurs in the context of government policy and practice. Thus, in creating a cumbersome system that makes it hard even for employers of good will to meet their full obligations, government policy makes it easier for exploitative employers to evade payments required by law. This also happens with regard to the binding of workers to employers and the creation of obstacles to the exercising of basic rights such as the receiving of benefits and reimbursements for people injured at the workplace. This also happens with the creation of obstacles to accessing the courts.

<sup>159</sup>. This verdict was criticized, among others, by Dr. Adam Shinar, "Ayelet Shaked Erases Human Rights Using bureaucracy", Haaretz, 08.10.2018.

# Conclusion

In this report we briefly touched on a variety of aspects relating to the employment of Palestinian workers in Israel. Trends of regimentation, plunder, and denial of basic rights form the basis for the employment of Palestinian workers in Israel. Criticism of the infrastructure that was initially intended to protect these workers and has become a non-functional organization that hoards funds deriving from workers' benefits yields only one immediate response from the government: immediate repudiation.

The last few years seen several improvements in the employment model of Palestinian workers, but those improvements are limited. Positive decisions — primarily the termination of binding workers to an employer, but also the renovation and expansion of the crossings — are not implemented and are repeatedly postponed, while simultaneously the quotas for work in the most dangerous industry in Israel, the construction industry, and for work that includes overnight stays and denies the workers basic liberties, are increased.

We have summarized below the primary changes that occurred over the past two years:

- **Quota increases:** This has started in recent years and is expressed on the ground.  
**Who supports this?** Security entities: COGAT, the Civil Administration, the ISA (Shin Bet), the Ministry of Defense.<sup>160</sup>
- **Renovation and expansion of the crossings:** The plan has been announced; at this time there seems to be a gap between the cost and the budget allocated to this.  
**Who supports this?** The Ministries of Defense and Finance.
- **Issuing permits to workers and canceling the arrangement that binds workers to their employers:** This has been officially announced, has not yet been implemented, and there is no clear and detailed plan about its implementation.  
**Who supports this?** A task force established for these purposes; the government, which has approved the recommendations; labor organizations.  
Manpower companies would prefer a different model, most likely employment via corporations, similar to the employment of migrant workers in the industry. This model also appears to have the support of the Population and Immigration Authority.<sup>161</sup>  
Reports on the 'Haaretz' website indicate that while the Ministry of Finance supports the change,

<sup>160</sup>. See, among others: Zaken, ibid.

<sup>161</sup>. Janaan Bsoul, "An Interdepartmental Committee Is Examining New Employment Models for the Palestinian Workers", The Marker 31 May 2016 <https://www.themarker.com/career/1.2961380>

one of the reasons delaying the move to the new employment mechanism, which cancels the binding of workers to employers and allows for the online payment of benefits, is “a lack of enthusiasm” for this change among security agencies. However, the Civil Administration has told Haaretz that it the new model was its own idea, and that it is promoting it within the framework of the task force.<sup>162</sup>

- **Closing down the Payment Department:** An intention was announced, the change has not yet been implemented, and there is no clear and detailed plan about its implementation.  
**Who supports this?** The Ministry of Finance.
- **Payment for retirement and sick leave:** An intent to change the existing arrangements was declared; there are problems with the new model as well and it is not clear what the new arrangement will be and when it will be implemented.  
**Who supports this?** According to the state’s announcements to the High Court of Justice, there seems to be no dispute about the need to correct the mechanism, but the scope and timing of the change are unclear.

## Principal Recommendations

- **Terminating the binding of workers to employers** and switching to a system of permits given to the worker that will allow him to move between employers in the industry without limitation – a model closer to a free market; alternatively, an arrangement of “binding to the industry” – a permit to work for any employer who is authorized to employ construction industry workers.
- **Increasing oversight** of the payment of wages and benefits, working conditions, concern about middlemen and the commercial trade in permits, and about safety in the construction industry.
- **Improving travel arrangements for workers between the West Bank and Israel**, reducing the waiting times, managing the crossings in a manner that allows for swift movement. Using suitable technology and examining the possibility of forming a special pathway for tenured workers.
- A progressive mechanism, which makes it easy to **employ workers for an extended period** – this could be founded on bureaucratic easements or on practices of the kind used around the world in various contexts to encourage “good” employers, such as benefits in tenders, reduction of fees, and others.

- **Introducing thorough changes to the Payment Department**, transforming it into a significant, functional body with an understanding of workers' rights and labor relations and a performance capacity that allows for informing workers about their rights and for making payments in accordance with labor laws.
- **Reducing bureaucratic obstacles and making information accessible.** Publishing all relevant procedures and guidelines in Arabic; linguistic accessibility (adapting the publication for workers in branches requiring low skills); reducing cumbersome bureaucratic demands; requiring each authority to accept information from the other state authorities, if they have it and it is relevant to the processing of workers' applications, without encumbering the workers.
- **Making medical care in Israel accessible.** Applying health insurance to workers employed in Israel.
- **Dedicating the amounts collected over the years to the purposes for which they had been collected** – the health and welfare of Palestinian workers in Israel.



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