

Below the Minimum: Non-Enforcement of Wage Law as a Structural Element in the Agricultural Sector in Israel

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Summary

The rights of Thai migrant agricultural workers in Israel are violated with great frequency. Particularly egregious and salient among these violations is the payment of wages lower than the minimum required by law, which is the focus of this report. The first part of the report, which compiles the information gathered by *Kav La'oved* for the year 2013, demonstrates that wage violations are prevalent on most farms in Israel; that on average workers are paid only 70% of the wages required by law and that the damage to workers due to these violations amounts to around half a billion shekels (NIS) per year.

On the basis of this evidence of widespread minimum wage violations, the second part of the report deals with the possibility that the phenomenon has become structural – that is, that the Israeli agricultural sector has become dependent on illegally low wages, and that enforcement of the law without compensation of some kind to farmers may do great harm to the sector. We set forth the various justifications provided by farmers for maintaining the status quo: that wages in Israel are in any case higher than those in Thailand, that low wages are necessary to provide workers with the overtime hours they desire, that employers face a labor shortage, and that they face various costs that cannot be deducted from employees' wages. We respond to each of these arguments in turn and argue that even if some of the employers' complaints toward the state are justified, the damage done to them cannot be compensated through an "indirect subsidy," by allowing them to violate workers' rights. We conclude with a short list of policy recommendations for state and civil society organizations to bolster enforcement of wage and other labor laws in the sector, to consider policy steps to support agriculture, as other countries do, and to lessen the burden of payments related to employment which do not benefit workers and to encourage unionization among farmworkers.

Introduction

About 22,000 migrant workers are currently employed as farmworkers in Israel. Most of these workers are from Thailand, and the vast majority are men. We at *Kav LaOved*, an organization dedicated to protecting workers' rights in Israel, are often privy to reports of violations of workers' rights, to cases of exploitation and to personal stories that leave us shaken. Migrant workers in Israeli agriculture suffer from many violations of their rights, both as workers and as human beings – from substandard living conditions to sexual harassment. Workers come to us seeking redress for violations such as use of pesticides without proper protection and training, habitual withholding of wages, starvation, living

quarters unfit for human habitation, employers who do not open bank accounts for their workers as stipulated in the Procedure on Employment of Foreign Workers in Agriculture,¹ de facto indentured labor, overwork; non-provision of paid vacation days, etc. But the violation of minimum wage laws stands out among these other violations in the complaints registered with *Kav LaOved*.

Our choice to concentrate on the issue of wages in this report is informed by several factors. First, our interest in violation of rights as a structural characteristic of the sector led us to focus on the issue of wages, in which regard there is a structural conflict, or “zero-sum game,” between employers and employees. Practically speaking, the quantitative nature of the issue enabled us to compile the data reaching *Kav LaOved* into numerical averages that provide an overview of the entire sector (within limits, which are described below). No less significant is the importance of wages to the workers themselves, who initiate contacts with *Kav LaOved* and even strike over the issue.

There is no disputing the fact that violation of the wage laws enacted by the State of Israel, most importantly the Minimum Wage Law (1987) and the Overtime Law (1951), does occur in the agricultural sector, as the phenomenon is known not only to *Kav LaOved* but also to the police and the Knesset.² Of course, as with any other illegal activity, one cannot expect the relevant parties to report reliably on their activities, especially on the record, so arriving at credible evidence is not a trivial pursuit. Nevertheless, the data acquired by *Kav LaOved* over the past few years is entirely consistent with our initial impression that violation of wage law in Israeli agriculture is rampant, the rule rather than the exception. This data, summarized in Part I below, provides the central evidence for this claim. The interviews we conducted with four farmers from different parts of the country corroborate this impression, that none of our interlocutors contested the working assumption set before them, namely, that wage laws are violated across the board. Some interviewees even admitted to violating wage laws themselves (although we did not ask about this directly).

Part II of the report takes as given the claim that wage laws are violated with great frequency and deals with the possibility – raised by all our interviewees – that full enforcement of the law would endanger the very existence of Israel’s agricultural sector. We outline the arguments set forth by the interviewees in favor of the status quo (or in favor of its regularization through exempting migrant workers from Israeli wage laws) and explain why, in our opinion, these arguments are not persuasive. We do not reject the possibility that the enforcement of minimum wage laws may make the sector, or parts thereof unviable, however, we do suggest that if this is the case – and assuming a public interest in the continued existence of an Israeli agricultural sector – the solution must be

1 For details, see “Procedure on Employment of Foreign Workers in Agriculture”, Director’s Circular 31/13, 22 December 2013 (Hebrew).

<http://www.piba.gov.il/FORMSANDREGULATIONS/NOTICE/Pages/22122013.aspx>

2 Shmulik Hezkiah, “Issues related to the employment of foreign workers in agriculture”, Knesset Research Center, 3 February 2010, pp. 6-7 (Hebrew).

based on government assistance and not on an “indirect subsidy,” that is, on turning a blind eye to violations of the law at workers’ expense.

Part I: Evidence of the Violation of Wage Laws as a Prevalent Phenomenon in the Agricultural Sector

Kav LaOved stays in touch with Thai migrant workers through a variety of channels: open office hours in two Israeli cities, a hotline open three times a week in the Thai language, and a Facebook page “liked” by close to 2,000 workers. In addition, our staff engages in field visits with farmworkers, with an eye to observing their living conditions, hearing their complaints, and providing assistance. Nevertheless, gathering and verifying information is often a challenge for us, as employers routinely intimidate their employees. Thus, many workers hesitate to complain due to fear of losing their jobs, due to a lack of accessible information on potential alternative employers, and fear that complaining will lead to dismissal and early return to Thailand. The workers, who are often indebted to brokers and who provide for their families through work in Israel, are afraid of becoming unemployed, or worse yet, being deported to Thailand with no possibility of return.

Moreover, according to the Procedure on the Employment of Foreign Workers published by the Immigration Authority, farmers are allowed to exchange workers amongst themselves in accordance with season and need. In practice, workers do not have the power to decide where they will be permanently employed, and those who complain or fight for their rights are liable to be arbitrarily removed to another farm.

Despite these limitations, *Kav LaOved* has been able to gather considerable amounts of information on the conditions under which Thai workers labor. Our data presents an unambiguous and disheartening picture of across-the-board non-compliance with labor laws in the Israeli agricultural sector. With very few exceptions, *all* farms about which *Kav LaOved* has information, across the country, refrain from paying their workers the legal minimum wage. Not all workers come to us to complain about illegally low wages, the organization serves various needs, including calculation of severance pay and registration of complaints about the violation of other rights, but we are careful always to document the wages reported by workers, and in all cases these wages fell below the legal minimum wage.

The following table summarizes the wages reported by workers who filed complaints with *Kav LaOved* in 2013, compared to the stipulations of the law:³

	Reported			Legal	Reported as percentage
	Average	Minimum	Maximum		

³ All numbers in New Israeli Shekels (NIS); 1 NIS = US \$0.25 (19 January 2015). The number of complainants is 217 and the number of employers is 80. Complaining workers report their base pay per day, overtime pay, and average hours worked. We chose to present the data by employer; by worker, the aggregate picture appears slightly more severe. (No differences were reported between different workers employed on the same farm.)

					of legal
Wage per regular hour	16.35	14.00	20.00	23.12	70.7%
Wage per hour overtime (over 8 hrs. a day)	19.26	14.00	25.00	28.90 (8-10 hrs.) 34.68 (10-12 hrs.)	66.6% (for hrs. 9 and 10)
Hours a day	10.03	8	15.5	12 maximum	---
Wage per day	169.52	120	263.25	243.80 (for average work day)	69.5%

On average, the workers filing complaints with *Kav LaOved* only receive about 70% of the wages to which they are legally entitled.

Additional information beyond the data summarized in this table adds to the disturbing picture. Beginning in February 2013, *Kav LaOved*'s team has conducted an average of two worker visits per month. We often return to the same locality more than once. On every single one of our visits, the workers we spoke to reported below-minimum wages. Another clear piece of evidence is the strike undertaken by farmworkers in Moshav Sde Nitzan on November 12, 2013. The wildcat strike, involving thirty workers, began when the employees refused to show up to work pending the raising of wages to the legal minimum and their timely payment. During the strike, representatives of Halishka Hapratit (a manpower agency responsible for the farmworkers) were invited onto the farm. The representatives located a worker suspected of leading the strike and coerced him into signing an agreement of "voluntary return" to Thailand. Agency representatives took the worker to the airport and illegally deported him from the country. The other workers, intimidated by this action, agreed to a compromise according to which wages would be raised to 130 NIS per 8-hour day, that is, to 70% of the legal minimum (184.96 NIS). This strike, like others that have come to our attention, bears witness to workers' awareness of their entitlement to the minimum wage. Moreover, the strikes testify to the widespread violation of wage laws in the farm sector and corroborate the data accumulating in *Kav LaOved*'s offices.

Enforcement Efforts

The Ministry of Economy is responsible for the enforcement of labor laws in Israel. The Ministry employs inspectors whose job is to visit farms following worker complaints and investigate the credibility thereof. Upon arriving at the relevant farm, inspectors ask to speak with workers, check their complaints and collect evidence. However, according to workers the inspectors arrive at farm communities without Thai interpreters, and are thus unable to check complaints with the workers and as a result, only the employers' testimony is heard. Usually, employers mislead the inspectors as to the number of hours

worked. The latter, who do not speak to the workers, go over the pay slips (which are not distributed to workers as required by law) and conclude that all is well. Lacking direct contact with workers, inspectors are unable to carry out a comprehensive investigation and to adequately enforce the law.

In many places visited by inspectors after receiving complaints over non-payment of minimum wages, workers received raises, but these remained below the legal minimum. For example, in 2011 in Moshav Ahituv in the Emek Hefer region, many workers demonstrated against their employers, demanding fulfillment of their legal rights, including the minimum wage. These workers came to *Kav LaOved's* office in April 2011 and declared that at least 300 workers were interested in registering a complaint over their labor conditions: 14 NIS per hour worked, no overtime pay, no weekly day of rest, and other violations. Upon receiving no assistance from the authorities and no concession from their employers, the workers engaged in a wildcat strike. Following the strike, the Ministry of Economy's inspectors arrived on the scene and attempted to mediate between employers and workers. In a meeting held by *Kav LaOved* with workers six months after the strike, it was revealed that following the inspectors' visit, the workers' wages were raised, but that they continued to fall below the minimum wage.

Estimating the Extent of Damage to Workers

As mentioned above, estimating the prevalence of an illegal activity is always a challenge. Without the possibility of carrying out a credible survey of employers or workers, adequate measurement is difficult to achieve. Nevertheless, in our opinion the body of evidence laid out above is sufficient to conclude with reasonable certainty that agricultural employers across the board violate the law, and that compliance is the exception rather than the rule. We also find it reasonable to extrapolate, due to the mass of evidence collected in our office, that the average wage reported by workers complaining to *Kav LaOved* is quite close to that paid to the average worker at large.

This assumption allows us to arrive at an estimate of the extent of total monetary damage done to workers due to non-payment of the legal minimum wage. According to our data, the average worker performs 309 days of labor per year (six days a week, minus four holidays given to them although they are legally protected to have 10). Thus, if there are 22,000 Thai workers resident in Israel, and if the numbers given by workers are representative of the situation in the sector at large, then a loss of 74.28 NIS per worker per work day (as shown in the table above) amounts to a loss of 22,952.22 per worker per year, or 504,955,440 NIS per year for all Thai workers combined.

Part II: Non-payment of the Minimum Wage – A Structural Characteristic of the Agricultural Sector?

In Part I, we set forth the evidence of widespread wage law violations in the Israeli agricultural sector, leading us to an estimate that Israeli farmers garner around half a billion shekels at the expense of their workers every year. In Part II, we deal with the possibility that this characteristic of the labor relationship in the farm sector is not only

widespread, but also *structural* – that is, that under current conditions Israeli agriculture is dependent on it for its survival, and that full enforcement of the law will endanger its existence *unless other policy changes are also enacted*.

In order to survive, any economic enterprise functioning in a capitalist market must be profitable. That is, its income must outweigh its expenses (including expenditures on production and materials, wages, and taxes) such that the enterprise's owners are able to meet their own needs and make further investments in the business. This is true not only of particular private enterprises, but also in the aggregate, for entire economic sectors. Several of the farmers we interviewed for this report admitted, off the record, to violating wage laws. However, all our interviewees added that *adherence to wage laws is an economic impossibility*, that is, that it would lower their profits to below the level of economic feasibility for the farm.

We are unable, with the tools at our disposal, to judge the truth of the farmers' claims. According to our estimate in Part I, the profits illegally accruing to farmers due to violation of wage laws are in the neighborhood of half a billion shekels per year. In 2012, the total output of Israel's agricultural sector was 29 billion NIS. Discounting all costs, including taxes on these (19.3 billion NIS) and all expenses for labor including taxes (5.2 billion NIS), profits accruing to farmers amount to 5.1 billion NIS.⁴ The gross profit rate thus earned (before taxes and financing costs) is therefore 17.58%. Without their illegally earned profits (according to our estimates), farmers would retain profits of 4.6 billion NIS, a gross profit rate of 15.86%. These calculations lead us to the conclusion that, without further data and analysis, one cannot say that full enforcement of minimum wage laws would condemn the whole farm sector to unprofitability. However, additional factors not taken into account here, such as financing conditions, may contribute to a significantly less rosy picture for farmers.

Moreover, it may well be that enforcement of labor laws will weigh disproportionately on farmers who grow seasonal products requiring more overtime labor, on smaller farmers unable to hedge the risks entailed by a lower profit rate, or other subsets of farmers. Thus, even if enforcement would not bring the Israeli farm sector to total ruin, it may lead to the failure of many farms and to a rise in the concentration of capital in the sector. On the basis of the data before us, it is impossible to reject the claim that non-enforcement is a structural element of the sector's viability, and that full enforcement with no other concurrent policy change may lead to significant, and not necessarily salutary, changes in the sector's economic structure.

Arguments in Favor of Non-Compliance with the Law

Working from the possibility that Israeli agriculture will be unable to survive the enforcement of wage laws, several of the farmers we spoke to concluded that the wage gap between migrant farmworkers and Israeli workers must be upheld, and even legalized

⁴ Central Statistics Office, "Agriculture in Israel, a Sectoral Balance Sheet: Price Indexes for Inputs and Outputs, 2011-2012". Jerusalem, 2013. (Hebrew)

by granting farmers a legislative exemption from Israeli labor law. The farmers we spoke to even claimed that non-enforcement is in the interest of the workers themselves, for two reasons: first, these employers argued that the wages paid in Israel, even if lower than those paid to local workers, are still much higher than the wages in Thailand and therefore desirable to migrants. Second, employers argued that Thai workers are interested in working long hours and gaining as much overtime pay as possible. Though both sides are interested in overtime work, the high cost of these hours makes them unprofitable for the farmers and thus both sides are hurt by the legal minimum wage for overtime.

The farmers we spoke to presented two additional arguments in favor of continuing non-enforcement of the law, which were not dependent on an ostensible community of interest between their workers and themselves. First, they claimed that due to the lack of desire on the part of Israeli workers to work in agriculture and the lack of potential for mechanization of the great majority of agricultural jobs, they face a constant labor shortage, and that the state's intervention in the free and voluntary contract between them and their workers is therefore unfair. Another argument made was that employment of Thai workers entails extensive additional costs, such as employer tax, accommodation expenses, licensing fees, etc. Farmers are legally entitled to deduct some costs from workers' wages, but only up to a maximum of 25% and contingent upon a number of accounting limitations which make it impossible to reach even this limit. According to the employers we spoke to, their additional costs in fact amount to much more than the legally available deductions. Farmers also complained about the large fees and excises they are obliged to pay, which amount, according to the Ministry of Economy (Law on Foreign Workers, 1991; Regulations on Employment of Foreign Workers, Prohibition of Illegal Employment and Ensuring of Fair Conditions, 2000 and 2001), and according to the farmers themselves, to about 10,000 NIS per worker per year.⁵

Counter-Arguments: The Need for Enforcement of Wage Laws

In KLO's opinion, the arguments for continued non-enforcement of the minimum wage law are unacceptable, since they are all based on the assumption that due to some irrelevant circumstance – a lack of Israelis willing to do agricultural work, or labor conditions in Thailand – Thai farmworkers are not entitled to the same rights due to Israeli workers. This assumption presents a danger to both Thai and local workers, since any accepted deterioration in the conditions of one group may lead to a “race to the bottom” that will affect workers in other sectors, even if they do not compete with them directly. In addition, the first argument made by the employers does not resonate with the reality we have observed – the fact that workers complain to us and even go on strike due to low wages is clear evidence that workers are indeed dissatisfied with the status quo.

⁵ In 2014, the breakdown of fees was as follows, in NIS per worker per year: employers' excise – 9,000 (750 NIS a month); request fee – 600; yearly fee – 1200; permit fee – 180. The calculation does not include National Insurance, health insurance and income taxes.

Even if workers did not protest their wages, the moral injunction “do not oppress the foreigner” (Jeremiah 7:6), a philosophy reflected in Israeli labor law, is aimed precisely at preventing the exploitation of migrants when living conditions in their home countries do not enable a dignified existence, and the State of Israel is obliged to uphold this principle regardless of whether workers express any demands in this regard.⁶ This obligation applies no less to the issue of overtime – the high cost of overtime hours is meant to make their use unattractive to employers and to compensate workers for the health and mental damage caused by overwork. Workers’ “desire” to work overtime, which may be the result of employer pressure, of debts incurred in Thailand to brokers who mediate in getting workers jobs in Israel, or of the need to compete with other workers – is certainly no reason to do away with legal protections.

The other two arguments demand more serious discussion. The labor shortage faced by farmers is real. The Israeli labor market is “split,”⁷ and Israeli citizens are usually unwilling to work on farms, certainly for extended periods and for minimum wage. It may be possible to employ Israelis for a wage several times higher than that paid today, but the further danger to the profitability of the sector which this strategy could bring is clear. Additional mechanization of agriculture is not a solution, given that Israeli agriculture is already highly mechanized.⁸ The labor shortage, then, has two outcomes relevant to our discussion: it creates a need for overtime hours, and gives employees a certain amount of leverage over their employers. Enlargement of the quota of migrant workers may therefore also be harmful to currently employed workers, even if we accept it as an objective need of the sector.

In discussing the fourth argument, about the peripheral costs of employment, we must separate those costs incurred by employers in providing services to workers (accommodation, travel, insurance, etc.) and taxes and fees, which are legally binding on employers but which do not benefit workers.⁹ Expenses of the former kind will be discussed in the section below. As for the latter, there may be truth in farmers’ claims that bureaucratic red tape prevents them from legally deducting full costs from workers’ wages; but steps must be taken to prevent unfair pricing of services granted (such as accommodation, travel, insurance) to workers. It may be necessary to open the current ceiling for deductions (25% of wages) for debate, but it is also necessary to ensure full oversight of deductions and to allow workers the option of sourcing services for themselves instead of receiving them from their employers at uncompetitive prices.

Possibilities for Change in the Agricultural Sector

⁶ In 1953 Israel signed and ratified the “Treaty on Migrant Workers” authored by the International Labor Organization (ILO).

⁷ See Edna Bonacich, “A theory of ethnic antagonism: The split labor market”, *American Sociological Review* vol. 37, No. 5 (Oct., 1972), pp. 547-559.

⁸ See Organization for Economic Cooperation and Development, “OECD Review of Agricultural Policies: Israel” (2010), p. 57.

⁹ That is, not including fees transferred to the state to finance benefits due to workers, such as National Insurance and pensions.

If non-payment of legal wages and non-enforcement of the relevant laws are indeed structural elements of the agricultural sector, without which its very economic viability is in question, and if we assume further that the existence of a stable, diverse agricultural sector is in the public interest, then enforcement of the law must be accompanied by other policy changes which will enhance farmer income. In other words, the “pie” of value added which is created in agriculture every year is divided among farmers, workers, the state, and additional parties, which have not been taken into account in this report (such as financial institutions). From the information at our disposal it is clear that the piece of the “pie” received by the workers is too small, by both legal and moral standards. Enforcement will enlarge the workers’ piece of the pie at the expense of employers. Our position is that if this leaves the farmers with too small a portion, then the shortfall must be made up from the portion taken by the state – not from the workers.

Such a transfer from the state to employers may take several forms. For example, the state could lighten the burden of taxation on farmers – either that which they share with other taxpayers or that applied to them especially as employers of migrant farmworkers. Alternatively (or additionally) the state could enhance the subsidies for agriculture, which today are low in comparison to other developed countries,¹⁰ and intervene in financial markets in favor of farmers, who suffer a structural handicap in this regard.

Additional policy steps available to the state in assisting farmers are beyond the scope of this report. However, we consider that effective protection of workers’ rights entails both a profound acquaintance with the realities of the sector and an openness to state intervention beyond the immediate needs for regulation and enforcement. Such openness may enable the formation of surprising alliances; without it, those defending the rights of workers may find themselves fighting a losing battle against a reality that they are powerless to change.

Policy Recommendations

The analysis above has led us to a few conclusions, which we state here briefly for the reader’s benefit. These conclusions are relevant to organizations and movements fighting for the rights of Thai migrant workers in the agricultural sector as workers and as human beings, to union organizers, and to the state. They are offered to the reader in the spirit of a call to serious, systemic thinking:

1. The labor laws enacted by the State of Israel must be fully enforced on behalf of Thai migrant workers in the agricultural sector. Neither an unofficial “blind eye” to violations nor a legal exemption from these laws is acceptable. The law must be enforced strictly and equitably.
2. An agricultural sector dependent for its viability on cheap labor is not truly sustainable. If the existence of an agricultural sector in Israel is in the public interest, then its viability must be ensured through various other means used in other countries, including subsidies, tax breaks, and agrarian reform.

¹⁰ See *Ibid.*, p. 128.

3. It may be desirable to lower the tax burden faced by farmers who employ Thai migrant workers, including the employers' excise and other fees. Fees indirectly benefitting the workers, such as National Insurance, should not be lowered.
4. The legal and practical hurdles faced by farmworkers who wish to unionize should be removed, and workers should be encouraged to organize, industry-wide or otherwise. Unionization is the most effective tool in the fight for workers' rights.