

“No Harm Was Caused to the Deceased”

The Response of the Legal System to Human Trafficking in 2007

Hotline for Migrant Workers

The title of this policy document is taken from the statement of defense submitted by a trafficker in a suit filed against him by the relatives of a trafficking victim who committed suicide (CC 55775/06 **Anonymous v Anonymous** (pending)).

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About the Hotline for Migrant Workers

The Hotline for Migrant Workers (HMW) is a non partisan not-for-profit organization that seeks to protect the rights of migrant workers and refugees and to uproot human trafficking in Israel. HMW strives to build a just, egalitarian, and democratic society in Israel that promotes tolerance and protects the weak. HMW's activities include providing information about rights; legal consultation and representation; raising public awareness; and promoting policy designed to prevent modern-day slavery in Israel. The work of HMW is possible thanks to the efforts of volunteers and the generous support of individuals and foundations, particularly the New Israel Fund.

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I have been living in fear for years. I don't sleep at night. I used to sleep on the floor of a storeroom and little animals would walk over me at night. When I got up my whole body was itching. There were cockroaches. All the time I was scared that someone was going to come in through the window or door. I didn't sleep, it wasn't somewhere you could sleep. It was a storeroom. The owner used to hit me all the time and lock me in. I didn't go out of the house for two years. I was scared all the time, I cried every night. I had so many dreams when I came here – to get married, to send home money. Nothing is left of all that. They killed me. I am alive but I am dead. I walk through the world but inside I'm dead. Nothing makes my pain go away. Not even the medicine I take. I take my pain with me wherever I go and it will always be there. I don't have any dreams and hopes any more.

(From the testimony of a a victim of slavery from Asia. Her enslavers were not prosecuted.)

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Introduction

This report describes developments in 2007 – the first year in which an attempt was made to enforce the Prohibition of Human Trafficking Law (Legislative Amendments), 2006 (hereinafter – “the Prohibition of Human Trafficking Law.”) The new law extended the definition of human trafficking: in addition to trafficking for the purpose of prostitution, the law now also includes trafficking for other purposes, including slavery, organ trade, and so forth. In addition, the new law created new offenses and established stricter penalties for existing offenses. Despite this, 2007 saw no more than the first signs of change in this field. Most of the criminal rulings still relate to trafficking in women for the purpose of prostitution rather than the new offenses. The limited body of civil and administrative rulings concerning victims’ rights also focuses mainly on the rights of victims of trafficking for prostitution rather than the rights of trafficking victims in the new, broader sense established in the law.

The present report is the fourth annual review published by the Hotline for Migrant Workers (HMW) concerning the attitude of the legal system toward human trafficking. Since 2004 HMW has monitored the situation in the field with the aim of identifying and reporting on the achievements, weaknesses, and development of the legal system in this field and proposing ways to reform and improve this system. This report examines the actions of the legal system over the past year, focusing on the legislative changes, legal proceedings in both criminal and civil cases, and the impact of these proceedings on offenders and victims.

To this end we examined court rulings published in 2007.¹ We also studied the minutes of meetings of the Knesset Subcommittee on Trafficking in Women and the minutes of the Custody Review Tribunal for Persons Unlawfully Present in Israel. This position paper also draws extensively on the field work of HMW volunteers and on the testimonies they took at detention facilities and elsewhere.

This study clearly reflects the lack of clarity on the part of the enforcement agencies regarding the new Prevention of Human Trafficking Law since its enactment. Although the new law extends the definition of the offense of trafficking, this change has not yet sufficiently percolated down to the field and so far is largely theoretical. The only area that has seen significant change in recent years (and this change has been gradual) is that of trafficking in foreign women for the purpose of prostitution. This trafficking has not been completely eradicated, but the identity of the women involved has undergone significant change. Today the main phenomena are trafficking in Israeli women for the

¹ We examined a total of fifty-one legal proceedings, including thirteen sentences; seven verdicts; eight rulings in appeals; six rulings in civil suits submitted by trafficking victims against their traffickers; and seventeen sundry decisions on issues relating to detention. These proceedings discussed the cases of seventy-eight different defendants and convicted offenders in the field of trafficking and ancillary offenses.

purpose of prostitution in its different forms (and particularly the offense of slavery, as discussed below); trafficking in Israeli women abroad; and trafficking in women from China to Israel.

The Offense of Human Trafficking in Israel

Human trafficking for various purposes has existed in Israel since the early 1990s. The patterns of trafficking for the purposes of slavery and forced labor have changed only marginally over the years, while the patterns of sex trafficking have changed considerably. This chapter discusses these two main patterns of trafficking – for the purpose of labor (in construction, agriculture, and domestic work) and for the purpose of prostitution. We also discuss rarer forms of trafficking that have emerged in Israel, particularly trafficking in organs.

1. Holding in Conditions of Slavery and Forced Labor

The “binding policy” that was implemented in Israel for many years facilitated the development of human trafficking. According to this policy, workers were “shackled” to their employees and could not leave them, even if they withheld their wages or maltreated them. Employers developed various means for enhancing the binding of employees, including withholding their passports, delaying payment of wages, threats, and so forth. Various cases of inhuman treatment of workers were uncovered in the construction and agriculture sectors over the years. However, these were defined as the exploitation and maltreatment of migrant workers rather than trafficking.

The Prohibition of Human Trafficking Law established two important new offenses: slavery and forced labor.² The introduction of these offenses reflected the important realization that people may become slaves not through any act of sale or purchase, but through the creation of ownership by their owner alone. The law established stringent penalties for these offenses, and the penalty for exploitation was increased from one year’s imprisonment to three years.³ The articles of the penal code concerning kidnapping were also changed in order to reflect the contemporary reality that people are kidnapped from their own country to other countries for these purposes.⁴

The foundation of the offense of **slavery** is the objectification of an individual. This offense is present if it is proved that the offender exercised tangible control over the life or liberty of the victim while the latter was held for the purpose of labor or sex services. It is irrelevant whether or not the victim consented to the offense; neither is it necessary

² Although forced labor had already been recognized as an offense under the penal code, this section was never implemented.

³ Amendment No. 91 to the Penal Code, Article 431.

⁴ Article 374(A).

to prove that improper means, such as violence or threats, were used in order to confirm the presence of the offense. The penalty for this offense is sixteen years' imprisonment, or twenty years if the victim is a minor.

As for the offense of **forced labor**, the distinguishing feature separating this offense from lawful work is the use of improper means (force, threats, deception, or exploitation of distress). In other words, unlike the offense of slavery, the offense of forced labor requires the use of improper means. However, once again violence is not necessarily required; for example, the exploitation of the vulnerable state of the victim may be sufficient. As with the offense of slavery, payment for labor does not negate the presence of the offense. The current penalty for this offense is seven years' imprisonment.

A range of warning signs may indicate the presence of these two offenses: The withholding of an individual's passport by the employer; recruitment for a given purpose, while in practice the individual was asked to perform a different function; the inability to retract a preliminary agreement; the absence of a salary or its subjugation in the form of a debt;⁵ denial of free access to means of communication or to friends; prohibition or restriction of religious worship and prayer; inadequate sleeping hours, food, medical treatment, or sleeping conditions; poor sanitary conditions in the place of residence; punishment for acts perceived as mistakes by the employer; physical or sexual violence; forced employment in the sex industry; and so forth. As with other criminal offenses, there may be a partial or full overlap between the two offenses.

2. Trafficking for the Purpose of Prostitution

From the early 1990s through 2006 the Israeli sex industry developed largely on the basis of trafficking in women from the Former Soviet Union. Following specific enforcement actions undertaken by the authorities against trafficking for this purpose (and for this purpose alone), two simultaneous processes occurred: Trafficking in women from the FSU declined, and the offense moved to concealed apartments.

At a meeting of the Knesset Subcommittee for the Struggle against Trafficking in Women, Superintendent Ra'anani Caspi of the Israel Police stated: "In 2006, our estimates – based in part on our own intelligence, detective work, and interrogations, and in part on meetings with NGOs – showed a decline in the number of women, so that there are now a few hundred women who are victims of trafficking. In 2001 we were talking about approximately 3000 women; today the figures are much lower... particularly in the escort agencies. What used to be open brothels have now been

⁵ It is important to emphasize, however, that these offenses may still be present even if the employee received some form of wages, and even if the minimum wage was paid.

converted into escort agencies. In the open brothels there are more women with Israeli identity cards.”⁶

A further change announced by the police relates to the manner of arrival of the women. This point was raised in the Knesset by Moshe Amir, head of the Police Questioning Division of Tel Aviv District: “I think it is worth noting the partial closure of the border with Egypt following the Disengagement. As I see, at least as far as the Tel Aviv District is concerned, there has been a significant drop in the number of women arriving from Egypt. Most times we don’t find women who came across the Egyptian border. We find women who arrived from the FSU. We have also identified a return to an old pattern – more women are entering with forged passports and fictitious visas.”⁷

The Israeli sex industry was not eliminated, however. Growing numbers of Israeli women, many of whom are drug addicts, have moved into the industry. A woman facing drug addiction is not a free person who can consent or refuse what is demanded of her; accordingly, the pimp who keeps her is not only a trafficker, but also holds the woman in conditions of slavery. The person who purchases sex services from her is a rapist, as will be explained below.

Two further patterns that have emerged in Israel in recent years are the trafficking in Israeli women to other countries and trafficking in Chinese women who have been forced to provide sex services for migrant workers from China and Thailand.

The attitude of the authorities toward the subjugation of Israeli women in the sex industry is similar to the approach they took toward trafficking in foreign women in the early 1990s, when the women involved were regarded as offenders guilty of being unlawfully present in Israel and of engaging in prostitution.⁸ The current phenomenon of drug abuse and prostitution has led to a similar labeling of these Israeli women as “drug-addicted prostitutes.” The outcome – whether concerning the trafficking in foreign women or domestic trafficking in Israeli women – is the same: the victim loses her autonomy and liberty; she is accused of being responsible for her situation – foreign women are interrogated to discover why they originally came to Israel and drug addicts are accused of developing their addiction. In the meantime the traffickers secure impressive profits thanks to clients who continue to use women, however miserable their condition, while the women themselves suffer serious physical and psychological damage.

⁶ Meeting of the Subcommittee for the Struggle against Trafficking in Women, 14 January 2006.

⁷ Meeting of the Subcommittee for the Struggle against Trafficking in Women, 14 January 2006, Minutes No. 3, 17th Knesset. On the agenda: The response of the Israel Police to the phenomenon of trafficking in women, 2006.

⁸ Although prostitution is legal it is perceived as part of the criminal world.

3. Organ Trading

Every year, some 1000 people in Israel wait for organ donations, including approximately 600 patients who wait for kidney donations. Every year, fifty people in Israel die while waiting for an organ donation.⁹ The prevailing shortage of donor organs and the risk to human life if these are not forthcoming, on the one hand, and the serious health condition facing a donor who loses an irreplaceable organ of their body (except in the case of blood or semen), on the other, create a vacuum that often leads to a form of human trafficking in which those with financial capacity purchase the organs of those in need.

Until recently, the only law governing organ donations in Israel was the Anatomy and Pathology Law, 1953. This law established that the organs of a deceased person may be used in order to cure another person. For many years it was not possible for living persons to donate organs. This situation was changed slowly and gradually by means of circulars issued by the director-general of the Ministry of Health.¹⁰

In June 2003, Minister of Health Danny Naveh tabled the Proposed Law: Organ Transplants, 2003 before a Ministerial Committee. The proposed law enables a living donor to receive compensation on account of losses incurred by the donation (loss of working days and hospitalization). The compensation was to be paid by the National

⁹ Statement by the spokesperson of the Ministry of Health: Minister of Health Promotes Proposed Law for Organ Transplants, 8 June 2003: <http://www.health.gov.il/news/news.asp?ID=113>.

¹⁰ A series of circulars issued by the director-general of the Ministry of Health established that donors may only donate organs to their relatives (exceptions in special cases must be approved by the director-general). Donors must receive approval from a committee that examines whether they are making the donation with full consent and without receiving remuneration (Director-General's Circular 2/97 at http://www.health.gov.il/download/forms/a1052_mk02_97.pdf), and Circular 10/98 at http://www.health.gov.il/download/forms/a1154_mk10_97.pdf). Donation after death is possible only with the approval of a first-degree relative and after free consent has been given (Medical Director's Circular 1/03 at http://www.health.gov.il/download/forms/a1376_mr01_03.pdf). Physicians are prohibited from transplanting organs donated following financial payments to the donor. Physicians who transplant purchased organs are liable to both criminal and disciplinary action and their licenses to engage in medicine may be revoked (Director-General's Circular 68/97 at http://www.health.gov.il/download/forms/a1023_mr68_97.pdf). A director-general's circular issued in 2006 clarifies the procedure to be followed when seeking funding for organ transplants abroad, noting that the financing of transplants in countries where there is a danger that the organs originate from trading should be avoided (Director-General's Circular 7/06 at http://www.health.gov.il/download/forms/a2819_mk07_06.pdf). Those undergoing transplants abroad are required to notify the Ministry of Health so that it can collect full data concerning the number of transplant recipients in Israel and provide monitoring and treatment for the recipients (see Director-General's Circular 38/06 at http://www.health.gov.il/download/forms/a2981_mr38_06.pdf). The position of the Ministry of Health was approved in a Supreme Court petition in 2007 which established that organ transplants should not be permitted in locations where there is suspicion of organ trading (HCJ 5413/07 **Anonymous v State of Israel** (ruling dated 16 September 2007)).

Transplant Center. The proposed law states that no remuneration is to be paid for the organ itself. An organ may be received from relatives and friends. The donor must be an Israeli resident in order to prevent international organ trading. Conversely, MK Zahava Galon tabled the Proposed Law: Prohibition of Organ Trading, 2003, which establishes that any sale of an organ resulting from economic hardship does not constitute free choice: “the sale of organs is a manifestation not of individual liberty but of individual subjugation.”

While concern has focused mainly on trading in foreign citizens in order to secure organs, in practice the donors to date have been Israeli citizens who have been misled, coerced, or deceived into donating organs. In 2003, for example, the Tel Aviv District Prosecutor’s Office indicted several individuals accused of kidnapping, blackmail, and false imprisonment in seven cases in which new immigrants facing economic hardship were persuaded to donate their kidney. The immigrants were told that people do not need more than one kidney, that no risks would result in the future, and that the removed kidney would grow again. At a later stage, when the donors attempted to withdraw their consent, they were prevented from doing so and told that they would be obliged to cover the costs incurred to the defendants for medical tests and other expenses.¹¹ Some of the victims received varying sums for the kidney, but in most cases this payment was offset against various imaginary debts. According to the statements of indictment, some of the women who offered to donate their kidney were also the victims of sex offenses by the traffickers.

Legislative Changes

This chapter reviews laws, proposed laws, and amendments relating to human trafficking discussed by the Knesset and the Ministry of Justice in 2007.

1. Proposed Laws

Single Judge

Since Amendment 56 to the penal code came into effect in the year 2000, introducing the prohibition against human trafficking for the purpose of prostitution, the legal system has failed to set dates for hearings rapidly and within a reasonable period of time in cases involving the trafficking in women for the purpose of prostitution. Even after a law was enacted requiring that preliminary testimony be taken from trafficking victims, the courts (particularly in Tel Aviv) continued to set later dates for the women’s

¹¹ CC 40225/03 **State of Israel v Mishkis et al.** Due to difficulties in locating one of the defendants and a lack of cooperation on the part of some of the witnesses it was decided to cancel the proceedings against two defendants and suspend those against the third.

testimonies.¹² In many cases, the women are discouraged by the significant period of time that elapses between their coming to the police or the shelter and giving testimony in court. Some of the women preferred to return to their countries and family after a long period of separation, thereby playing into the hands of the traffickers, who also employed kidnapping or threats in an effort to persuade them to retract their testimony.¹³ A further result of this situation was the release of detainees suspected of trafficking due to protracted detention that could not always meet the tests for this purpose established in legislation and case law.¹⁴

Against the background of these problems, the Proposed Law: The Courts (Amendment No. 49) (Hearing before a Single Judge in the Offence of Human Trafficking for the Purpose of Leading to an Act of Prostitution), 2007, sought to establish that trafficking offenses may be heard before a single judge.¹⁵ The explanatory notes to this proposed law, which was adopted in January 2008,¹⁶ state:

The unreasonable protraction of proceedings sometimes leads to the release of defendants detained pending completion of legal proceedings. These delays are particularly grave in cases of human trafficking for the purpose of prostitution, in which the complainants do not usually hold Israeli citizenship. Some of these complainants wish to return to their country of origin as soon as possible, while others wish to undergo a process of rehabilitation in Israel but cannot commence this until their

¹² Amendment 39 to the Criminal Proceedings Law [Combined Version], 1982, Article 117, establishes that when an application is submitted for preliminary testimony in a trafficking case the court must decide on the application within two weeks from its submission, and the testimony must be collected within two months from the date of the decision, unless the court has extended the period for special reasons, which must be detailed.

¹³ For example, see CC (TA Mag.) 1367/04 **State of Israel v Tarasova** (sentence dated 9 April 2006). The defendant, a trafficking victim, was planted in the shelter for trafficking victims by traffickers in order to persuade other women not to give testimony.

¹⁴ The Criminal Proceedings Law (Enforcement agencies – Detentions) permits detention for nine months, with extension for an additional 90 days, subject to the approval of a Supreme Court justice (Article 62 of the law). In most cases requests for extensions from the prosecutor's office concerning detentions in trafficking cases have been approved. In some cases, however, the Supreme Court has rejected the request, obliging the prosecutor's office to agree to lenient plea bargains with the traffickers. For example, see Sundry Applications – Criminal 8648/06 **State of Israel v Birkman et al.** (decision dated 26 November 2006). In this case, the court decided to release five of the seven defendants in what became known as the "tunnels case," after the traffickers forced women to hide during police raids in tunnels built in the walls of the brothel where they were held. The Supreme Court was obliged to take this decision due to the slow progress of the trial.

¹⁵ This provision is despite the general rule established in Article 37(A) of The Courts Law (Combined Version), 1984, which states that offenses carrying a death penalty or a penalty of sixteen years' imprisonment or above are to be heard by a panel of three judges, unless the offenses are included in a list of those that are excluded from this rule and may be heard by a single judge.

¹⁶ For the full text of the law, see:
http://www.knesset.gov.il/committees/heb/material/data/H09-01-2008_8-39-51_184_1.pdf.

testimony is completed due to the uncertainty they face. Moreover, as time passes the memory of events is liable to fade, particularly in light of the trauma experienced by trafficking victims. This can impede the evaluation of the testimonies, even to the point of impairing their reliability.

Proposed Law: Prohibition of Consumption of Commercial Sex Services

In August 2007, HMW and the Hebrew University submitted a draft of the Proposed Law: Prohibition of Consumption of Commercial Sex Services, 2007, to the Knesset Subcommittee on Trafficking in Women. The main features of this proposed law are a penalty of six months' imprisonment for any person who consumes sex for pay, with the possibility of replacing this penalty with an educational workshop in the case of first offenders. Since the client is a central chain in the sex industry, any effective struggle must also include those who bear the main responsibility for its existence.

A survey undertaken by the Knesset Research Center found that 78.2 percent of the Israeli public believes that the clients of the sex industry should not be prosecuted, despite the fact that 60.9 percent believe that such penalization would reduce the scale of the phenomenon. In other words, although the penalization of clients is perceived as an effective tool for reducing the scale of prostitution, most of the public opposes this measure. Further findings showed that 21.8 percent of the public agrees that clients should be prosecuted, while 27 percent favor the prosecution of women who engage in prostitution. In other words, women are still perceived as bearing **more** guilt for the phenomenon of prostitution than their clients, who are perceived at worst as the victims of the prostitutes.¹⁷ The courts, however, took a significant step forward in 2007, albeit from a different angle, when they adopted the position that consumers of pornography create demand for children for this purpose, and that this defines the gravity of their actions.¹⁸ It is true that the law almost always makes a clear distinction between adults

¹⁷ Shirley Avrahami **Findings of a Public Opinion Poll on the Subject of the Criminalization of Clients in Sex Services**, Knesset Research and Information Center, 2007.

¹⁸ Several sentences were issued in 2007 in which the court convicted men of possessing pornographic video clips and pictures of minors on their personal computers. (For example, see CA (Haifa) **State of Israel v Darayev** (sentence dated 20 September 2007); CA (Magistrates – TA) 5174/06 **State of Israel v Mill** (sentence dated 6 September 2007); CA (Magistrates – Haifa) **State of Israel v Offer** (sentence dated 23 September 2007); CA (Magistrates – TA) 2483/07 **State of Israel v Or** (decision dated 27 June 2007); CA (PT) 3555/05 **State of Israel v Foxman** (sentence dated 8 January 2007)). In several rulings the courts noted that the consumption of these video clips and pictures leads to a situation whereby children are coerced into participating in such filming. In effect, the court accepts the argument that demand influences the scope of supply. (See for example CA (KS) 3071/06 **State of Israel v Folk** (sentence dated 25 November 2007), in which the court notes the comments in the Knesset during its debate on the proposed law prohibiting the possession of such materials: “We ultimately decided that it would be improper to ignore the fact that due to the demand for this type of pornographic publication... and although it is for

and minors, so that acts that are perceived as a serious offense against minors will sometimes be considered legitimate in the case of adults. Nevertheless the mere recognition of the fact that the demand for pornography contributes to supply constitutes significant progress in the Israeli legal world.

Proposed Law: Prohibition of Management of an Online Brothel

In recent years there has been a significant increase in the number of brothels managed over the internet. Brothels of this type are extremely advantageous from the perspective of the criminal world: They provide partial protection from arrest for the managers due to difficulties in location; they enable the concealment of the women; they reach every home in Israel offering their human merchandise; and they grant the client total anonymity – indeed, the client is not even required to leave his home.

In an effort to uproot this scourge, HMW¹⁹ drafted the Proposed Law: Penal Code (Prohibition of the Management of an Online Brothel), 2007. The proposed law establishes that the management of a virtual brothel is an offense liable to five years' imprisonment (the same penalty as for the management of an ordinary brothel). Although the existing law already permits the prosecution of a person who operates a virtual brothel, since the law includes an open list of locations,²⁰ the proposed amendment emphasizes the particular gravity of online brothels, which has been perceived as legal in the absence of any specific prohibition in the penal code and in the almost-total absence of action by the enforcement agencies. According to the proposed law, just as the manager, receiver of payments, and guard are held responsible in the case of an ordinary brothel, so the manager of the website of a virtual brothel, together with the graphic artists and the content manager, are liable for their actions.

personal use, the only way to secure such a publication is to require children to participate therein, and the injury to the children in this context is almost intolerable.”

¹⁹ In cooperation with Mishna, The Clinical Center for Law and Society of the School of Law, Academic Track, College of Management.

²⁰ The law establishes as follows: “A person who manages a place, including vehicles or vessels, for the purpose of engaging in prostitution is liable to five years' imprisonment” (Article 204 of the Penal Code, 5733-1977). To date, and despite the large number of brothels managed over the internet, only one prosecution has been filed, in the case of a pimp by the name of **Rotem Holtzman**. According to the facts noted in the sentence, Holtzman advertised women on a website on which he promoted sex services (CA (TA) 1902/07 **State of Israel v Holtzman** (sentence dated 18 November 2007)). The clients would select the photograph of their preferred woman and book her by telephone. Holtzman sent the woman to the client's home by taxi. The payment was divided equally between Holtzman and the woman. On account of these offenses Holtzman was convicted of conspiring to commit a crime and procurement to prostitution. He was sentenced to four months' imprisonment, which he will be able to undertake in the form of community service if found suitable; a suspended sentence of twelve months; and a fine of NIS 25,000. The individual who managed the online brothel was sentenced to six months' community service, a twelve month suspended sentence, and a fine of NIS 20,000. As usual in such cases, the court overlooked the women who are supposed to be protected by the offense of procurement, choosing to award fines to the state rather than to compensate the victims.

Proposed Law: Donation of Eggs

As we have seen, the behavior of the law enforcement agencies concerning the enforcement of the new law has been slow and cumbersome. The behavior of the Knesset concerning the donation of eggs by women, however, is downright absurd. There can be few cases when a legislature has **created** and **promoted** a criminal offense rather than enacting a law to prevent it, but just such a case seems to have been witnessed in Israel over the past year. In 2007, the Knesset passed the Proposed Law: Donation of Eggs, 2007 at its First Reading. The proposed law seeks to change completely the current situation concerning the donation of eggs so that women will be able to donate eggs even if they do not require these for fertility treatment; women will also be able to donate eggs for research. The donation of eggs is a protracted, painful, and sometimes dangerous procedure that entails complex and exhausting treatments. The authors of the law assumed that few Israeli women will be willing to donate eggs solely for the purpose of research; accordingly, they extended this opportunity to women who are residents rather than citizens of the State of Israel (Article 11(1) of the proposed law). The significance of this article is simple: Sooner or later someone will recognize the economic potential inherent in the proposed law (assuming it becomes law) and will act to secure the donations of eggs required by scientists. Most, if not all, of the payment for the eggs will be withheld by the intermediary. Importing women to Israel to produce eggs on demand or exploiting impoverished Israeli women or residents of Israel for the same purpose are an inevitable development in the world of human trafficking, which operates according to the rules of supply and demand. As long as Israel serves as a magnet for women who create eggs and demonstrates its willingness to pay for this service, people will be found who will provide the merchandise, even if this is against the women's wishes and entails their cynical exploitation.

The Knesset should regard the donation of eggs as just another form of organ donation. This donation should be limited to immediate relatives or to the donation of eggs by a woman for her own fertility process. The law should not permit the donation of eggs by any woman who wishes to do so in return for payment, and certainly not when the woman in question is a resident rather than a citizen, a distinction that sometimes renders her status tangibly more fragile.²¹

2. Exemption from Court Levy for Trafficking Victims

On 18 April 2007, the Court Regulations (Levies), 2007 were published, replacing the Court Regulations (Levies), 1987. In accordance with Regulation 19(8), the following are eligible for exemption from court levy: "A litigant entitled to legal services in

²¹ For further criticism of the proposed law, see: Smadar Noy (Kanyon), Daniel Mishori, Yaeli Hasash "Geese Laying Golden Eggs – Proposed Law: Donation of Eggs, 2007" **Refuah U-Mishpat** 36, June 2007, pp. 161-79; position paper of Isha L'Isha dated 12 June 2007 on the subject of the Proposed Law: Donation of Eggs. A response on this subject was prepared jointly with Isha L'Isha and the Clinical Legal Education Center at the School of Law of the College of Management and submitted to the Knesset Health Committee and Constitution, Law, and Justice Committee on 9 December 2007; no reply has been received to date.

accordance with the Addendum to the Legal Aid Law, on such matters and in such scope as established therein.” In accordance with Section 1 of the Addendum to the Legal Aid Law, 1972 (which was also amended in the framework of the Prohibition of Human Trafficking Law), legal aid is to be provided for an individual against whom an offense has been committed in accordance with Article 375A or 377A(A) of the Penal Code, 1977, or ancillary offenses, in matters relating to – (A) Proceedings in accordance with the Entry to Israel Law, 1952, regardless of the victim’s financial capacity. Thus in accordance with the new regulations trafficking victims are eligible for exemption from payment of the levy.²²

3. Regulations of the Fund for the Struggle against Human Trafficking and the Rehabilitation of Its Victims

The Prohibition of Human Trafficking Law determined that a fund was to be established whose income would be dedicated to the struggle against human trafficking, prevention of the phenomenon, and the rehabilitation of its victims. The law established that fines imposed on traffickers and money and possessions confiscated therefrom would be forwarded to a special fund dedicated to the above-mentioned goals. Half the money in the fund is earmarked for the rehabilitation of trafficking victims, while the remaining half is earmarked for the struggle against trafficking, prevention, and the payment of compensation ruled in favor of victims in a preemptory ruling but not actually collected. In December 2007 the drafting of the regulations for the establishment of the fund was completed.²³

Although this fund ostensibly claims to protect the victims of the offense, it actually injures their rights. Under the guise of the struggle against human trafficking, prevention, and rehabilitation of the victims – actions which should be undertaken and financed by the State of Israel – the fund usurps the victims’ money and returns only part thereof to the victims, indirectly, and after they submit a rehabilitation plan. It does so not for the simple reason that this money **belongs to the victims** but on the grounds that it may help their rehabilitation. Thus although the vast majority of the money in the fund is the product of the subjugation of the victims, they themselves will not benefit from all of it.

4. Decisions of the Custody Review Tribunal

The Custody Review Tribunal,²⁴ together with the Border Control Officer, constitute a critical junction for persons held in conditions of slavery or trafficked for this purpose

²² Section 19(7) of the Regulations.

²³ Penal Regulations (Forms of Management of the Earmarked Fund for Processing of Assets Confiscated in the Framework of Cases of Human Trafficking and Holding in Conditions of Slavery), 2007.

²⁴ The Custody Review Tribunal for Persons Unlawfully Present in Israel maintains judicial review of the detentions of persons unlawfully present in Israel held in imprisonment

and who are facing deportation from Israel. An in-service training course on the subject of the new law was held for the judges of the tribunal in August 2007. Nevertheless, it seems that the law has not yet been properly internalized.

An example of this is provided by the minutes of a hearing held by the tribunal in July 2007. A detainee who does not know what type of visa she holds, if any, relates that she was promised a work visa and certain conditions that were not maintained. She related that she worked in domestic labor without breaks and without a day of rest. She was isolated and she was also sexually harassed by her employer:

He did not pay me money or even let me have a day off... Apart from that he sexually harassed me. I didn't go to the police because my employer threatened that he would make sure I was deported and I didn't have any money. When I told my employer that I wasn't willing to work in these conditions he took my passport and flight ticket and told that I will be sent back immediately.²⁵

Although the tribunal decided that the case should be investigated it took no further action and did not require that the woman receive appropriate conditions for a victim of slavery, including transfer to a shelter. The detention order was approved without changes.

In minutes from August 2007, a detainee from Asia told the tribunal that she did not know where she arrived from. She was led across the Egyptian border by some route. An Israeli man who offered to help her forced her to have sex with Chinese workers. He collected a daily fee from her whether or not she had received any clients:

I don't know where I arrived from. I guess I was cheated. I paid a lot of money in China to someone who spoke Hebrew. He told me that he would give me a work visa for six months in Israel. If I'd known that this is how things would work out I wouldn't have come to Israel.²⁶

Once again the Immigration Police was instructed to launch an investigation but the woman remained in prison; the tribunal noted that she was to be treated as an "infiltrator" and not as a victim of slavery.

As of the beginning of 2008 there was no change in this situation. At least two cases raising suspicion of trafficking and holding in conditions of slavery – in light of the details provided by the detainees and external signs that should have raised suspicion, such as employment in isolated conditions and lack of knowledge of English – were

facilities under the terms of the Entry to Israel Law, 1952. The tribunal is empowered to permit the release of the detainee on such conditions as it determines, but it is not empowered to nullify the deportation order.

²⁵ Minutes of the tribunal dated 4 July 2007. Decision of Judge Sharon Bavli-Lari.

²⁶ Minutes of the tribunal dated 15 August 2007. Decision of Judge Ruti Greenberg.

identified by the tribunal as “improper handling by the manpower company” or offenses of deception.

Enforcement

As noted above, the weakest link in the struggle against human trafficking in Israel seems to remain the enforcement agencies, and in particular their inability to internalize the significance of the new legislation. It seems that they continue to perceive human trafficking as trafficking in women from the FSU for the purpose of prostitution. Any pattern that deviates from this “classic” model is seen not as trafficking but merely as the maltreatment of migrant workers. In this chapter we examine the response of the police and the State Prosecutor’s Office to the new offenses. As we shall show, failings on the part of both bodies in identifying these phenomena mean that the new offenses have not yet been brought before the court, despite the fact that experience shows they have been present in Israel for many years.

1. Police

The Immigration Police is the main body responsible for attending to offenses against migrant workers. It is currently unable to identify signs of offenses of slavery and forced labor even when these are manifested in their most extreme forms. The reasons for this include a lack of knowledge and an inadequate budget due to the fact that most of its budget is devoted to detention and deportation. When slavery victims contact the Immigration Police to file a complaint, the offenses examined are usually fraud or usurpation rather than trafficking offenses.

In December 2006, for example, a group of nine Thai workers were discovered living in geese pens in Moshav Ben Zakkai. The group was held in this location by two brothers in inhuman conditions: They were required to work long hours, sometimes as many as 22-23 hours a day. In their testimonies the workers stated that they were required to feed the geese every four hours and then to watch over them, so that if any died they could be plucked and cleaned for immediate sale. When the workers complained to the company that brought them to Israel the response was threats to deport them to Thailand – something that would have prevented the workers from repaying the debts they left in their homeland.

Although over a year has passed since these Thai workers were located, the enforcement agencies have so far confined themselves to submitting a statement of indictment against the brother on account of force-feeding the geese under the Animal Cruelty Law, 1994, and on account of slaughtering poultry outside a slaughterhouse in contravention of Section 28(A) of the Animal Diseases Ordinance, 1985. No charges have been brought on account of the conditions of slavery imposed on the Thai workers.

A letter from the Immigration Police to the NGO Kav Laoved on this subject stated that “we have not found any evidence of employment in conditions of slavery.”²⁷

In another case L., a Ukrainian citizen, arrived in Israel through a manpower company, after paying a \$ 500 mediation fee. While still in Ukraine L. was promised that she would work for an important and senior figure in Israel and that all matters concerning her visa would be resolved after she arrived. She was also told that she would live in her employer’s home. In reality, her employer in Israel did not pay her wages, did not give her vacation days, and sexually harassed her. She was required to perform various tasks that were not included in the original contract. The employer held frequent parties at which she was required to serve the guests. When she told her employer that she was not willing to work in these conditions, he took her passport and flight ticket and told her that she was returning home. At this stage she fled from him and reached the shelter for trafficking victims. The police decided to close the case due to lack of evidence, while continuing to investigate marginal aspects of the affair, such as the withholding of L.’s passport.

2. The State Prosecutor’s Office

Due to the manner in which the police investigates trafficking and ancillary offenses, the number of investigations launched is small and the number of cases that have resulted in indictment is even smaller. The small number of indictments prepared (but not served) – three on account of forced labor and one on account of slavery – have waited protracted periods for approval by the State Prosecutor’s Office.²⁸ To the best of our knowledge, this is the sum total of the activities of the State Prosecutor’s Office in 2007 on the subject of trafficking and ancillary offenses.

Case Law

Although court rulings issued in 2007 still related mainly to trafficking in women for the purpose of prostitution, initial and limited attention could also be seen to the offenses included in the new law, particularly trafficking in organs. This chapter examines court rulings, including the ruling of the High Court of Justice.

²⁷ Letter from Staff Sergeant Major Maya Peretz, an investigator in the Immigration Police, to Dr. Yuval Livnat, legal advisor to Kav Laoved, dated 14 August 2007.

²⁸ Comments by Chief Superintendent Dorit Ben Meir from the Immigration Police at a joint meeting of the Knesset Committee for the Examination of the Problems of Foreign Workers and the Knesset Subcommittee for the Struggle against Trafficking in Women, 26 December 2007.

1. Trafficking for the Purpose of Prostitution

Since beginning to address the issue of **human** trafficking, the authorities have focused largely on the trafficking in **women for prostitution**, and even then in a restricted manner. Most of their attention has been directed to trafficking in foreign women, mainly from the FSU, who have been brought to Israel. By contrast, the trafficking in Israeli women abroad and trafficking in Israeli women within Israel itself are still seen as subject to the “free will” or “free choice” of the women who engage in prostitution in these formats. This chapter examines the different patterns of trafficking for prostitution that have developed in Israel and reviews the attitude of the courts toward these phenomena.

2. Holding in Conditions of Slavery for the Purpose of Providing Sex Services

The Prohibition of Human Trafficking Law establishes, in addition to the offense of trafficking in persons for the purpose of prostitution, the offense of holding in conditions of slavery for the purpose of providing sex services – both of which can be used to prosecute traffickers.

In May 2007 the Immigration Police undertook the protracted monitoring of two Chinese citizens who were procuring women for prostitution, together with additional offenses. The two men were arrested. Four women from China were found in their home; the women had been held on the premises and forced to engage in prostitution. Two of the women show a similar profile to that seen in women from the FSU who are trafficked to Israel for the purpose of prostitution: Severe economic deprivation; recruitment in the country of origin; false promises regarding the nature and conditions of their work in Israel; purchase; transfer to Israel by a tortuous route across the Egyptian border while they are concealed; sale to a pimp; and coercion into working as prostitutes while being kept isolated, imprisoned, and under threats. Each of the other two women underwent their own tortuous route to Israel before falling into the hands of the two pimps – human traffickers – who promised them shelter and claimed they could secure them employment and visas. All four women were forced to provide sex services for migrant workers from Asia and were taken by their captors to trailer parks where the migrants were held. At the end of the evening the women were taken back to the pimps’ apartment, which they would only leave on the next evening of forced prostitution.

The women, who speak only Chinese, were subject to their captors who controlled their lives in a tangible sense and ensured their compliance through threats against the women and their families. Although these conditions meet the legal definition of “holding in conditions of slavery,”²⁹ it emerged that this was not enough to ensure that

²⁹ In the case of two of the women, Article 375A(A) of the Prohibition of Human Trafficking Law could have been applied. This article establishes that “a person who holds a human in conditions of slavery for the purpose of labor or services, including sex services, is liable to sixteen years’ imprisonment.” Regarding the other two women, both Article 375A(A) and

the victims could realize their rights. Even after the traffickers were arrested by the police, the women were terrified and afraid of their fate and did not wish to file a complaint with the police. Although the women were arrested after the Immigration Police was already in possession of evidence indicating that they had been employed in prostitution, the investigators claimed that their case related to procurement rather than trafficking or slavery. In any case, even without the women's testimony the prosecution had enough evidence to indict the defendants. Despite this, a plea bargain was prepared and the two men were convicted solely of offenses of procurement. The behavior of the enforcement agencies in this case shows that they have not yet internalized the fact that women from countries other than the FSU are also being trafficked to Israel. Even when they are faced with living evidence of this, they have declined to act accordingly, both with regard to the traffickers and their victims.

3. Trafficking in Foreign Women to Israel

The penalties meted out by the courts to offenders found guilty of trafficking women are still more lenient than those permitted by law. In 2007 the average penalty was 2.8 year's actual imprisonment and an eighteen-month suspended sentence; the penalties ranged from nine months' imprisonment to seven years. Seventy-eight percent of cases ended in plea bargains.

These figures represent a further slight decrease by comparison to previous years. In 2004 the average period of imprisonment for human trafficking was 3.4 years; the range of sentences was from five months to eight years. In 2005 the average penalty increased to 4.6 years, and the range was from four months to eighteen years. By contrast, in 2006 the average penalty fell sharply to 2.9 years, while the range of sentences was from six months to thirteen years.

4. Internal Trafficking in Israeli Women

As noted above, the offenses established in the new law do not necessarily require cross-border trafficking – they may also apply inside the State of Israel and with regard to Israeli women. An example of slavery can be found in a case heard at Tel Aviv District Court in 2007, although the events to which the case relates occurred before the new law came into effect. This case reveals the ugly face of modern Israeli slavery: no foreign women or international trafficking are involved – only a local offender and drugs.

Shimon Vaknin was prosecuted for drug trading, procurement, holding a person in a location for the purpose of engaging in prostitution, conspiring to commit a crime, threats, blackmail with threats, forcible blackmail, and attempted procurement for the

Article 377(A)(5) could have been applied; the latter article penalizes a person who traffics in humans in order to procure an act of prostitution.

purpose of prostitution.³⁰ The defendant forced the women to pay him for drugs; forbade them to leave the brothel before they had paid him, since (he claimed) they were in debt to him; and threatened and blackmailed them by use of force when they dared to do so. Vaknin subjugated the women to meet his own needs, providing them with drugs whenever they wished to the point that they became completely dependent on him and subject to his economic needs. In sentencing Vaknin the court wrote:

In effect this is a form of slavery of these girls, who were willing to sell their bodies to the consumers of sex acts, but also to sell their souls to the drugs provided by the defendant. Thus the dependence of the complainants on the defendant became absolute, to the point that the defendant controlled not only their bodies, souls, and time, but also prevented any possibility of their leaving the brothel until they repaid their financial debt – a debt that only grew with each passing day. Accordingly **the girls had no real chance of escaping from this subjugation**. (Emphasis added).

In another case that occurred in 2007, the defendant could and should have been prosecuted for the offense of slavery, but the enforcement agencies failed to do so. **Shlomo Menachemov** was convicted of offenses relating to drug trading, possession and management of a location for the purpose of prostitution, and procurement.³¹ Menachemov was employed as a guard and during part of the period as manager of a brothel on Neve Shaanan Street in Tel Aviv, an area well-known for its harsh conditions. He supplied drugs to the women he employed in prostitution. In the sentence the court noted:

The offenses of procurement for acts of prostitution and possession and management of a location for the purpose of prostitution are also serious, ugly, and revolting offenses... The defendant in this case also functioned as a not-insignificant link in this system, which exploits the weakness of these prostitutes and exploits their dependence on dangerous drugs.³²

The means of control employed in the past against the victims of trafficking from the FSU, such as the confiscation of identifying documents, threats of possible deportation, and “debt bondage” created on the basis of the expenses for purchasing the woman and bringing her to Israel, have now been replaced by no less serious means of control used against the victims of internal trafficking. These including creating and enhancing drug dependency; threats to physical integrity; and debt bondage created due to the purchase of drugs. Despite the glaring nature of this phenomenon, the police and the State Prosecutor’s Office still seem to be fumbling in the dark.

³⁰ CA (TA) 40205/06 **State of Israel v Vaknin** (sentence dated 6 December 2007).

³¹ CA (TA) 40100/07 **State of Israel v Menachemov** (sentence dated 29 October 2007).

³² P. 4 of the sentence.

5. Trafficking in Israeli Women to Other Countries

At the beginning of 2007 an indictment was served against Angelique Sebahg Gautier, who was charged with offenses of conspiring to traffic in humans, supplying dangerous narcotics, threats, and additional offenses.³³ The defendant was arrested after HMW contacted the police; HMW volunteers spoke to the defendant on the telephone following the publication of an advertisement in a newspaper.³⁴ The statement of indictment revealed that the defendant had trafficked at least nine Israeli women recruited by newspaper advertisements and by personal contacts at Israeli nightclubs. The defendant purchased flight tickets to Ireland for the women, confiscated their identifying documents, forced them to be photographed in the nude for the website she ran, and obliged them to have sex with clients, despite the fact that some of them refused. She took the money paid by the clients and made the women become addicted to drugs – all with the assistance of a partner who has not yet been apprehended. The case is still pending. After Sebahg was indicted, HMW contacted the State Prosecutor's Office and the Israel Police and asked that those who assisted in the offense also be prosecuted, including the newspaper that published the advertisement although it was aware of its content; the photographer who took the naked photographs of the women and delivered them directly to the defendant; and the travel agency at which the defendant appeared repeatedly to book tickets, each time accompanied by a group of young women whose passports she was holding.³⁵ The State Prosecutor's Office decided not to prosecute the photographer or the travel agency since there was insufficient evidence that they were aware of what was transpiring.³⁶

In January 2008 the sentence was given in the case of **Arkady Kizner**. In a plea bargain, Kizner was convicted of attempting to procure a person for employment in prostitution after he recruited Israeli women to work in prostitution in Canada.³⁷ Kizner, who has a criminal record in offenses associated with prostitution and drugs, was sentenced to six months' imprisonment and a two year suspended sentence under the terms of the plea bargain.

In addition to the above cases, HMW contacted the Israel Police ten times over the year concerning other cases raising substantial suspicion of trafficking in Israeli women to other countries. To date no replies have been received concerning these cases.

³³ SC (TA) 1067/07 **State of Israel v Sebahg** (pending).

³⁴ The advertisement appeared in the "Wanted" column of the local newspaper *Ha-Luach Ha-Batuach* in Haifa on 20 October 2006 and read: "\$1000 a day!! + flights for beautiful women to work in London + English!"

³⁵ Letter dated 27 June 2007.

³⁶ Letter from the State Prosecutor's Office dated 21 November 2007.

³⁷ SC (TA) 1071/06 **State of Israel v Kizner** (sentence dated 22 January 2008).

6. Organ Trading

The only indictment served in 2007 under the terms of the new law and the hearings in which were also completed during the same year, concerned a case of organ trading that occurred in northern Israel. A group of individuals, one of whom masqueraded as a physician, published an advertisement in Arabic-language newspapers stating that they were looking for a kidney donor of any blood type. The advertisement promised a financial reward for the donor during the recovery period. According to the sentence, the defendants focused their search on defenseless individuals from poor socioeconomic backgrounds. Due to their psychological weakness or lack of awareness, as well as their harsh circumstances, these individuals agreed to donate a kidney in return to payment of a paltry sum.³⁸

The defendants used psychological pressure, fraud, and deception in order to convince their victims to donate their kidney. They did not provide all the necessary information; did not explain the psychological and physical risks involved or the possible dangers resulting from the operation, such as the need for anesthesia, or possible infections; did not examine the physical and psychological suitability of the victims to undergo the procedure; and did not explain how their life would change after the operation. The victims were flown to Ukraine to undergo the operation. The “purchasers” who required the kidneys paid \$ 125,000 - \$ 135,000 to the merchants. It should be noted that here, too, the representatives of the defendants relied on the argument that the victim had granted consent, as in the cases involving trafficking for prostitution. They argued that a situation in which an individual agrees of their own free will to donate an organ from their body in return for payment does not establish the offense of trafficking.³⁹

Another case from 2007 relates to an application submitted by the State Prosecutor’s Office to detain a person on suspicion of organ trading. The prosecution alleged that in 2007 the man served as a liaison in Ukraine. He received the intended donors at the airport and took them to their hotel and to the hospital for the operation. After a few days’ recovery he took them back to the airport and paid them for the organ removed from their body. The court decided to arrest the man and noted:

There is grave concern that a person who is willing to forego an organ of his body for financial remuneration does so because of distress that he cannot solve in any other manner... the legislator used the term “taking” rather than “bringing” demonstrating that the intention is not necessarily that one needs to use force, deception, or usurpation – although obviously these all add to the consolidation of the offense... As I see it, it is apparent that at the very least the offer of financial remuneration in return for the right to an organ of the body constitutes a transaction in which one person acquires rights to another. As such, and given the situation as detailed in the explanatory comments, this falls under the

³⁸ SC (Haifa) 4044/07 **State of Israel v Ellen** (sentence dated 16 December 2007).

³⁹ Sundry Criminal Application 6673/07 **Ziss v State of Israel** (decision dated 5 August 2007).

offense of trafficking. This is all the truer when the acquisition of the rights is achieved while exploiting the distress of the other.⁴⁰

7. Trafficking for Slavery – “Turks for Tanks”⁴¹

According to an agreement signed in 2002 between Israel Military Industries (IMI) and Turkey for the enhancement of 170 Turkish tanks, the State of Israel also undertook to employ 800 Turkish workers through Yilmazlar, a Turkish construction company registered in Israel, in order to offset the payment. These workers were not to form part of the quota of building workers imported to Israel. The agreement also stated that these workers would be “absolutely bound” to their employer – i.e., dismissal or resignation would lead to the loss of status in Israel and expose the worker to arrest and deportation, without any possibility of revising his status.⁴² In this situation, when employees are moved from one country to another and serve as currency, overt trafficking takes place between two governments – trafficking that both regard as completely legitimate.

In 2004 HMW and the the NGO Kav Laoved submitted a petition against this arrangement.⁴³ In the petition the organizations demanded that the “Closed Skies” procedure and the Procedure for the Transfer of an Employee from One Employer to Another also apply to the Yilmazlar workers. While the petition was still pending a ruling was issued concerning the binding policy for all migrant workers. The ruling stated that the restriction on movement from one employer to another was unlawful and void. Despite this ruling, the state continued to argue in the framework of the petition on behalf of the Yilmazlar workers that the arrangement was lawful.

On 19 September 2007 a ruling was issued in which the Supreme Court rejected the petition by a majority opinion. The court determined that in this case, as distinct from the employees whose case was discussed in the binding policy ruling, the workers were not weak and their rights were being maintained. It further argued that since this was a temporary arrangement there was no reason to disqualify it. The minority judge, Justice Levy, found that it was impossible to determine whether or not the rights of the company employees were being maintained; in any case in normative terms it is improper that someone should lose their permit to be resident in Israel due to their leaving their employer.

⁴⁰ Detention (Naz.) 3219/07 **State of Israel v Tatrachok** (decision dated 31 July 2008)

⁴¹ This expression is borrowed from an article by Ruti Sinai “Turks for Tanks” **Ha’aretz** 16 May 2003.

⁴² At the time, all migrant workers in the building industry in Israel were subject to the “binding policy,” under which a worker who left an employer thereby became unlawfully present in the country. Unlike the Yilmazlar employees, however, two procedures applying to building workers (the “Closed Skies” procedure” and the Procedure for the Transfer of an Employee from One Employer to Another) enabled a change of employer subject to certain conditions.

⁴³ HCJ 10843/04 **Hotline for Migrant Workers v Government of Israel** (unpublished, ruling dated 19 September 2007).

On 5 October 2007 a petition was submitted to hold a further hearing in the ruling. The court was asked to examine the question as to whether binding per se constitutes a violation of workers' rights or whether, as was implied in the majority ruling, binding is improper only when it is accompanied by tangible, additional, and proven injury (AHCJ 8255/07). As of the date of publication of this study no decision has been made in the application. In February 2008 the State Prosecutor's Office announced that it had decided to extend the agreement with Yilmazlar by a further three years, through 2010, at least.

8. The Criminal Liability of the Clients of Trafficking Victims

The clients of a victim of trafficking are not exempt from criminal guilt. Although the Proposed Law: Criminalization of the Clients of the Sex Industry has not yet come into force, in cases of trafficking or slavery the clients can probably already be penalized in accordance with the existing law. Engaging in sexual relations with a woman who is under the influence of narcotics, even if her occupation is a prostitute, meets the foundations of the offense of rape, since the woman is "in a condition preventing objection," as defined in the offense of rape in the penal code (Article 345(A)(4)). The enforcement agencies, and the police in particular, should adjust their outmoded attitudes in keeping with those of the twenty-first century: **The women should not be arrested and investigated on suspicion of harassment, solicitation, or drug use: the men that use them should be arrested and investigated.**

An example of a case in which the client could and should have been prosecuted appears in a criminal appeal heard by the Supreme Court in 2007. This sad case reveals the protracted abuse by a man of his ex-wife. The defendant raped and assaulted the victim and forced her to have sex with other men; he told the men that his ex-wife was engaged in prostitution and determined the price.⁴⁴ On account of the latter offense the defendant was convicted of procurement for an act of prostitution and attempted procurement. Had the offense been defined as vicarious rape the penalty would certainly have been greater. Regarding one of the charges the court described the sequence of events as follows:

Leved Ildiz, a foreign citizen present in Israel for the purpose of work, confirmed that he had sexual intercourse with the complainant after the respondent proposed that he do so in return for NIS 50. He states that the complainant was afraid and shaking all the time that he was close to her. He interpreted this as fear of "her boyfriend or husband." During the sex act the complainant covered her face. The witness looked at the respondent – who was 3-4 meters away from them all the time – since he did not understand the reason for this. The respondent said something that he did not understand and she removed her hands from her face.

⁴⁴ CA 11847/05 **State of Israel v Anonymous** (ruling dated 23 July 2007).

In other words, the person with whom the complainant was forced to have sex realized that she was objecting. Despite this he continued to have sex with her. In such cases, we believe, the clients can and should be prosecuted.

The Rights of Trafficking Victims

This chapter reviews the attention of the enforcement and law authorities to the rights of trafficking victims. The most prominent feature here seems to be the gross discrimination against victims of trafficking for the purpose of slavery and forced labor by comparison to the victims of trafficking in women for the purpose of prostitution. While victims of trafficking for prostitution who arrived from the FSU are entitled to accommodation in the shelter, receive a visa for a rehabilitation period, and are given legal aid in suing the trafficker and requesting a visa – regardless of whether the state uses their testimony – none of these rights are enjoyed in practice by the victims of other offenses or by victims of trafficking for prostitution who did not come from the FSU.

1. Transfer of Victims to the Shelter

The vast majority of the women who currently reside in the Ma'agan shelter for trafficking victims are victims of trafficking for the purpose of prostitution. This does not reflect the numerical importance of these victims by comparison to the victims of trafficking for other purposes, who actually constitute a majority. Although the shelter is more than willing to absorb victims of different types of trafficking, it is the police that ultimately determine who will enter the shelter, significantly restricting the possibility of rehabilitation even when free places are available in the shelter. Thus, for example, a citizen of an Asian country was arrested for being unlawfully present in Israel. It emerged that she had been held in conditions of slavery and her employer would hire her out to perform housework for any client who so desired. HMW demanded that the woman be released from detention and transferred to the shelter for trafficking victims. The Custody Review Tribunal refused to approve this and, accordingly, in 2007 an appeal was submitted to Haifa Administrative Affairs Court.⁴⁵ The court rejected the application to transfer the woman to the shelter on the grounds that it is intended solely for the victims of trafficking for the purpose of prostitution, despite the lack of any shelter for slavery victims. However, the court ordered that the woman be released from detention immediately. The Ministry of the Interior subsequently forced the woman – whose complaint is being investigated at the time of writing – to choose between receiving a visa and being permitted to work, or receiving a place in the shelter. This absurd decision was only retracted following intervention by the Interministerial Coordinator for Human Trafficking, Attorney Rachel Gershuni. The woman finally received shelter and the possibility to remain in Israel and work lawfully.

⁴⁵ AP (Haifa) 435/07 **Tamang v Ministry of the Interior** (decision dated 21 May 2007).

2. Compensation through a Civil Procedure: Civil Claims against Traffickers

In 2007 just seven women contacted the Legal Aid Office and requested assistance in filing civil suits against their traffickers. Two civil suits were filed against traffickers; four other cases are still being examined by the Legal Aid Office. The small number of requests to the Legal Aid Office to receive assistance in civil suits is particularly notable given the large number of requests submitted for assistance in securing visas (forty-six in 2007).⁴⁶ The discrepancy between these two types of request for assistance is largely due to the women's skepticism that they will be able to collect the sums awarded as compensation in civil proceedings; by contrast more women are successful in securing a one-year residency visa.

The question as to whether trafficking in women for prostitution can be heard in the labor courts has yet to be resolved. A case raising this principled question continues to be pending at the National Labor Court, over a year after the hearings were completed; the court has not yet issued its ruling.⁴⁷ On the principled level it is doubtful whether prostitution in general, and particularly prostitution in conditions of trafficking or slavery, can or should be considered just another form of work. A similar position was presented by the attorney-general who expressed this position in the proceeding in the Ackerman case before the National Labor Court.

The labor court places numerous obstacles before trafficking victims who wish to sue their traffickers. The victims are required to prove the number of clients they saw, sum received from each, and the amount they themselves received. It is very difficult to prove these details, and this often substantively impairs the suit and, accordingly, the sum ruled in the women's favor.

A ruling that may indicate the problematic approach of the labor court to the issue of prostitution and trafficking was given by Judge Avrahami of Jerusalem Labor Court. As in other judicial instances, trafficking in women was sharply criticized in rhetorical terms, yet in practical and economic the trafficking victim's rights were gravely injured.⁴⁸

In this case the woman testified in court that she was obliged to receive seven clients a day; each client paid NIS 200-250, and she earned a total of NIS 29,400 during the three months she was held by the trafficker. The court established that this figure is above the minimum wage, and that "in the absence of knowledge and evidence regarding the due wage, the claim for wage differentials is to be rejected." This decision was given despite

⁴⁶ Letter from Attorney Sigalit Zohar, Legal Aid Office, 6 December 2007.

⁴⁷ LA 480/05 **Ackerman v Anonymous** (pending).

⁴⁸ For example, see p. 9 of the ruling: "A prostitute also has a soul, a spirit, and human dignity notwithstanding the fact that the defendant treated her like an object. A call girl is also entitled to human rights. Human rights were intended first and foremost for weakened populations that cannot easily defend themselves and whom society must act to defend." LAB 2852/05 **Anonymous v Anonymous** (ruling dated 20 September 2007).

the fact that the trafficker's actual profit was substantially higher than the amount held by the plaintiff.

As in previous cases, this arbitrary decision reflects the fact that while the court is more than willing to condemn traffickers in women, it is extremely cautious about providing tangible protection for the victims' rights.⁴⁹ The "absence of knowledge" regarding the monies paid of which the court complains is unclear, particularly given that official reports exist on this subject (such as the concluding report of the Parliamentary Commission of Inquiry into Trafficking in Women, which notes the average number of clients seen each day by trafficking victims, the amounts paid, and the number of days a month the victim is forced to work in prostitution). These figures would seem sufficient to calculate the profit secured by the trafficker and to forward this sum to the victim. Yet the court declines to do so, demanding that the **woman** prove the precise profit secured by the trafficker at her expense. Can it really be expected that a woman who has been coerced into prostitution and is subject to threats against herself and her family will maintain precise ledgers and full records of all her clients and the sums they paid to her trafficker? If she does not hold any such record, is there any reason to assume that the person who trafficked her is entitled to any profit at her expense?

To the best of our knowledge, only one suit has been filed by the Legal Aid Office in slavery cases; the vast majority of these cases are processed by NGOs. The main reason for this is that there is presently no shelter for slavery victims, whereas most victims of trafficking for prostitution are now referred to the Legal Aid Office by the shelter.

Despite the numerous difficulties involved in securing access to state legal aid in slavery cases, the main advantage is the relative ease in collecting compensation monies from the employers, compared to the enormous and irresolvable difficulties seen in cases concerning trafficking for prostitution.

3. Visas for Trafficking Victims

In 2007, the Legal Aid Office processed the cases of forty-six victims of trafficking who wished to receive visas allowing them to remain lawfully in Israel. Eighteen of the women received positive replies from the Ministry of the Interior over the year; the remainder are either still waiting for approval of their request to receive legal aid, or for a reply from the Ministry of the Interior.

However, the processing of visa applications enabling victims to remain in Israel for a period of time and to undergo rehabilitation reveals in the clearest manner the difficulty of the authorities in adapting to the changing patterns of trafficking. The Ministry of the

⁴⁹ For example, see LAB (Beersheva) 4634/03 **Anonymous by Slaservsky et al.** CA 24 210, in which the court similarly ruled that a trafficking victim had failed to prove how much profit her traffickers secured through her exploitation; the court awarded her the minimum wage. This ruling also includes particularly vociferous comments against human trafficking.

Interior rejected requests relating to victims who failed to meet the familiar profile of a woman from the FSU trafficked to Israel for the purpose of prostitution. For example, in 2007 HMW was obliged to submit six petitions to the courts demanding the granting of visas in such cases.⁵⁰ These petitions related mainly to the victims of slavery and forced labor, but not exclusively so. Petitions were also submitted on behalf of women who were trafficked for the purpose of prostitution and whose situation is completely identical to that of other victims of trafficking for prostitution, with one difference: they came from China. The Ministry of the Interior refused to grant them a visa, and changed its position only after a petition was submitted.

4. Legal Aid for Unaccompanied Minors

In 2006 a minor aged fifteen was trafficked to Israel from Guinea. He was arrested and detained for nine months for being unlawfully present in Israel. During this period the Ministry of the Interior and the Custody Review Tribunal refused to release him. HMW appealed against this decision, but the authorities continued to argue that it was a reasonable solution to leave the minor in detention. The administrative court disagreed, ruling that the minor was to be released. He could not be deported to his country of origin due to the lack of diplomatic relations between Guinea and Israel, and accordingly there were no grounds for holding him in detention. The ruling added that the authorities must provide the minor with representative through the Public Defender's Office.⁵¹

After the ruling was granted, and after the Custody Review Tribunal continued to refuse to appoint a legal aid for minors, a further appeal was submitted on behalf of a minor from the Ivory Coast after the tribunal refused to provide her with legal representation.⁵² After the appeal was submitted the Ministry of Justice decided that an attorney is to be

⁵⁰ AP 1380/07 **S. v Ministry of the Interior**; AP 1381/07 **D. v Ministry of the Interior**. These petitions were submitted on 4 April 2007 after the Ministry of the Interior announced that it was intending to deport immediately the petitioners, who had been held in conditions of slavery. At the same time the Immigration Police continued to investigate their complaints. On 16 October 2007, after a postponement was requested in the date of the hearing, the respondent announced that the petitioners would receive rehabilitation visas for one year. On 21 October 2007 the petitions were deleted by consent. Administrative Petitions 848/07, 849/07, 850/07, and 851/07 were submitted on 9 September 2007 after the Ministry of the Interior announced its intention to deport the petitioners, who had been trafficked and held for the purpose of providing sex services. The Ministry of the Interior asked to postpone the hearing; at the same time an indictment was served against the traffickers. On 12 November 2007, under the terms of a plea bargain, the defendants were convicted of procurement for an act of prostitution in aggravating circumstances (CA 2354/07 **State of Israel v Zhiang Xsieng** (sentence dated 12 November 2007)). The defendants were sentenced to twelve months' imprisonment and an eighteen months' suspended sentence. An appeal was submitted against the levity of this penalty. On 24 December 2007 the Ministry of the Interior announced that the petitioners would receive rehabilitation visas for one year.

⁵¹ AA 739/06 **Anonymous v Ministry of the Interior** (ruling dated 14 January 2007).

⁵² AA 41207 **Anonymous v Ministry of the Interior** (ruling dated 14 February 2007).

appointed by the Legal Aid Office for any unaccompanied minor; since then, all unaccompanied minors have indeed enjoyed representation.

5. The Right to Health

The health of many trafficking victims is injured during the course of trafficking due to the forced labor imposed on them for many hours, without any consideration for their well-being and without the provision of any medical services or adequate services. The damage is particularly severe in the case of the trafficking in women for the purpose of prostitution.⁵³

Victims of trafficking for the purpose of prostitution who stay in the shelter receive a large range of health services, with the exception of treatment for serious diseases. At present the state covers the cost of treatment for tuberculosis, which can easily be transmitted by air. However, the NGO Israel AIDS Task Force provides and finances treatment for AIDS patients who are not Israeli citizens, including trafficking victims. Physicians for Human Rights-Israel provides free or subsidized treatment and tests in various cases, though it cannot provide the required treatment for diseases such as infectious hepatitis due to their high cost.

A petition against this policy was submitted by HMW, Physicians for Human Rights-Israel, and the Israel AIDS Task Force, together with two trafficking victims who contracted AIDS, hepatitis, and tuberculosis. The petition argued that since the women's diseases were the result of trafficking, the state should bear the costs of treatment.⁵⁴

The Supreme Court determined that pending the completion of the work of an interministerial team and the delivery of its recommendations, the petition will not be heard and the status quo will be maintained.⁵⁵ However, in order to prevent injury to the petitioners' health, the court recommended that the Ministry of Health provide the necessary tests and treatment for hepatitis; this recommendation was adopted. As of the time of writing the petition is still pending.

⁵³ **The Health Risks and Consequences of Trafficking in Women and Adolescents**, London School of Hygiene & Tropical Medicine, 2003, available at: <http://www.lshtm.ac.uk/hpu/docs/traffickingfinal.pdf>; **Stolen Smiles: The physical and physiological health consequence of women and adolescents trafficked in Europe**, London School of Hygiene & Tropical Medicine, 2006, available at: [http://www.lshtm.ac.uk/hpu/docs/Stolen%20Smiles%20-%20Trafficking%20and%20Health%20\(2006\).pdf](http://www.lshtm.ac.uk/hpu/docs/Stolen%20Smiles%20-%20Trafficking%20and%20Health%20(2006).pdf).

⁵⁴ HCJ 5637/04 **Anonymous et al. v Minister of Health et al.** (pending).

⁵⁵ The interministerial team comprises representatives of various government ministries, including the Ministry of Justice, the Ministry of Internal Security, the Ministry of the Interior, and the Ministry of Foreign Affairs. The team is examining different ways to address the problem of human trafficking. The team completed its work during the course of 2007 and its conclusions are currently awaiting approval by a committee of director-generals from the different ministries.

Victims of trafficking, slavery, and forced labor who are not housed in the shelter do not receive any such services.

6. Stay of Exit Orders against Foreign Employers

Israeli court rulings place obstacles in the path of those seeking to prevent the departure of foreign citizens from Israel. The underlying approach is to ensure that the movement of a foreign citizen will only be restricted in exceptional and unique circumstances. In the case of offenses of trafficking, slavery, and forced labor such circumstances often seem to be present, yet despite this the courts continue to adopt an excessively cautious approach in issuing stay of exit orders. In most cases this approach is against the interests of the victims.

In many cases slavery victims come from the same country of origin as their employers. The employers who hold them enjoy legal status in the target country (including diplomats, diamond merchants, bankers, or those lawfully present for other reasons) and they speak the victims' language. The employers require "servants" who are familiar with their own culture, customs, cuisine, and manners and with whom they share a common language. Many of the countries of origin are characterized by a sharp distinction between different social and economic classes, and this distinction is further exacerbated in the countries to which the employers and "servants" move.⁵⁶

The same situation is found concerning women trafficked for the purpose of prostitution: both the victims and the traffickers originally come from the FSU. In this case, however, the traffickers are usually Israeli citizens, while the women are foreigners. Their traffickers exploit this situation in order to subjugate the victims. If the police begin to follow the traffickers' movements, they sometimes leave Israel, exploiting the fact that the center of their lives continues to be in the FSU.

By way of example, an Indian citizen was held in Israel by Indian citizens who were present in Israel, held work visas, and received permission from the state to bring a "service person" with them. After the women escaped she filed suit at Tel Aviv Labor Court. As part of the proceedings a stay of exit order was requested against the defendants. The court refused to grant such an order and shortly before the defendants were due to give testimony they left Israel. The court ruled a substantial sum – NIS 270,000 – in the woman's favor, but this ruling will in all probability be rendered meaningless now that her employers managed to escape back to their own country.⁵⁷

⁵⁶ See, for example:
Hidden Slaves: Forced Labor in the United States, HRC University of California, Berkeley, September 2004, pp. 13-4, available at:
http://www.hrcberkeley.org/download/hiddenslaves_report.pdf.

⁵⁷ LAB 6877/0 **Jacinta Fernandez v Shaha et al.** (ruling dated 5 February 2008).

The courts should adopt more flexible tests when determining whether or not to prevent a person leaving Israel. In cases that include prima facie suspicion of trafficking, slavery, and forced labor, and even if the police has not yet investigated the suspicions, the courts should at least require substantial guarantees from employers wishing to leave Israel, particularly if their departure appears hasty and connected with the filing of the suit.

Conclusion

Our review of the rulings granted by the legal system in 2007 and, in particular, of cases that remained outside the legal system in the year paints an alarming picture of progressive legislation alongside enforcement agencies that find it difficult to internalize changing realities and the development of legislation concerning trafficking and ancillary offenses.

Since the early 1990s the authorities have made substantial progress, ultimately recognizing that women who are trafficked from other countries to Israel for the purpose of prostitution are not offenders but victims who require rehabilitation. This realization has led to the development of services and rights provided to the victims, including a special shelter, legal aid, rehabilitation visas, medical treatment, and so forth. Against the background of this progress, the outmoded and ingrained attitudes of the authorities toward Israeli trafficking victims are particularly evident. These victims are perceived as “prostitutes” responsible for their own condition. A similar approach is taken to the victims of trafficking for other purposes – slavery and forced labor.

Trafficking in its various forms has been taking place in Israel for almost two decades. The solutions are well-known: Police personnel involved in the offenses described in this study must undergo training in order to familiarize them with the new legislation and the manner in which it is to be implemented in practice. The penalties imposed on traffickers and other offenders who hold humans in conditions of slavery and forced labor must be increased. Rehabilitation visas should be provided for the victims of these offenses for a period of at least one year. Victims must also enjoy a tangible – and not merely theoretical – possibility to secure redress from their traffickers in the context of the damages suits.

The activities of the State of Israel in 2007 to apply the new law in the field and in the courts was meager, uneven, and hesitant. We hope that in 2008 this approach will be replaced by more dynamic and concerted action.

Recommendations

Ministry of the Interior

- The Ministry of the Interior, more than any other ministry, seems to be caught in stereotypes concerning trafficking in general and trafficking in women for prostitution in particular. The ministry should undergo as comprehensive training as possible and should consider placing staff members with training in social work or psychology at key junctions in the interface with trafficking victims.

Police

- The regular police and the Immigration Police must undergo more meaningful training focusing on the identification of victims of the offense, and should learn from the experience of organizations active in this area.
- The police must substantially improve the economic battle against traffickers, particularly in the case of the trafficking of persons for the purpose of prostitution.
- A special training and study framework should be established relating to the situation of Israeli women engaged in prostitution. The police should stop focusing solely on foreign women.

State Prosecutor's Office

- Each district prosecutor's office should appoint an attorney responsible for the subject of foreign trafficking victims. Each victim of the offense should know that they are entitled to provide an affidavit concerning the effect of the offense on their well being.

The Courts

- It must be ensured that the judge appointed to hear preliminary testimonies from the victims of trafficking for prostitution has the necessary training and sensitivity for this subject.

The Fund for the Struggle against Human Trafficking and the Rehabilitation of Victims

- The fund – whose constitution is currently being completed – constitutes a means for usurping from the traffickers money that belongs to the victims. It must be ensured that all the money in the fund is transferred to the trafficking victims themselves. This money must not be used to fund the enforcement bodies and the treatment of victims – expenses that should be covered from the state treasury.

Rehabilitation

- A shelter must be established for the victims of slavery and forced labor, as well as for Israeli women who wish to leave the cycle of prostitution.