Working without Dignity: The Violation of Workers' Rights in Israel

Abstract of a report by Attorney Michal Tadjer, ACRI, December 2006.

In the course of its fifty-eight years of existence, the Israeli labor market has undergone far-reaching changes and developments. The labor laws--most of which were passed in the 1950s--were created at a time when most workers remained in the same job for most of their lives. Those laws created a network of rights meant to promote and maintain the traditional, long-term form of work. However, from the mid-1980s on, a new outlook began to shape economic and social policy in Israel and, consequently, new patterns of employment evolved. While the ideology guiding government, business, and labor in Israel changed, the labor laws based on the increasingly anachronistic ideology continued to prevail.

That tension between changing ideologies and unchanging laws reverberates throughout this report, which is an attempt to present a picture of the labor market in Israel in the early 21st Century. The report examines the problems and difficulties facing workers in Israel in light of a changing reality, and analyzes the factors that contribute to the increasing trend of exploitation of workers in Israel, their humiliation and transformation into commodities. The report reviews: the frameworks, ways, and methods used that have negatively impacted Israeli workers; the weakest populations of workers in Israel; and the failure to enforce labor law and defend workers' rights. The analysis is supported by the stories of men and women whose rights have been violated, and provides recommendations on how to end these abuses and bring about positive changes to the situation.

Chapter 1: Weak Workers

Most of the breaches of labor law in Israel -- and especially the most severe -- are aimed at workers who belong to particularly weak and vulnerable population groups and thus find it difficult to demand their rights.

New Immigrants from the Former Soviet Union (FSU)

Many of the new immigrants who arrived in Israel from the FSU since the early 1990s work in part-time, temporary jobs for subcontractors and employment agencies. The language barrier is one of the factors that forces them into low-status jobs, even if they were educated professionals in the FSU. Indeed, most immigrants from the FSU are employed in professions that do not match their levels of education and occupations in their countries of origin. Their wages are on average 30% lower than the wages of native Israelis The new immigrants' language difficulties, and the fact that they are unfamiliar with the protective laws in Israel enable their employers to exploit them. Despite their poor terms of employment and wage gaps, the level of the new immigrants' participation in the labor force is higher than that of native Israelis (in 2000 93% of the men and 89% of the women, compared to 75% of native Israeli men and women).

The inferiority experienced by new immigrants from the FSU in the labor market is usually temporary. Over the years they become increasingly integrated into Israeli life, close cultural and language gaps, and attain higher employment. However, even with further acclamation into

Israeli society, immigrants continue to suffer from discriminatory employment practices when Israeli employers prefer, for the most part, to hire native Israelis to fill their positions.

Ethiopian Immigrants

The integration of members of the Ethiopian immigrant community in the Israeli labor market has been slow. Ethiopian immigrants are usually employed in low-status jobs, many of them through sub-contractors and employment agencies, and typically earn below the minimum wage. The rate of employment of Ethiopian immigrants is almost 10% lower than the overall level of employment in the general population and about one-third of the Ethiopian population is employed as unskilled workers. Many of the Ethiopian immigrants came to Israel without formal education and without the skills needed to succeed in the Israeli labor market. According to the Israel Association for Ethiopian Jews, only 4% of the resources devoted to programs for the Ethiopian population is allocated to helping immigrants find employment. Other criticisms concern the small number of available frameworks to provide supplementary education for Ethiopian immigrants, and the lack of tailored vocational training programs. The segment of Ethiopian immigrants with academic degrees is mostly employed in projects within the Ethiopian community, projects which fail to advance those workers in the broader Israeli labor market.

The Arab Citizens of Israel

Until the 1990s, hardly any industrial zones were established in the Arab sector, nor were budgets allocated to solving the infrastructure problems in the existing commercial areas. In the absence of an employment infrastructure, employment in the Arab population is restricted to light industry, crafts and construction, commerce, education, and traditional industries such as textile and wood. Workers in those industries are frequently unemployed and are ejected from the labor market at a younger age than is typical with other kinds of jobs: 37% of Arab citizens aged between 45 and 54 do not work, compared to only 13% of the Jews in the same age bracket. In addition, an Arab worker accumulates an average of 8.5 years of experience at a job, compared to an average of almost 10 years that a Jewish worker accumulates. This affects most of the protective rights, which depend on tenure, such as rest home pay, holiday pay, the number of annual vacation days and the level of severance pay and pension rights, as well as the ability to make a living after retiring from the job.

The level of participation of Arab citizens in the Israeli labor market is 39%, compared to the national average of 57%. One of the main reasons for this is the low level of participation of Arab women in the labor market – only 18% compared to 55% of Jewish women. Factors contributing to this low level of participation include: the small number of employment options in the Arab localities; a shortage of public transportation services; the lack of branches of the employment service in Arab areas; and a shortage of childcare frameworks. The gaps between Arabs and Jews are also reflected in wages: according to a survey published at the end of 2004, the average wage of salaried and self-employed workers in Arab localities was 63% of the average wages of salaried and self-employed workers in Jewish localities: NIS 3,992 compared to NIS 6,314, respectively.

In 2000 budgets were allocated for the development of new industrial areas and vocational training in the Arab sector, but the Ministry of Trade, Industry and Labor utilized only part of those budgets. There is no employment office for academics operating in any Arab locality at present, despite the high number of unemployed Arab academics.

Arab workers who try to integrate into the labor market in the Jewish sector suffer from discrimination in admission to work due to, among other things, the requirement of prior military service or of Hebrew as a mother tongue as conditions for being hired. Arab academics find it very difficult to find jobs with Jewish employers; the Arab labor market creates a limited demand for educated workers, most of whom are employed in teaching and education. Arabs are almost

completely absent as employees in management professions (4.6% of the educated Arabs compared to 9.8% of the educated Jews) and in other professional positions. In the high-tech industry the rate of Arabs was estimated in mid-2006 at only 2.8%. Representation of Arabs in academia is only 1%. The chances of an Arab academic to work in a profession appropriate to his or her level of education are five times lower than the chances of a Jewish academic with the same profile.

For many Arab workers -- especially academics -- the public sector is almost the only hope for employment. In recent years there has been a slow rise in the rate of Arab workers in the civil service, and at the end of 2005 their rate was 6.9%. However, most of the Arab workers who manage to find a place in the civil service are concentrated in occupations and professions where their impact on decision-making processes is limited.

Despite the figures, which indicate a clear discrimination against Arabs at every stage of employment, very few law suits are submitted to the labor courts by Arabs about discrimination at work. This fact may indicate a very low level of trust of the legal system, along with pessimism as to the ability to bring about change.

Migrant Workers

Migrant workers come to Israel from poor countries in order to work at the most physically taxing jobs, in conditions and for wages that no Israeli citizen would tolerate. Thus, they have become the weakest group of workers in the Israeli labor market. Migrant workers began coming to Israel at a high rate in the early 1990s, after government policy during the first *Intifada* created a shortage of Palestinian workers. Over the years, due to the growing pressures by interest groups the government increased quotas for migrant workers and their number spiked tenfold: from 20,000 in 1993 to 140,000-180,000 workers in 2005, which is almost 10% of the entire workforce. The rate of migrant workers in the labor force makes Israel one of the top five countries that import workers.

According to official statements by government authorities, the migrant workers were brought to Israel temporarily, in order to fill a temporary shortage of labor. In actuality, however, migrant workers have come to permanently populate certain industries, such as construction, agriculture, and nursing. An exploitative trade has developed around the transport of foreign workers to Israel, involving huge sums of money. The brokerage fees the workers pay employment agencies in Israel and in their countries of origin have become a considerable source of profit, and therefore employers and brokers benefit from the expulsion of workers and their replacement with new workers, and an incentive is created to increase the rate of turnover of migrant workers.

Some of the most common problems of migrant workers who come to Israel are: paying high brokerage fees in order to be able to come to Israel; working for months on end without salary or for a meager salary, until the brokerage fee or the commission the employers charge illegally is paid back; binding the worker to the employer, so that his legal status in Israel depends on his subjugation to the specific employer who brought him to Israel; abuse and violation of rights that in many cases reach the level of exploitation and enslavement. All of this is on top of the fact that the workers have their own difficulties due to their unfamiliarity with the Hebrew language and the Israeli law and administrative system; and working without permits, which exposes the worker to the danger of expulsion, as the only way out of severe exploitation. In March 2006 the High Court of Justice accepted a petition by human rights organizations about the binding arrangement and revoked its legality. Since then, no overall alternative guidelines have been issued for the employment of migrant workers in Israel, and the Interior Ministry and the Ministry of Industry, Trade and Labor continue to operate according to the binding arrangement, occasionally asking to extend the deadline the Court gave them to change the illegal arrangement.

Palestinian Workers from the Occupied Territories

In 1987, before the outbreak of the first *Intifada*, 110,000 Palestinian residents of the Occupied Territories were employed in Israel (representing 40% of the total workforce of the Occupied Territories). After years of creating a dependence of the Palestinian labor market on the Israeli market, the government of Israel gradually changed its policy and decided to restrict, and ultimately to cease, the granting of Israeli work permits to Palestinians. Thus, tens of thousands of families lost their only source of income. As of July 2005, only 16,000 authorized workers from the Occupied Territories worked in Israel, as well as an estimated further 30,000 residents working without permits.

Palestinian workers caught in Israel without work permits are subject to arrest, often carried out with humiliation and violence by the security forces. Subsequently they are either jailed or heavily fined as a condition for their release. Police violence in the case of Palestinian workers without permits can reach the point of manslaughter. The Israeli authorities exploit the dependence of many Palestinians on work in Israel and their desire for work permits to put pressure on those who want permits or need their permits renewed to cooperate with the security forces. A bribery industry has emerged surrounding entry permits, and representatives of the Palestinian liaison mechanism demand money in exchange for their collaboration with Israeli representatives.

The Israeli government decided in principle as early as 1970 that workers from the territories would be employed under the same conditions as Israeli workers. But employers exploit the lack of enforcement, the Palestinians' status in Israel, and their economic distress to deny them their most basic rights. The wages of workers from the Occupied Territories are considerably lower than those of Israelis, and even lower than the wages of migrant workers. The wages of Palestinian workers employed in the settlements are even lower. The Palestinian workers in Israel and in the settlements do not enjoy most of the National Insurance Institute (NII) rights, including unemployment benefits, guaranteed income benefits, old-age benefits, child allowances, disability allowances and nursing insurance, even though every month sums are deducted from their meager salaries to go toward the NII. The closures repeatedly imposed on the Occupied Territories disrupt the continuity of their work and infringe their social rights and their livelihood. Many Palestinian workers lose their jobs after the long closures, and in these cases are usually not entitled to severance pay. This is in contradiction to rulings of the labor courts.

Israeli employers submit false reports to the employment service's payment department (responsible for the transfer of salaries from Israeli employers to Palestinian workers) about the work hours and wages of the workers from the Occupied Territories. Thus, their pay slips note only the salary paid for some of the hours actually worked (and all accompanying benefits are calculated on the basis of those numbers), while the remainder is paid to the worker in cash. In this way the employers reduce their employment costs, and the workers have to get by with a very small portion of the social benefits to which they are entitled. As a result of the proliferation of this phenomenon, the payment department issued in instruction according to which it would not receive reports on work that totaled less than 15 days.

Palestinian workers employed in agriculture in the settlements suffer from health problems caused by the poor working conditions and the lack of adherence to safety laws. Among other things, Palestinians are employed in spraying pesticides without protective gear or professional guidance about the use of pesticides, and they suffer daily from sunburn, fractures, backache, aching limbs and other ailments.

In 2003 the discrimination against Palestinian workers employed in the settlements was perpetuated by a decision by the Attorney General, according to which the law applying to Palestinian workers would be the law that existed in the place of their employment before the occupation (namely, the Jordanian or Egyptian law), rather than Israeli law.

Palestinian workers who file suits in Israeli labor courts face special difficulties, beyond the difficulties of the rest of the weak workers: they are required to deposit guarantees that may reach thousands of shekels; and if they are prohibited from arriving for the hearing of their case because of a closure, their suit is rejected.

Older Workers

Age discrimination is so endemic in Israel that many employers do not even try to hide it. Older workers are fired more easily, often to make room for the young; and the chances of an older person finding a job that suits his or her experience and skills are very low. As a result, the unemployment periods of older people are considerably longer than those of the young: an average of 46 weeks, compared to an average of 36 weeks for younger people. Since the mid-1980s the level of participation of men aged 60-64 in the labor market has decreased by 10%: from 67.1% in 1986 to 57.1% in 2005. Discrimination against older workers is even exercised by bodies who are supposed to support them and help them. Thus, the employment service is considerate of employers' requests for "young" candidates. The existing regulation allows the acceptance of such discriminatory criteria, orders them to be entered into the employment service's database, and even accommodates these demands when placing jobseekers. The employment service clerks are not required to report discriminatory requests of employers, even though such requests violate the Equal Opportunities at Work Law.

People with Disabilities

It is very hard for workers with disabilities and workers with chronic diseases to find jobs, even when their disabilities are not impediments to succeeding in specific jobs. If they reveal their disability or disease in the process of admission to a job, or if their disability is visible, it is likely that they will not be recruited. In addition, employers are not sufficiently aware of their duty, based on the Equal Rights for People with Disabilities Law, to perform reasonable adjustments for workers with disabilities according to their needs -- such as adjustments at the workplace, the equipment, the job description or the working hours.

A large group of people with disabilities work in sheltered employment frameworks and in alternative frameworks outside of the open labor market, and the law makes it possible to pay them a considerably lower rate than the minimum wage -- as low as a few shekels per hour. The jobs in these settings are usually monotonous and performed in poor conditions. The Minimum Wage Law makes it possible to set a reduced minimum wage even for disabled workers who are not employed in sheltered employment frameworks. The lowest hourly wage in the private sector is paid to mentally disabled workers, who earn an average of less than NIS 10 per hour. Learning disabled workers earn just a little more than NIS 10 per hour, and emotionally disabled workers earn an average of NIS 12 per hour.

Children and Youth

In 2004, 6.3% of youths were employed – amounting to some 21,000 workers. About one-quarter of the working youths are employed in hospitality and food services. Children and youth are especially exploited in the area of wages: 56% of the working youths are paid less than the minimum wage to which they are entitled. The average youth wage in 2004 was NIS 11.7 per hour -- while the minimum wage for youth according to the law ranged from between NIS 13.5 and 16 per hour, according to the age of the working youth. Other common violations are wage withholding and excessive working hours.

In recent years the phenomenon has developed of employing Palestinian children in agricultural jobs and in food markets in Israel. The employment of these children is not reported to the authorities; the children do not have medical authorization or medical insurance, and work under difficult conditions and at low wages.

Women Workers

As a rule, in each of the groups discussed above, the situation of women is inferior to that of men in four primary ways: level of participation in the workforce; level of pay; status at work; and the nature of the work. Women are also exposed to sexual harassment at the workplace.

Participation in the workforce: Despite a steady increase since the 1950s onwards, the rate of women in the Israeli workforce remains lower than that of men: 49.6% compared to 60.6% respectively. Even today the rate of women who work in Israel is low relative to developed countries.

Level of pay: The wages of male workers are 63% higher than those of women: a man earns a monthly average of NIS 8,650 and a woman earns an average of NIS 5,320. Part of that gap is caused by the fact that women, much more than men, work at part-time jobs: about 36% of women are employed in part-time jobs compared to 17% of men, and the average number of hours a woman works per week is 31, compared to 42 for men. But there is even a sizable gap in the wage per hour: men's hourly wages are 23% higher than women's. The average salary of women managers today is NIS 11,700 per month -- 78% of the salary of male managers, which is NIS 15,600 a month.

Status at work and the nature of the work: 64% of women are concentrated in traditional female occupations -- mostly in education or administrative jobs. Only 10% of men are employed in those professions.

Women are employed more than men in potentially exploitative employment structures: the rate of women employed through employment agencies is 1.5 times higher than men, and they are employed in this way for almost twice as long men: an average of 26.2 months, compared to an average 13.8 months for men.

Discrimination: Discrimination against women at work is not only the result of social perceptions of the inferiority of women, but has clear economic motives. The employment of women of childbearing age is disrupted with each birth, and usually women also carry the main burden of raising children in Israel. Even employers who do not exercise abusive employment patterns in other areas fire women after maternity leave or when their parental responsibilities do not allow them to stay at work until late hours. In 2000-2002 the number of requests submitted to the Ministry of Trade, Industry and Labor to allow the dismissal of pregnant women or women undergoing fertility treatments rose by almost 30%: 1,407 requests in 2002 compared to 1,070 requests in 2000. In tandem, there was a significant increase in the number of employers interested in dismissing female employees who were undergoing fertility treatment. In both cases the increases were steady and consistent. In addition, every year an average number of 1,330 women are demoted to less senior positions than they held before giving birth.

Chapter 2: Economic Changes and their Impact on Labor Relations in Israel

The phenomenon of globalization coupled with internal developments within the Israeli economy and society have, over the last decade, created significant changes in the Israeli labor market. The demand for economic efficiency is increasing, and values such as organized labor and

social solidarity have been pushed aside. Economic changes have increased the level of inequality between different kinds of workers in Israel, and resulted in the creation of patterns of "abusive employment," a substantial reduction in the protection of workers rights, and the growing potential for exploiting vulnerable workers.

Part-time Work

In the last quarter of 2005 part-time workers comprised 38% of the Israeli labor force, and numbered 797,000 people. Of those, 145,000 were employed in part-time jobs because they could not find full-time jobs, and they are defined as "involuntary" part-time workers. Three-quarters of such workers are women.

Temporary Work

Many of the temporary workers are employed through manpower agencies. It is estimated that tens of thousands of other workers find temporary jobs independently and are employed on an hourly, daily, or weekly basis. Today, unlike in the past, workers are involuntarily caught in temporary employment situations for long periods of time. This phenomenon too, like part-time work, derives from the problem of unemployment: workers who are unable to find permanent work for many months accept temporary jobs. In this setup, their ability to accumulate welfare rights and rights at work, such as severance pay, pension funds, rest-home pay and holiday pay is seriously infringed, because most of those rights depend on tenure at work.

Many of these "temporary" workers are actually permanent workers, and their "temporary" status does not refer to the length of their employment with the company, but rather to their inferior status within the employment hierarchy. Thus, for instance, at the Israel Electric Company, some 300 so-called temporary workers are signed on temporary contracts for a period of up to 10 years. After that they are fired and the company hires other temporary workers to replace them. As opposed to the permanent workers, temporary workers at the Electric Company are neither represented nor organized. The Israel Air Authority employs 2,000 temporary workers, who are fired after five or six years. In the security and cleaning industries, temporary-permanent employment has become a common practice. Many companies in those fields habitually fire their workers every 8 to 10 months, and rehire them again after three months or more. In that way they are denied the social security network and tenure-dependent rights.

Hidden Workers

It is estimated that 10-20% of employees do not receive pay slips, and their employers do not report them at all. These include, for example, waiters, cleaning and household workers, child minders and caregivers. There are findings showing that this phenomenon has infiltrated even large and organized companies. These workers are not recorded with the National Insurance Institute (NII), and are therefore not insured and do not receive the social benefits to which they are entitled, including maternity allowances, unemployment benefits, compensation in the case of a work accident and more. If they try to demand their rights at the labor courts, they have a very hard time proving the rate of their salary and length of their employment without pay slips or any formal documentation of their employment.

Freelance Workers

In many cases workers are defined as freelancers with no real justification, only to avoid carrying the cost of the worker's employment. The unjustified use of this employment pattern was apparently born in the public sector, among other reasons, as a response to limits on hiring. In the private sector, also, some workers are defined as self-employed, even if they are

employed in a permanent, long-term and continuous setting, which meets all the criteria of the employer-employee relationship.

The Unholy Trinity: The Worker, The Contractor, and The Employer

About 10% of the workers in Israel – what amounts to hundreds of thousands of employees -- are currently employed by manpower agencies, service contractors and other contractors for secondary employment (compared to 2% of the workers in Europe). Contracting employment, or "indirect employment," entails employing workers to perform work for a certain organization, even though formally they do not work for the organization, but for a third party -- the contractor. The indirect employment pattern has turned the relationship between employee and employer into a three-way relationship: the worker, the contractor, and the organization that commissions the work. The worker's work contract is signed with the contractor, who pays his or her wages and other employer payments. The de facto employer pays the contractor a sum agreed upon between the sides in advance. During the period of the contract between the contractor and the user organization, the worker is available to the user organization and under its supervision -- even though formally he or she is employed by the contractor. About half of the contracting companies' workers are employed in the public sector.

a. Manpower Contractors, Companies and Organizations for Secondary Employment

Contracting with manpower companies which supply temporary workers was meant to fulfill important needs in the labor market, such as addressing situations of uncertainty and cultivating management flexibility. Trends to reduce the cost of labor in the private sector, along with calls to reduce the public sector and impose limits on the number of positions, led to the expansion of the system, and today many organizations that use the services of manpower contractors do not do so to fulfill temporary needs but to fill a permanent need for workers, who will not enjoy the rights of direct employees and will not be included in the company’s official worker positions.

5% of Israeli employees are employed through manpower contractors -- 3 times more than most developed nations, where the level of employees employed through manpower agencies is no higher than 1.5%. The duration of employment through manpower contractors in Israel is also considerably higher than the duration of that form of employment in other countries: in 2001, the length of employment of workers for manpower companies in Israel was an average of 19.5 months, compared to an average 7 months in the United States. 46% of subcontracted workers in Israel are employed in the public sector. Certain government ministries use the indirect employment pattern on a large scale: the Health Ministry employs some 4,500 workers indirectly, through the Association for Public Health Services; and in 2004, the Ministry of Welfare employed 2,500 workers indirectly.

The average wage of subcontracted workers is 60% of the average general wage, and only 5% of the subcontracted workers earn NIS 25 per hour or more. Even when the day's pay of the subcontracted worker is equal to that of a worker with a similar rank in the organization, he or she does not receive certain extras included in collective agreements, which sometimes constitute a very significant part of the monthly pay. The harm to those workers is not only on the legal level of the infringement of their rights, or on the economic level of their pay, but also on the social level – the distinction between them and the company's direct workers, and the feeling of inferiority that is engendered. The proportion of people belonging to weak population groups among the employees of employment agencies – such as migrant workers, women, new immigrants, and low-pay workers – is considerably higher than their proportion in the labor market in general.

The Employment of Workers through Personnel Contractors Act – 1996 should have solved many of the problems caused by this pattern of employment. But the section of the law which was supposed to guarantee the worker's integration in the user organization within a given time

frame has already been frozen several times because of the strong opposition of the Finance Ministry. Most recently the implementation of this provision was postponed until 2008. The provision that requires the terms of subcontracted workers to be equal to those of direct workers does not apply to employment agency workers in the private sector, and is only partially implemented in the public sector. However, some sections of the law have provided a certain level of protections to employment agency workers, such as the requirement to make a written agreement between them and the contractor, the prohibition of the contractor and de facto employer to make various deductions from the worker's salary, and the establishment of the right of a worker who did not receive minimum wage from the contractor to demand his wage from the user organization.

Another problem in the implementation of the law is the definition of the employers to which it applies -- the law does not provide a sufficient answer to the question "what is an employment contractor?" Some of the manpower contractors adopt a series of more or less fictitious features, meant to define them as service contractors rather than manpower contractors, and thereby to exclude their workers from the purview of the various protections.

b. **Service Contractors**

Like manpower contractors, service contractors also belong to a three-way employment pattern of contractor-worker-user organization. The service contractors are divided into those who provide actual services that require special skills and training (such as publishing services, catering, IT support and so on), and contractors that provide a workforce, such as cleaning and security companies. The number of workers for service contractors is estimated to be at least 100,000 workers, and some think the number is much higher.

Among the common violations of workers' rights in the industry are: paying below-minimum wages; employing people for overtime work and on holidays without providing payment; firing workers without paying severance; nonpayment of social benefits; preventing leave and nonpayment for leave; illegal deductions and fines; attempts to crush labor organization and more. The two industries most often mentioned in this context are cleaning and security.

c. **The Responsibility of the User Organization**

Government ministries, local authorities, educational institutions, and government companies all issue tenders for service jobs, including cleaning and security services, and take the cheapest bid. Until recently, these tenders did not set terms that would guarantee the rights of subcontracted workers. Moreover, often the service contractor that wins the tender is the one in which the competitive terms of the bid make it impossible to pay the workers all of their wages and rights according to labor laws and collective agreements.

The strong criticism voiced over this situation led to a certain change, although it is still too early to assess its implications. In August 2006, the Finance Ministry announced it would begin to monitor the agreements made by the government ministries with the cleaning and security companies and those companies' compliance with their commitments according to the agreements and laws. Draft laws are being promoted to prevent tenders that will lead to the non-realization of subcontracted workers' rights, and make the user organizations responsible for the rights of the workers they employ through contractors.

Workers, Corporations and What Lies in Between

Tens of thousands of small businesses, partnerships and associations have collapsed in recent years. Large companies are sold, split or merged and others undergo processes of rehabilitation, streamlining, receivership, or liquidation. Workers are fired or outsourced and collective agreements are canceled. In these complex processes, workers' rights are low in the

order of priorities, and the main -- if not only -- way to protect them is through a strong workers' committee.

Unionization and Its Limits in the Present Labor Market

In the 1970s, for a variety of complex reasons, there was a sharp drop in the number of workers organized in worker unions as well as under the Histradrut's auspices. The rate of workers organized in any labor organization, which in the 1980s was around 85%, dropped to 40% in 2000 and to 32% in 2003. Attempts by workers to create worker organizations in their places of work in many cases fail and there are not infrequent reports of attempts by employers to crush unionization efforts. In the Tel Aviv Stock Exchange's Maala Social Responsibility Index, 39% of the surveyed companies stated that they would not allow workers unions. These are companies which perceive themselves as socially aware, and it is easy to assume that resistance in companies in Israel in general is even higher.

Collective Agreements

The objective of a collective agreement is to equalize the terms of employees of the same profession, and its goal is to balance the negotiating powers of the two sides in the labor relationship -- the employer and employee. Over the years the Israeli labor market has shifted from collective agreements to personal contracts, and the incidence of collective agreements has dropped significantly: from applying to 85% of employees in Israel in the early 1980s to only 56% of the workers in 2000.

The Right to Strike

The extent of the protection of the right to strike, the main tool of organized workers in Israel, has changed over the years. Most of the strikes take place in the public sector, usually in the context of organizational and structural changes and worker layoffs. The Finance Ministry has acted over the last years to de-legitimize strikes, claiming that the right to strike is abused in Israel and used in a disproportionate manner. This argument engendered legislative initiatives to limit the right to strike, which were all rejected. Since the 1970s Israeli court rulings have created various limitations on the right to strike.

Employment Patterns and Their Impact on Unionization

The workers in the irregular employment patterns mentioned above do not enjoy the rights achieved through collective bargaining, and possesses an inferior status in the companies where collective bargaining takes place. This is most damaging in workplaces where workers who are part of the collective framework enjoy the very strong protection of a workers' committee, such as banks. There exist glaring disparities in banks between the subcontracted workers -- who do not enjoy protection even of their basic protective rights – and the regular workers, who enjoy improved terms thanks to collective agreements. Indeed, the labor courts might enforce the collective rights of the workers in the irregular patterns, but most of those workers, who belong to the weak groups, are not aware of this and do not demand their rights on the basis of the collective bargaining.

One of the common arguments is that the temporary workers or subcontracted workers are hired instead of the veteran workers, in order to get around the collective agreements and reduce the professional organization's bargaining power. They constitute a significant work force that the employer can employ, for instance, in the case of a strike. Therefore, workers' unions object to the introduction of subcontracted workers into the workplace.

Liquidation and Bankruptcy

Workers' rights at the time of liquidation or bankruptcy are regulated by Israeli law on two tracks, and on both tracks the chances of the workers receiving their full rights are slim. The first track is anchored in the Bankruptcy Ordinance and stipulates that workers' rights shall be guaranteed by placing them in a relatively high place on the list of creditors, higher than ordinary creditors, but after creditors with property liens, headed by the banks. The latter may realize the mortgage given to them by the company that is being liquidated, without prejudice to the rights of the other creditors, including the workers. If the company that is closed does not receive a liquidation order, but, instead, receives a procedure freeze order, the workers, like the rest of the creditors, are not entitled to receive the money owed to them by the company. And, sure enough, companies use the legal tool of procedure freeze to avoid payment.

The second track is anchored in the National Insurance Law, according to which workers, whose employer went bankrupt or was issued a liquidation order, are entitled to receive from the NII a payment calculated according to their work wages, other wage components and the severance pay the worker deserves. But the liquidation process sometimes lasts months or years and the workers cannot receive their wages until it is completed. And if that weren't enough, the payment is limited to a maximum sum set by law which today stands at NIS 70,000. In this situation, veteran workers, who worked with a company for many years before it was liquidated, and who have accumulated rights whose value is higher than the ceiling stipulated by the law, will be compensated only very partially.

Recovery and Rehabilitation

The erosion of the status of the labor union infringes upon the ability of workers and companies undergoing recovery and rehabilitation processes to maintain the status of the collective agreements that protect them. Israeli law tends to strengthen the status of the creditors who are insured during the rehabilitation and recovery of a company, and does much less to protect the rights of the workers in such processes. A draft bill was proposed before the Knesset in July 2006, attempting to anchor the rights of workers in insolvent companies that wished to undergo recovery and rehabilitation processes.

Chapter 3: The Growing Phenomenon of the Violation of Labor Laws

Israel has about 20 laws that deal with various aspects of the employer-employee relationship**,** called protective laws, which determine the minimal rights to which a worker is entitled and which an employer is obligated to provide. But employers use a variety of methods, some of which are creative and complex, to violate those laws.

The Minimum Wage Law

According to various estimates, 50-70% of the workers who are supposed to earn minimum wages actually earn less. Violations of the Minimum Wage Law are most common among small businesses, and those groups which are most likely to suffer from these violations include: migrant workers, followed (in a decreasing order) by Arab women, Arab men and Jewish women. Employers use various methods to hide the violation of the Minimum Wage Law from the workers and from the enforcement authorities:

- Fictitious reports of work hours: the employer reports on the pay slip a lower number of work hours than the employee actually performed, and then pays wages only for the reported hours. When you divide the gross wage into the reduced number of hours, it appears that the employer did supposedly pay the minimum wage, as required by law. Actually, the worker worked a larger number of hours and for a lower rate than the minimum wage.

- Claiming the workers are "training" or "interns," and are therefore not entitled to labor wages. Hundreds of medical technology interns, for instance, are employed this way in hospitals – whether private or public – despite a ruling on this matter by the Haifa District Labor.
- Defining the worker as a "freelancer" allows the employer to avoid the application of the labor laws, including the Minimum Wage Law.

The Hours of Work and Rest Law

Many workers do not receive the legal wages for working overtime and on the Sabbath, and do not enjoy a weekly day of rest. The phenomenon is particularly common in the cleaning and security service companies. The measures that employers use to violate the law include:

- An artificial separation of work hours at different work sites and calculating them separately.
- Declaring "global wages," while exploiting the exceptions stated by the law – "senior" workers and workers whose hours cannot be monitored.

The Wage Protection Law

Violations of the Wage Protection Law, which defines the deadlines for paying wages, forbids wage deductions, and obligates the employer to give the worker a detailed account of his or her wages and the sums deducted from them, are very common.

Delayed wages: Not paying wages on time is a common offense, not only among small businesses and companies that are undergoing difficulties, but also in the public sector – a phenomenon that is considered very unusual among developed countries. At the end of 2003 the wages of 16.5 thousand workers in the local authorities and the religious councils was delayed for several months. In early 2006 it was reported that 73 local authorities owed 12,400 workers wages totaling NIS 188 million. Workers of the Arab and Druze authorities in particular suffer from prolonged and serious wage delays.

In the private sector, workers who suffer from repeated delays in the payment of their wages do not always hurry to leave their jobs: sometimes they feel committed to and responsible for the survival of the business, and are willing to wait for it to recover; sometimes they are afraid to that they will end up with no pay and no job.

Wage deductions: The Wage Protection Law provides a closed and limited list of permitted deductions from wages, and any other deduction is illegal. Nonetheless, and despite explicit rulings by labor courts on this matter, employers habitually deduct from their workers' wages sums of money as punishments for disciplinary infractions, lateness, going out without permission, untidy dress and so on, and to cover damages or mistakes caused during work. Many employers conceal the deduction in different ways in the pay slip, for instance as "bonus reduction."

Many employers – including cellular phone companies, Internet providers, security companies, airlines and retail chains –make their workers sign an agreement to pay a fine of thousands of shekels if their employment ends for any reason before a certain period (usually 6-12 months). Sometimes the fine is presented as covering the cost of training the workers, but the required sum is not proportional to the training provided.

Fictitious pay slips: In this method, every 8 to 10 months the personal information of the worker on the pay slip is updated with the information of another person, so as to fictitiously interrupt the continuity of the employment. Sometimes the worker is asked to provide the information of another person, which is entered into his or her pay slip for 3-6 months. The salary itself continues to go into the worker's bank account, and he or she continues to work as before. And

so, the worker is employed for a long period, but is denied all of the tenure-dependent social benefits and work benefits. In the case of a work accident, such workers will discover that they are uninsured because their employment is not recorded at all and NII payments are not contributed on their behalf.

Hiding information: The Wage Protection Law requires employers to provide their workers with a detailed account of the wages paid to them and the sums deducted from them. This is a very important section, which allows the worker to know whether his or her rights based on the Wage Protection Law are being respected or violated. For exactly that reason employers try in different ways to prevent or restrict the workers' access to this information, by issuing pay slips with a considerable delay, refusing to present their workers with a record of the hours they worked as printed by the attendance clock, and so on.

The Notification Law (Employment Conditions)

The Notification Law (Employment Conditions) that was enacted in June 2002 states that the employer must give his or her workers written information about the job and its terms, within 30 days of beginning to work. This law is very important, not only because of the obligation of transparency it imposes on employers, but also because it makes it possible to place the burden of proof as to work conditions on the employer. An employer that did not provide such an announcement by law is the party who carries the burden of proving the terms. Even though four years have gone by since the law came into effect, many workers are not aware of their rights based on this law, and employers ignore it or only partially uphold it.

The Severance Pay Law

A worker fired from his job depends on his employer, who is supposed to pay his last salary and severance pay; the worker needs a recommendation letter, and also needs a dismissal letter to allow him to receive unemployment benefits. This dependence on the employer is problematic. Sometimes employers retroactively deny the dismissal and claim the employee left of his or her own accord. Often workers are forced to resign in various ways so that they are denied their severance pay and rights to unemployment benefits. Many workers do not know that according to the Severance Pay Law, a worker is entitled to severance pay even if he or she was not fired but resigned because of a material worsening of employment conditions. Even those who are aware of this provision have a very hard time enforcing it upon their employers when they leave.

Firing workers without severance pay is very common in contracting companies and manpower agencies. When a client ends his or her contract with the company, it is common practice in many companies to tell the workers who were placed with that client to wait for a "new assignment" (the workers do not receive salaries during the waiting period), in order to avoid the payment of severance pay. The waiting period sometimes extends for weeks or even months, and the worker is forced to look for a new job. In other cases, the companies offer the worker alternative part-time work, or a few days' work a month, instead of full-time work. If he or she refuses and resigns they withhold the severance pay.

Another method used to reduce the rate of severance pay to which the worker is entitled is the fictitious recording of premiums in the pay slip: the employers record certain components of the wages as wage premiums rather than as basic pay – upon which severance pay is exclusively based and contributions for social benefits are deducted. This practice is prevalent even in many workplaces in the public sector, where the wages of many workers are deliberately divided into different components, recorded for instance as "bonuses" or "over time." In all of these cases, workers who are fired find out that their severance pay is much lower than their salary during the time they worked.

Employing people within the freelance framework also helps deny workers their severance pay, as well as a host of other workers' rights.

Convalescence, Vacation and Religious Festival Pay

Employers evade payment of vacation, convalescence and religious festival pay in similar ways to those mentioned above, such as recording bonuses in the pay slip as "pay in lieu of vacation and convalescence pay," and defining the worker as a freelancer. Another very common method is periodically firing the worker for more than three months so that his or her employment continuity is interrupted. In this way the employer evades paying the worker severance pay and convalescence pay – two rights to which the worker is entitled only if he or she worked continuously for the employer for more than a year. Interrupting the tenure also impacts on the calculation of the vacation days that the worker has accumulated, as well as his or her entitlement to receive religious festival pay which is conditional on completing at least 3 months' work.

Infringements of Dignity and Privacy

Infringements of workers' dignity, privacy and freedom of speech are very serious and common issues, which are often very difficult to address. Many workers' complaints center around violations of their dignity through humiliating treatment at the hands of their employers: shouts and insults; a tough and threatening approach; forbidding bathroom breaks during shifts; demanding that workers empty their pockets and be inspected every time they leave the workplace and more. Many workers view the invasion of their privacy at the workplace or during the recruitment process as a serious infringement of their dignity. The existing legal framework only provides partial redress for this phenomenon.

Placement companies: As part of examinations at placement companies, candidates for jobs or for promotions are required to reveal their characteristics and personalities and answer many questions, some of which excessively probe their and their families' personal lives. Sometimes questions are presented which might conceal violations of the principle of equality and the Equal Opportunities at Work Law (e.g. questions about plans for expanding the family or about health status). In this way employers can make decisions on the basis of considerations which have been recognized by the law and by court rulings as illegitimate, while maintaining the façade of objectivity and neutrality.

The results of the tests are transferred exclusively to the employer, and the placement companies make sure to have the examinees sign a form where they waive their right to see the results of the test. If the worker or candidate did not pass the tests he or she cannot find out why, and if he or she did pass the tests, he or she still will never know what information the employer has about him. A suit filed by ACRI demanding to allow a candidate for a job to see the results of the tests he underwent during screening for the job was rejected by the Tel Aviv Magistrate Court, and the appeal to the District Court over the rejection is still pending.

Polygraph tests: More and more workers are required to undergo polygraph tests as part of the hiring process, and many report that the examination makes them very anxious and feels like a criminal investigation. In November 2006 ACRI filed a suit on behalf of a job candidate who was asked to undergo a polygraph test, after he successfully underwent an interview and testing at a placement company.

A requirement to present criminal and police background printouts: According to the law, private bodies are not entitled to demand criminal and police records. But employers have found a simple way to circumvent this prohibition: they require the worker or job candidate to present them with the records as preconditions for employment. This is especially detrimental to workers and candidates whose computer printouts from the police include records of investigation files

opened against them in the past and closed, or of offenses that were cleared or have expired. Often at issue are false complaints or minor affairs, but the full information does not appear in the record, and its presentation may severely harm the worker or the job candidate. Recently, in the framework of discussions about a petition filed to the High Court of Justice, the State suggested a new arrangement for the presentation of criminal records to prevent this phenomenon. The arrangement is expected to be implemented in the coming weeks.

Technological tracking devices: Other kinds of invasion of workers' privacy have been made possible by technological developments. For instance, the cellular phone companies provide employers with tracking services that allow the employer to know where the worker is at any given moment. Employers can also monitor workers' electronic mail or their Internet surfing.

Chapter 4: The Enforcement of Labor Laws

Enforcement of labor law can be divided into three categories: criminal and administrative enforcement, which falls under the responsibility of the Ministry of Industry, Trade and Labor; civil enforcement, under the responsibility of the labor courts, where they discuss suits of workers whose rights were violated; and enforcement by the public, through raising workers' awareness of their rights and through public opinion. Most of the violations of workers' rights described above do not derive from problems in legislation or interpretation of the law but rather from its non-enforcement.

Enforcement of the Labor Laws by the Ministry of Industry, Trade and Labor

The Ministry of Industry, Trade and Labor's labor law enforcement unit is in charge of the criminal enforcement of the labor laws, including the Minimum Wage Law, the Equal Opportunities at Work Law and the Prevention of Sexual Harassment Law. The unit employs 200 inspectors, some of them in part-time positions. For 14 years the number of inspectors did not increase, or grew marginally, despite a tremendous rise in the volume of business in Israel, and despite the major changes in the labor market. 70 of the inspectors deal only with the enforcement of safety laws at work, and more than a hundred other inspectors deal only with apprehending migrant workers who work without permits. Only 22 inspectors are responsible for the enforcement of the labor laws for Israeli workers; 4 of these inspectors specialize in enforcing the law about work on the Sabbath and only 18 deal with the rest of the labor laws, meaning that their work covers 2.4 million employees in Israel.

The information on the basis of which the unit's inspectors operate comes mostly from worker complaints. But it is highly unlikely that the workers who suffer most from violations of the law will file complaints to the Ministry of Industry, Trade and Labor. Until recently the enforcement unit did not use segmentation of workplaces, of industries or of vulnerable workers, even though such segmentation existed and was available to the unit.

From the beginning of 2006 changes have been felt in the approach and activity of the enforcement unit, and a more constructive and effective approach is evident. For instance, there was a proactive campaign to check work conditions in the security and cleaning industries. However, the hundreds of complaints collected through the campaign, and in other enforcement campaigns that followed, were not handled – because of a manpower shortage. The new Minister of Industry, Trade and Labor, Eli Yishai, who entered office last April, promised to increase the number of inspectors, but for the meantime their number has not been increased. At the beginning of his term the change was felt mainly in the enforcement of the law forbidding the employment of Jews on the Sabbath, and it is hoped that we will also witness improvement concerning the enforcement of the Minimum Wage Law, the Wage Protection Law, the Youth Labor Law and others laws. In September 2006, the ministry recruited 300 people for various ministry positions, for a proactive examination of the adherence to labor law among employers all over Israel. For three days 4,000 workplaces and 30,000 workers were checked. The findings were very troubling: 92% of the employers checked were found to be violating workers' rights, and 15% of the employers were gravely violating the laws. The campaign did not provide a real answer to the problem of the violations, but it reflects the ministry’s growing awareness of the public's and media's criticism of the lack of enforcement.

Administrative Fines and Indictments: Too Little and Too Late

On the basis of the inspections conducted by the labor inspectors, the Ministry of Industry, Trade and Labor's legal bureau opens investigation files. Based on the results of the investigation files, administrative fines are imposed or indictments are filed, depending on the

severity of the offense. The bureau currently employs 12 prosecutors, five of whom are in charge of enforcing labor laws and the rest enforce consumer and standardization laws.

Indictments: The work of the 5 prosecutors in charge of enforcing labor law at the Ministry of Industry, Trade and Labor results in a minute number of indictments filed against employers who violate the law: in 2004, 281 indictments were filed, and in 2005 there were less than 200. In the previous years only a few dozen indictments were issued every year. The vast majority of those indictments are against employers who employ migrant workers without permits, and only a tiny minority concerns the violation of workers' protective rights. Today, more than 3,000 files are ready for indictments to be filed and are awaiting prosecution, and every month another 50-150 cases are added to the list. Because of the backlog, the ministry has issued a tender for the recruitment of independent lawyers to file suits on its behalf.

Administrative fines: The figures show a sharp rise in the number of fines imposed on employers after 2001, and an absence of significant change since then: 2001 – 112 fines; 2002 – 416 fines; 2003 – 328 fines; 2004 – 522 fines; 2005 – 440 fines. The number of fines is only a drop in the ocean of violations, a drop that cannot serve as a significant deterrent, surely not considering the level of the actual fines: the average sum of a fine for a violation of the Minimum Wage Law is NIS 7,140 and the average sum of fines for violations of the Youth Labor Law, the Notification Law (Employment Conditions), the Early Notification of Dismissal Law and the Equal Opportunities at Work Law range between NIS 1,900 and 2,300. The administrative fines are sometimes collected years after the offense the imposition of the fine; and an employer can accumulate more and more fines, because the law does not pose a maximum ceiling of fines beyond which sanctions for violating the law are increased. Considering all of the above, the power of deterrence completely dissipates, and it is very worthwhile for employers, especially if they employ many workers, to violate the law.

Alongside the justified criticisms of the functioning and behavior of the Ministry of Industry, Trade and Labor's enforcement unit, it is important to stress it is not a bureaucratic failure but a policy problem. The budget allocated to the ministry's enforcement unit is very small, and the priorities dictated to it place the enforcement of protective laws on employers at the bottom of the ladder.

At the end of 2005 the Knesset passed a law to create an ombudsman for the enforcement of the Equal Opportunities at Work Law.

The Labor Courts

The enforcement of the labor laws via civil suits filed by the injured workers against their employers is the most extensive enforcement activity. Israel has five district labor courts, in which 48 judges serve. The National Labor Court acts as an appeals court and has 8 judges. The drop in the number of organized workers and the effectiveness of enforcement through collective labor relations, along with the limited enforcement by the Ministry of Industry, Trade and Labor, have increased the recourse to the labor courts, which have become the only address for unorganized workers whose rights have been violated: while in 1974 the district labor courts heard 10,000 civil suits in labor disputes, and the National Labor Court heard 600 cases, in 2004 96,000 suits and collective disputes were heard at the district courts and 2,600 cases in the National Court.

Filing a Law Suit

A worker whose rights have been violated has to go through several stages until the legal suit ripens: the first stage is legally defining the infringement; the second stage involves placing the blame on the party responsible for the infringement of rights, and confronting this party; the third stage is going to court. The length of time this process requires is especially long for victims

who belong to weak population groups. Some of the protective laws have short statutes of limitation that sometimes prevent the suit from being filed: a claim to redeem vacation days is limited to three years and a claim to convalescence pay to two years. The limitation on the other laws is seven years.

The new employment frameworks, and the structural changes in the labor market, may also delay turning to the court. Thus, for instance, the triple employment framework (worker-contractor-actual user) makes it hard for victims to know who they should demand their rights from, and sometimes a long time goes by until they understand that they can also demand their rights from the actual user.

Workers are often made to sign waivers where they promise to avoid going to court. This constitutes a signature under duress, in which they are told either directly or by implication that if they do not sign the waiver they will not receive their last salary, severance pay or the dismissal letter they need to receive unemployment benefits. Many workers do not know that such a practice is illegal, and believe that they really can not go to the labor court after they sign the waiver.

The Process in the District Court

Speedy procedures in labor courts are restricted to relatively low sums of money (suits of up to NIS 20,000). They do not adhere strictly to the laws of evidence and procedures, and they usually conclude with only one evidence session. Many of the workers who receive speedy hearings are low-salary workers, because of the maximum sum one can claim in such a hearing. For that reason many of them are not represented either: in a claim of such a low sum it does not pay to hire the services of a lawyer, whose fees can reach a quarter or even a half of the total sum of the claim. The employers, on the other hand, especially those who routinely use illegal methods, use the permanent services of legal counsel and representation.

Problems that derive from self-representation

The workers who represent themselves often do not speak Hebrew, and sometimes have no education, let alone legal education. It is very hard for such workers to formulate their arguments legally and to deal with the bureaucracy of the labor courts. Sometimes the judges do not show sympathy for those difficulties, and the discussion is conducted on a legal level between the judge and the employer's lawyer; in these cases the worker is pushed aside, and struggles to follow the discussion. The cultural conflicts – the gap between members of the weak population group and the judges who belong to the elite – are sometimes evident in the court rulings, in phrases such as "lack of clarity," "outbursts" or "evasions" which are attributed to the workers. It is important that in the labor courts, where workers go to seek protection of their rights, and particularly when there are no alternative effective enforcement mechanisms, the judges recognize that gap and display the requisite sensitivity.

Workers from the weak populations, who file suits in the labor courts without legal representation or legal aid, are not always aware of all their rights, and sometimes do not demand all of the rights to which they are entitled according to the law and collective agreements. The workers who represent themselves sometimes show confusion, panic, disorientation and misunderstanding of the process.

Many of the weak workers are not native Hebrew speakers. Sometimes they have to bring family members, neighbors and even young children to their hearings, in order to overcome the language problem and understand the proceedings. Even when the worker understands what is said at the hearing, it may be difficult for him or her to present arguments in Hebrew in a persuasive and clear way. The use of interpreters in courts is limited, at least in speedy hearings, and sometimes problematic solutions are employed to solve the language problem.

So, for example, in the suit of a Turkish migrant worker who worked at a construction company, the head of the sued company was the one to translate the plaintiff's testimony into Hebrew, thereby creating a clear conflict of interests.

Another problem is the lightning speed in which the hearings take place. The judges' desire to end the claims as quickly as possible is part of the labor courts' streamlining efforts, as well as the entire legal system's, but efficiency and speed have a price: usually only 10 minutes are allotted to the discussion of each claim on the judge's roster. Almost all of the hearings are much longer, and therefore plaintiffs and their witnesses have to wait for the end of the proceedings in the previous hearing. The quick pace of the hearings causes a feeling of lack of control for the unrepresented worker, and harms his or her ability to follow the proceedings in the court. Many workers also feel that their voice is not heard.

No Deterrence

One of the biggest obstacles to defending workers' rights and enforcing them is the courts' avoidance of using the remedies determined by law. The most obvious example of this phenomenon is the rare implementation of the sections on compensation for wage delays and compensation for the delay of severance pay. Even though these are widespread phenomena, only rarely, and only in particularly outrageous cases, do the judges use the sanctions set by law for delayed pay or the delayed payment of severance pay.

The Burden of Proof

In many cases the burden of proof is a difficult or even insurmountable obstacle facing a worker who wishes to demand his or her rights in the labor court. The most extreme case is increased pay for working overtime: a worker who wishes to demand this is required to present an accurate record of the hours he or she worked every day, and the record must be made in "real-time" -- meaning, every day, separately, for the whole work period. The worker must prove not only the number of hours worked but also the fact that the employer asked him or her to work those hours. The labor courts habitually reject claims for overtime pay if there is not an accurate daily record from the period of work. By law, employers are supposed to keep work hour books, with a recording of their workers' hours. It is troubling that the labor courts do not place the burden of proof on the employers, who possess the necessary information and data for proof (in claims for redeeming vacation time, on the other hand, the courts impose on the employer the burden to prove how many vacation days the worker took, because the law requires the employer to keep annual vacation books).

Compromises

Of all the claims filed with the labor court, only a few result in verdicts, after a proof process, while the vast majority end in compromise. Bringing the sides to the point of compromise is commendable, but it appears that some of the judges encourage compromise even in cases where the result undermines workers' rights. Often the labor court points out to the worker the proof difficulties he or she can expect to encounter, and thereby persuades him or her to accept a compromise solution. The worker, who is unfamiliar with the law and the ruling, does not know how to interrogate witnesses and does not know the court procedures, is afraid of the complicated process and is pushed into a compromise and to renouncing some of his or her rights.

The many difficulties in the legal process and the high chance of compromise actually allow the most offensive employers to collect handsome profits from violating the workers' rights: they violate the law vis-à-vis many workers, and when one of them files a suit, a compromise is signed in which the worker is paid only part of what he or she deserved. Meanwhile, months go

by in which the money stays in the employer's bank account, and other workers are deterred, knowing the employer is not afraid of a court confrontation.

However, it is important to note that sometimes the compromise is offered as a solution that protects the worker's rights. For instance, in cases when the employer is in a difficult economic condition -- on the brink of liquidation or bankruptcy, if the workers wait for the conclusion of the proceedings instead of opting for a compromise, they might find the employers unable to pay the debt.

Recommendations

The assumption at the basis of this report is that there exist tools and measures that can be used to address the problems described in each of the chapters.

Policy and Legislation

- Severing the link between entitlement to the benefits that derive from the different laws and the long-term employment framework. Welfare and labor benefits must be given to each worker personally, allowing him or her to carry them from one job to another -- whether he or she is self-employed or an employee.
- Establishing in law that a public body cannot contract with a subcontracting company that has in the past violated workers rights according to some of the labor laws (there is currently such a proposed bill on the agenda -- an amendment to the Public Bodies Law).
- Placing responsibility on bodies that use the services of subcontracted workers for the rights of the workers they employ in that way (a draft law on the responsibility of the user of subcontracting services is being promoted by the Forum for the Enforcement of Workers' Rights, of which ACRI is an active member).
- Imposing heavy sanctions on "serial" violators in areas that require licensing from the State, such as providing security and guard services (a draft law to prevent the repeated violation of labor laws is presently being promoted by the Forum for the Enforcement of Workers' Rights).

Enforcement and Implementation of Existing Legislation

- Far-reaching organizational changes and a substantial expansion of enforcement by the Ministry of Industry, Trade and Labor.
- A more extensive use of the existing sanctions for certain violations of law -- primarily delay in paying salaries and failure to pay the minimum wage -- by the labor courts.
- Shifting the burden of proof concerning work hours from the workers to the employers.
- Taking advantage of licensing processes for companies, required in many areas (such as manpower, security and guarding) as a tool to supervise the implementation of the labor laws.
- Including labor unions in the enforcement system.

Expanding the Organizational Safety Net

- Developing incentives to encourage worker unionization.
- Applying collective protection to all workers, and creating equality between organized workers and those who are not organized (for instance, by signing national collective agreements, to ensure the rights of all workers in Israel, even those who are not organized).

Awareness and Education

Raising workers' awareness of their rights -- for instance, through legislation that would require employers to post notices at the workplace that detail rights at work, and establishing an accessible framework for receiving information in the area of workers' rights.