

Bringing in State Regulations, Private Brokers, and Local Employers: A Meso-Level Analysis of Labor Trafficking in Israel¹

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This article examines the intersection of state policies, private brokers and local employers that fuels trafficking practices and forced labor of legal labor migrants. Focusing on the Israeli case of labor migration, we offer a meso-level institutional analysis of the modes by which private brokers' actions combine with state regulations and policies in creating labor trafficking. More specifically, we stress the active role official labor migration schemes play in the growth of a private brokerage sector driven by profit considerations and in the privatization of state capacities regarding migration control and management. Our analysis demonstrates how systemic features – and not necessarily or solely criminal activities – catalyze trafficking practices taking place first and foremost within the realm of legal migration.

INTRODUCTION

Human labor trafficking has received increasing attention in the last two decades. While not a recent phenomenon, this “new form of slavery” has attracted renewed public interest due to changing trends in migration flows and the globalization of labor, among other factors.

Antitrafficking campaigns led by prominent international organizations since the 1990s, the U.S. Congress' establishment of the Interagency

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Task Force to Monitor and Combat Trafficking in the early 2000s,² and the signing of the UN's Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons³ have all served as important tools to combat human trafficking worldwide. Yet, these initiatives also point to different approaches by international policy makers to the definition and identification of trafficking. According to Gozdzia and Collett (2005), prior to the crafting of the Palermo Protocol in December 2000, trafficking in persons was generally viewed as smuggling human beings and a type of illegal migration. The international definition of trafficking that has emerged since then is considerably broader and includes "the recruitment, transportation, transfer, harboring or receipt of persons by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person who controls another person, for the purpose of exploitation" (Gozdzia and Collett, 2005:104).

Differences in defining also animate academic research on labor trafficking. Broadly, attempts to theorize human trafficking have yielded two main theoretical approaches: "legalistic," which regards trafficking as essentially a criminal activity; and "commodification," which sees human trafficking as an intermediary system in the global migration business, facilitated by a range of legal and illegal activities and by public and private agents (Salt and Stein, 1997; Salt, 2000; Kyle and Koslowski, 2001). The two approaches are not incongruent, but the latter seeks to overcome three interrelated shortcomings implied by the definition of trafficking as a strictly illegal activity which leave out of its purview much of the conditions that make possible the phenomenon. The first difficulty in a legalistic approach is its neglect of the *legal* ways by which trafficking practices can emerge. Placing trafficking firmly within the bounds of illegality overlooks how traffickers exploit illegal but also legal methods and channels of entry. Such a categorization also fails to account for cases where the status of the migrant drifts in and out of legality during the process (Salt, 2000:37); perhaps more significantly, it falls short of addressing practices

²The Trafficking Victims Protection Act (TVPA) signed in 2000 (P.L. 106-386) and the Trafficking Victims Protection Re-authorization Act of 2003 (H.R. 2620),

³Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime, New York, November 15, 2000, I.L.M. 1529, Vol. 56, article 3(a). Israel signed the Protocol in 2001 and ratified it in 2008.

and situations that might defy the norms and rules of formal political authorities but are regarded as “licit” or acceptable by social actors involved in transnational flows (Abraham and van Schendel, 2005:4). In fact, trafficking often takes place in a fuzzy normative space where a clear-cut distinction of the (il)legal and the (il)licit is unattainable.

Secondly, the legalistic view requires categorization to distinguish voluntary migration from trafficking in persons, where the latter involves “coercion, exploitation, abuse, loss of control on life options, or agency [...] with the main purpose to place persons in a harm ‘situation’ where their labor can be exploited under conditions that involve human rights abuses” (Haque, 2006:7–9). Yet as Salt notes, trafficking challenges the dichotomy between forced and voluntary migration, as it is not always possible to establish whether elements of fraud and/or coercion are present and whether these are sufficient to change the characterization of the situation from legal recruitment and employment to the more grievous act of trafficking (Salt, 2000). Therefore, trafficking and voluntary forms of migration are best thought of as a continuum in which several variations coexist between the poles (Salt, 2000:34; Wong, 2005).

Thirdly, focusing on trafficking as a criminal issue can often obscure the role that institutional and legitimate actors such as private brokers, employers, relatives, and state agents play in facilitating and perpetuating the phenomenon (Limoncelli, 2009; Spener, 2009). As Kyle and Dale (2001) argue, social research on human trafficking tends to trace the causes and agents involved in its creation and maintenance to globalization-related processes that create the conditions for the increase in transnational crime of all sorts, or to an individualized analysis of ruthless and greedy criminals involved in the exploitation of weak victims. Hence, most research tends to remain too general or too particular, overlooking concrete historical actions and actors at both the sending and receiving end of the line that are responsible for the increase in human trafficking (Kyle and Dale, 2001).

In this article, we aim at overcoming the pitfalls of a legalistic approach to trafficking in labor by adopting a meso-level analysis that takes into account the intersection of state policies, private brokers, and local employers and assesses their role in facilitating or hindering the commodification of migration and its degeneration into human trafficking (Kyle and Dale, 2001; for an expansion of a meso-analysis of illicit flows, *see* Abraham and van Schendel, 2005). Drawing on the empirical case study of Israel, we address two main questions: what conditions allow official labor migration schemes to turn into a scheme to import trafficked labor?

How does this transformation take place? To answer, our meso-level analysis seeks to identify the mechanisms, actors, and relation patterns at play at the “labor importing” end. By identifying *mechanisms*, we aim to tackle the “how” of trafficking; by probing the *institutional logic* of action driving a variety of actors and the institutionalized *patterns* shaping their relations, we can illuminate the conditions that facilitate it, and accord its broader meaning as (i)legitimate phenomena (for a meso-institutional analysis of migration policy making in general, see Cornelius and Rosenblum, 2005).⁴

Based on our empirical analysis, we argue that systemic features of official labor migration schemes embedded in neo-liberal logics of governance and institutionalized power relations – rather than necessarily or solely criminal activities – can become powerful catalysts of trafficking in labor taking place first and foremost within the realm of legal labor migration. Contrary to the commonly held assumption that relates trafficking to fraudulent practices and abusive arrangements, we posit that although necessary these are not sufficient factors for understanding the creation of a trafficking industry and its ongoing operation. Two of the most prominent arrangements prevalent in the Israeli case, namely binding workers to employers and the deployment of private mediation agencies, are officially sanctioned in Israel, and they are also to be found in the legitimate toolkit of labor migration schemes elsewhere (Martin, 2005). Moreover, illegal practices by employers such as confiscating and withholding passports or providing substandard living and working conditions, while certainly abusive, do not lead as such to trafficking. Therefore, we suggest that to understand how trafficking becomes a systemic element of official labor migration schemes, we should examine the deeper institutional logic and power relations in which these practices and mechanisms are embedded and normalized.

In answering our main questions, we single out two principal conditions that allow legal mechanisms and practices to result in trafficking: the first is “governing labor migration from a distance,” referring to neoliberal configurations of governance that rely on the privatization of labor recruitment, employment and control, and concomitantly on the creation of a

⁴We draw the concept of “logic” from neo-institutional theory in sociology which adds a cognitive dimension to the analysis of social and political action. Logic refers to broad cultural beliefs and rules that structure cognition and guide decision making in a field. It assumes that institutional behavior is embedded in cultural, social, and political environments and that particular structures and practices are often reflections of as well as responses to rules, laws, conventions, and paradigms built into the wider environment (Powell, 1991).

large for-profit industry of broker agencies. The institutional logic underlying governing at a distance relies on the devolution of certain functions to organized private actors, but more deeply on logics of “de-responsibilization” of state agencies for labor migrants’ rights and conditions. While governance at a distance through private or private–public partnerships has become a distinctive form of labor migration management in many countries (Martin, 2005), trafficking becomes more likely when public agents are unwilling either to invest material resources in the monitoring of workers’ rights and conditions throughout the process or to recognize the moral responsibility entailed by the insource of labor migrants. As we shall see, practices such as binding, turning a blind eye to charging high recruitment fees, and persistent reluctance to engage in bilateral agreements with migrants’ countries of origin reveal that a major interest of Israeli governments is to encourage employers to prefer legal workers as a foremost means to ensure their continuous turnover and temporariness, all of which come at the expense of legal workers’ rights and labor market situation. This interest is further buttressed by the perception of labor migration as a temporary rather than structural feature of the Israeli labor market and of non-Jewish labor migrants as a potential threat to the identity of the state (Kemp and Rajjman, 2008).

The second condition favoring legal labor migration turning into trafficking is clientelist politics. This distinctive pattern of distribution, which entails the concentration of public benefits in the hands of organized groups and the distribution of costs among the unorganized public (Freeman, 1995), relies on institutionalized relations between powerful organized sectors and government officials and politicians across the political spectrum. Whereas governing migration at a distance explains the modes whereby state agencies manage the turnover of labor migration through the creation of profit-driven intermediaries and indenture, clientelistic politics explains why certain sectors are preferred over others, how they manage to influence the allocation of visas and subsidies, and how they succeed time and again in stymieing substantial policy reforms. Both privatization of labor management and clientelism point to a political and institutional context that gives priority to employers’ and state’s interests over those of precarious non-citizen workers, creating the conditions for trafficking-related phenomena to go ‘unnoticed’ and unpunished.

The significance of a meso-level institutional analysis which takes into account the combined effect of private brokers, employers and state regulations and policies in facilitating labor trafficking is threefold. First,

it juxtaposes to prevalent accounts that place at their center (governmental or societal) corruption (for a critique, *see* Richards, 2004). Accordingly, we turn our attention to mechanisms widely regarded in Israel as legitimate in controlling labor migrants and regulating their employment conditions, and to deep-seated societal perceptions of non-Jewish workers as lesser deserving aliens showing how both create the normative environment for trafficking-related abuses. Second, our analysis runs against arguments over states losing sovereign control in face of global migration and international organized crime (Sassen, 1996). Rather than assuming the state's impotence, we point out the active ways in which state institutions retain their control over labor migration and even enhance their sovereign power by rolling out significant aspects of the labor recruitment, employment, and governance while at the same time gaining "autonomy" from societal pressures and migrants' claims. Third, our analysis contributes to the general literature on migration by showing how institutional actors become implicated in blurring the distinctions between legal and illegalized as well as voluntary and coerced forms of migration.

Israel presents a good case study for probing the complex ways whereby legality and illegality, choice and coercion, and private and public agents intertwine to facilitate labor trafficking. In 2003, the U.S. State Department's report on Trafficking in Persons (TIP) placed Israel in the Tier 2 category of countries that had made efforts to combat trafficking for the purpose of prostitution and labor exploitation, but have yet to fully comply with the minimum requirements of international standards.⁵ In 2006, Israel was demoted to the Tier 2 Watch List in the TIP report (U.S. Department of State, 2006:46). At the end of that year, Israel's Law against Human Trafficking came into force, recognizing traffic in persons for labor and other purposes as a criminal offense (for an analysis of the impact of the 2006 TIP report on Israeli efforts to combat trafficking in labor, *see* Efrat, 2012).⁶ Yet, despite the new legislation, the annual TIP reports noted time and again that Israeli government's efforts had proved insufficient in the area of human labor trafficking.⁷ Prominent Israeli

⁵The TIP report began addressing labor trafficking in Israel in 2003; since then, the coverage of labor trafficking has expanded. *See* <www.state.gov/documents/organization/21555.pdf> accessed July 14, 2013.

⁶The 2006 law was not the first criminal prohibition of human trafficking: Sex trafficking was criminalized in 2000 (Efrat, 2012:200).

⁷*See* <<http://www.state.gov/documents/organization/142979.pdf>> accessed June 14, 2010.

NGOs such as Worker's Hotline and the Hotline for Migrant Workers, which advocate on labor migrants' issues, argued down the years that the main shortcoming of governmental antitrafficking policies was their failure to address properly the infrastructural factors that had allowed the labor trafficking industry to thrive for almost two decades. Israel remained at the same rank until 2012, when the TIP report at last grouped it in Tier 1 (U.S. Department of State, 2012).

This study is based on a comprehensive documentary analysis of several data sets we compiled during the research: governmental decisions, parliamentary proceedings of relevant committees – especially the Knesset Committee for the Examination of the Problem of Foreign Workers (heretofore Knesset Committee), reports produced by the Knesset's Information and Research Center, court rulings, local NGO materials, articles in newspapers, and data from various publications on labor migration. Data analysis started with a thorough reading of the materials to identify the social actors involved in the institutionalization and perpetuation of labor trafficking in Israel, namely state actors (*e.g.*, government officials from the executive, legislative, and judiciary), non-state actors (NGOs), local employers, foreign state actors such as the U.S. State Department, and transnational actors such as IOM. Through the analysis, we were able to grasp not only the complex infrastructure of entrepreneurial actors and institutions that facilitates and sustains labor migration and trafficking to Israel but also the extent of power of these actors, especially that of civil society or employers/manpower agencies with regard to the state. In presenting our findings, we have tried to strike a balance between giving a voice to a variety of actors and highlighting the findings regarded as the most representative of most actors involved. In Part I, we briefly describe labor migration in Israel. We then (in Part II) discuss how state regulations (mainly the binding system that prevents visa portability and the privatization of labor migrants' recruitment) and clientelist politics create the initial conditions for the development of a labor trafficking industry based on the exploitation of migrant workers and violation of their basic human rights. In Part III, we present empirical data to illustrate the ways legal migrants become trafficked persons on arrival; we demonstrate how this is done by charging illegal recruitment fees and manipulating workers once they have arrived in Israel. As we shall see, the common forms of coercion and pressure exerted on many of the workers to remain in exploitative conditions (bondage, substandard living conditions, forced labor, long working hours without physical rest, employer's refusal to provide medical care) include withholding

wages, confiscation of passports, and the ever-present threat of deportation should they dare to complain.⁸ In Part IV, we analyze how, despite increasing international and domestic pressure to combat trafficking, state lack of, or only partial law enforcement, coupled with well-entrenched clientelist politics, perpetuate trafficking practices within the scheme of labor migration. To conclude, we discuss the main insights provided by the Israeli case for understanding the global challenge of labor trafficking.

LABOR MIGRATION IN ISRAEL

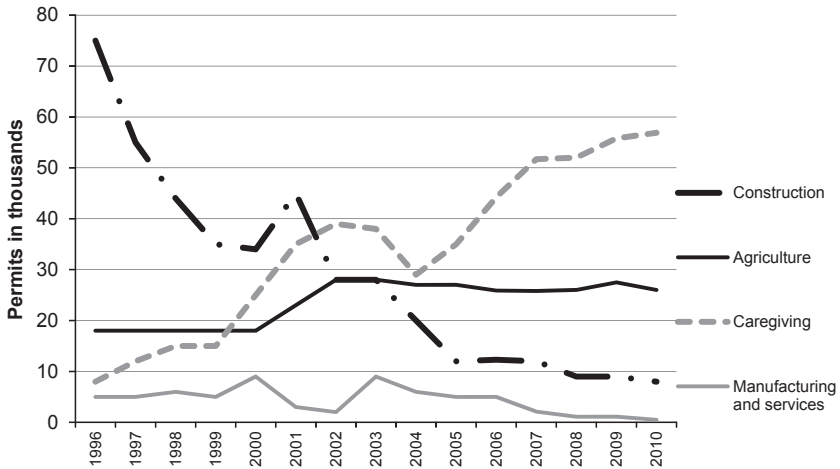
In the early 1990s, Israel enacted a managed migration scheme for low-skilled foreign workers to replace Palestinian commuters from the Occupied Territories in the Israeli secondary labor market, mainly in the construction and agriculture sectors. From 1993, the proportion of foreign workers in the Israeli labor market grew constantly and rapidly, exceeding the highest number of Palestinian commuters ever reached previously (Bartram, 1998; Rosenhek, 2000). In 2002, the number of foreign workers with and without permits peaked at 11% of the total labor force (14% of the private sector labor force). That same year, aiming significantly to reduce the number of foreign workers, the Israeli government resolved a policy of “closed skies” to further limit foreign labor recruitment. This policy succeeded in temporarily reducing the overall number of foreign workers, but by 2011, their proportion in the labor market was again on the rise, comprising an estimated 9% of the total labor force (Natan, 2011). Given these figures, Israel ranks among the industrialized economies that rely most heavily on foreign labor.

Figure I shows the industrial distribution of migrant workers with permits residing in Israel between 1996 and 2010. The bulk of legally recruited migrant workers was concentrated in three main sectors: construction (workers mainly from Romania, China, Turkey, and the former Soviet Union [FSU]), agriculture (mainly from Thailand), and long-term care (LTC) (mainly from the Philippines, but also from Sri Lanka, India, and Bulgaria).

Figure II displays trends in Israeli work permits for foreign workers according to employment sectors. While in 1996, the construction sector

⁸Not all migrant workers in Israel fall into the category of exploited workers. Estimating the number of exploited workers is difficult because not all cases of exploitation are reported to the authorities.

Figure I. Number of Work Permits for Foreign Workers 1996–2010



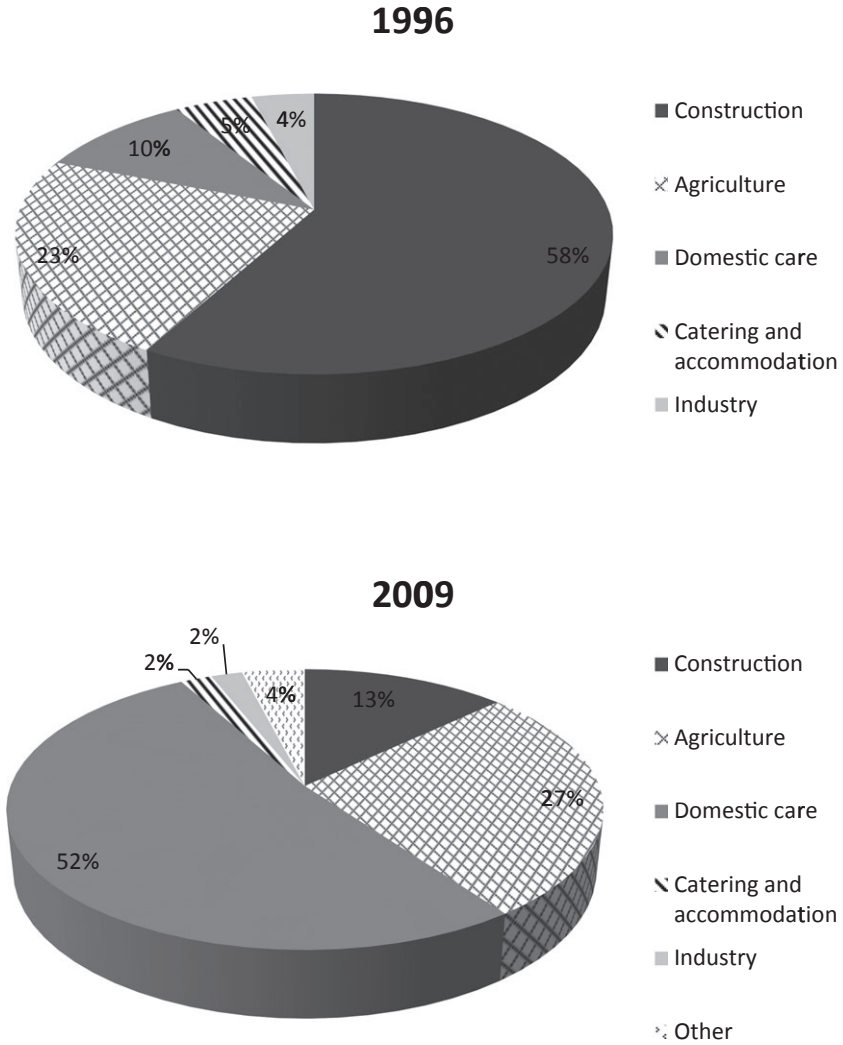
Sources: Bank of Israel, 2007, Natan, G., 2009, PIBA, 2011.

was the largest employer of migrant workers (58% of all permits), by 2009, most work permits targeted the caregiving sector, which accounted for over half the total permits granted that year. The agricultural sector increased its share by the end of the 2000s, comprising a quarter of all permits allocated. The redistribution of quotas and permits among the sectors indicates a change in the balance of power between employers and state agencies and highlights the government's ability to determine which sectors it wished to benefit.

The ethnic composition of the flows also changed over time, with migrants from Asia accounting for 74% of all arrivals in 2010 (see Table 1). This feature is explained by the changing composition of economic branches receiving work permits: a fall in the number of workers in construction (from East Europe, mainly Romania and Turkey) and a rise in the number employed in agriculture (from Thailand) and caregiving (from the Philippines, India, Nepal, and Sri Lanka). Given the expanding share of work permits in LTC and the grant of the majority of work permits to women, the gender composition of labor migration flows to Israel changed over time. For example, while men comprised 85% of all arrivals in 1995, by 2010, their share had shrunk to 48%.

As it is often the case, official recruitment of foreign workers also opened a "backdoor" to an inflow of undocumented migrants arriving

Figure II. Distribution of Non-Israeli Workers by Employment Sectors, 1996 and 2009



Sources: Eckstein 2010, Figure (2), p. 18.

mainly from Eastern Europe, South Asia, Africa, and South America, who became employed primarily in the services sector. According to estimates from the Israeli Central Bureau of Statistics (CBS), at the end of 2010, 95,000 undocumented foreign workers (who entered as tourists and

TABLE 1
ARRIVAL OF WORKERS WITH PERMITS BY COUNTRY OF CITIZENSHIP AND GENDER

Country of citizenship	1995		2000		2006		2010	
	%	% Men	%	% Men	%	% Men	%	% Men
Asia (total)	33.1	81.0	44.1	63.0	74.6	62	74.3	57.0
India	0.4	86.0	1.3	78.0	3.4	53	9.6	40.0
Turkey	7.7	94.0	3.4	98.0	3.4	100	2.5	99.0
Lebanon	5.9	74.0	1.7	56.0	—	—	—	—
China	2.4	97.0	5.6	96.0	10.1	99	5.0	96.0
Philippines	2.9	18.0	14.6	17.0	19.6	14	18.0	13.0
Thailand	13.3	90.0	15.3	91.0	27.5	93	23.5	94.0
Nepal	—	—	—	—	8.6	17	4.6	19.0
Other	0.5	79.0	2.1	66.0	2.1	52	10.8	48.0
Africa (total)	0.4	75.0	1.1	51.0	0.3	82	0.3	92.0
Europe (total)	62.3	87.0	51.1	78.0	24.5	30	23.8	18.0
Bulgaria	2.6	96.0	4.4	69.0	1.2	20	0.3	14.0
Former Soviet Union	3.2	85.0	8.2	66.0	13.1	19	17.6	7.0
Romania	52.7	89.0	31.8	86.0	8.0	38	—	—
Other	3.8	59.0	6.8	61.0	2.1	74	2.8	83.0
America and Oceania	3.0	70.0	3.3	63.0	0.6	61	1.5	70.0
USA	2.2	69.0	2.1	67.0	0.3	90	0.9	85.0
Other	0.8	71.0	1.1	55.0	0.3	38	0.6	50.0
Not Known	2.9	81.0	0.2	78.0	—	—	—	—
TOTAL	100.0	85.0	100.0	71.0	100.0	54	100.0	48.0
	(78,300)		(52,200)		(32,700)		(32,300)	
Mean age	35.0		35.4		35.2		36.4	

Sources: Central Bureau of Statistics, 2004, Table 4.10; 2010, Table A.

remained in the country) resided in Israel, comprising 45% of the total foreign worker population (CBS, 2011).⁹

As a country of socio-democratic origins, Israel has developed progressive social and labor legislation – including laws applying to labor migrants – and exercises judicial oversight over compliance (Kemp, 2010). Yet in the regulation and control of labor migration, the Israeli system is akin to the systems of the Arab Gulf states and the newly industrialized countries (NICs) in Southeast Asia, where laws and regulations governing labor migration are much stricter than those prevailing in western labor-importing countries. Labor migration in Israel is based on contractual labor and is typically temporary in nature, with no expectations of permanent settlement or citizenship rights for the migrant. As in the Arab Gulf states, in Israel, work permits are granted to employers, to whom the migrant worker is indentured, thereby maximizing employers' and state control over the

⁹<http://cbs.gov.il/hodaot2011n/20_11_182e.pdf> (Accessed on January 9, 2012).

foreign population; the state does not allow residence without a work permit or recognize the right of family reunification; and it practices a stringent deportation policy, which at any time allows the arrest and expulsion of undocumented migrants by a simple administrative decree.¹⁰ Finally, the state has until refused to sign bilateral agreements with the countries of origin to regulate recruitment and employment conditions, thereby enabling profit-seeking private agents to dominate this field.

The Israeli system thus deviates in important ways from the International Labor Organization (ILO) Convention of 1949 and the ILO guidelines adopted in 1997 for the protection of temporary foreign workers, which call on governments to allow migrants to switch employers and to bring their families with them, and to regulate their recruitment and employment through public agencies and bilateral agreements with countries of origin (Martin, 2005). Coupled with Israel's continuous anxiety over a changing ethnoscape that may threaten the state's Jewish character, the system outlined above illustrates the context and current situation of labor migrants in Israel.

THE BINDING SYSTEM: STATE REGULATIONS, CLIENTELIST POLITICS, AND UNFREE LABOR

State active policies and regulations, rather than state impotence, can create the initial conditions for the development of a labor trafficking industry. Until 2005, the foreign workers system in Israel was based on the "binding policy" which prohibited visa portability, making foreign workers' work and residence permit valid only for a single employer. The worker's passport was stamped with the name of the employer for whom he/she was permitted to work, and he/she was forbidden to work for any other employer – even one who had been granted a license to employ labor migrants. Binding the worker meant that any change in work relations, such as dismissal, resignation, or employer bankruptcy, would lead to the loss of the worker's residence permit and his/her becoming automatically subject to arrest and deportation.¹¹

¹⁰Nor has Israel joined the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, <www2.ohchr.org/english/bodies/cmw/cmw.htm>. We thank one of the anonymous reviewers for calling our attention to this point.

¹¹This arrangement is rooted in the Entry into Israel Law, 1952, the Employment Service Law, 1959, and Clause 1M (a) of the Foreign Workers (Prohibition of Unlawful Employment and Assurance of Fair Conditions) Law, 1991.

The Israeli binding system resembled the *kafala* patronage or guarantee system in Saudi Arabia and other Gulf countries that require foreigners to have *iqamas*, or permits, bearing the name of the local sponsor and the title of the foreigner's job. As in that system, Israel's binding of foreign workers was a means for the state to delegate to private employers certain functions which in other countries usually belong to state institutions (Calandruccio, 2005:278). The institutional rationale for binding workers to single employers was twofold: First, it served employers' interests in reducing turnover of workers attracted to better wages or working conditions elsewhere, and stabilized or even reduced labor costs; in this capacity, binding operated as a form of subsidy for particular employment sectors, but also for individual employers. Secondly, binding served state agencies' interest in controlling foreigners and in eliciting employers' persistent preference for documented rather than undocumented labor migrants. In other words, the binding system fostered the privatization of state control in the hands of employers, who became the beneficiaries of unfree labor, but who also assumed responsibility for keeping the labor indentured (Kemp, 2004:272–3).

The advantages of the binding system for state institutions and private employers came at the expense of the labor migrants. Under state regulations and enforcement mechanisms, foreign workers were subject to grave violations of their rights: Any foreign workers who demanded that their employers respect labor legislation on working conditions or sought remedies for such violations faced immediate dismissal and loss of their legal status. Employers (especially in the agriculture sector) would “sublet” the services of “their” workers to other employers without the workers' consent, thereby rendering them illegal and deportable. Losing the work permit as a result of the binding policy would have detrimental consequences for workers' ability to repay loans they had taken out back home to pay the high recruitment fees demanded by recruiting agencies there. On the other hand, withholding the workers' passport to stop them leaving their jobs became a widespread norm among employers and a major factor in the creation of forced labor (Hotline for Migrant Workers, 2007).

Paradoxically, the binding system was one of the major catalysts in the creation of *illegalized* workers, “run outs” in the employers' jargon. Data from the Ministry of Labor's Manpower and Research Unit show that in 1999, 53% of the undocumented migrant population entered Israel with a work permit and either overstayed its validity or left their original employer (Bar-Tzuri, 2001). According to the Worker's Hotline

and Hotline for Migrant Workers, two prominent local NGOs advocating on labor migrant issues, 81% of migrant workers arrested in February and March 2003 had entered the country with a valid work permit. Of these, 21% had become “illegal” for one of two reasons: They were reassigned to another employer; or their visas expired without their knowledge as their employer had confiscated their passports containing the permits (Hotline for Migrant Workers and Worker’s Hotline’s, 2003). Labor market regulations were not only ineffective in preventing the turnover of labor migrants (without the workers’ consent), but more importantly, they directly gave rise to the very effect that the state was supposedly combating through its Immigration Police. According to a report by the Ministry of Industry, Trade and Labour (ITL), 46% of male deportees in 2008 were foreign workers from Asian countries (China and Thailand) in which Israel conducted official recruitment of foreign labor (Bar-Tzuri, 2009).

The binding system became a target of public criticism over the years. For example, the Central Bank of Israel criticized binding on the grounds that it inhibited free competition in the labor market at the expense of low-skilled Israeli workers (Kemp, 2004). However, the main drivers behind the struggle to abolish the binding arrangement were NGOs advocating for labor migrants’ rights. This effort peaked with the submission of a petition to the Supreme Court of Justice in 2002 calling for an alternative system for the employment of labor migrants (HCJ, 4524/02).

The petition argued that the binding system violated “fundamental constitutional rights and basic legislative norms, including human dignity and liberty; entitlement to human respect; the right to freedom of contract and association; the freedom of choice and action; and the freedom of occupation, due to the fact that it does not meet the requirements, and specifically the proportionality requirements, of the provisions of the basic law that allow limitations on such basic constitutional rights” (Clause 9).

In September 2004, the state announced that a new employment method had been formulated which was to provide labor migrants with some mobility among employers.¹² The new system applied first to the construction sector – at the time the largest employer of foreign labor, and only later were similar arrangements devised for agriculture and LTC. Under the new system, construction contractors hired workers from

¹²In 2004, the government appointed an inter-ministerial committee (the Endorn committee) to submit recommendations for replacing the binding system.

authorized employment agencies which served as the employers. Employees were allowed to change agencies once every four months and had 30 days to find a new agency before becoming deportable. The agencies were required to deposit high fees for each worker so as to ensure the foreign workers' rights and raise the price of hiring them; this was to reduce their desirability in the sector (and to replace them with Israeli workers, mainly Israeli-Arab citizens). Fees also served as an incentive for employers to ensure that workers leave before or as soon as their permit expired (*see* Ministry of Industry, Trade and Labour, 2008).¹³

The reform ran relatively "smoothly" in the construction sector; however, its implementation in the LTC and agriculture sectors shows how state regulations and clientelist politics intersected in maintaining indentured labor. New employment arrangements for the LTC sector were introduced only in 2010. The new arrangement introduced a "lighter" version of binding, allowing intra-sector mobility between employers and agencies. However, as the policy requires new recruits to be fully employed and the allocation of jobs to LTC workers already in the country, it has encountered criticism from employment agencies, which strongly favor fee-bringing recruits from abroad (OECD, 2011:230). Moreover, following strong lobbying by representatives of the elderly and handicapped groups that oppose the ban on the binding system, an independent bill of 2011 (dubbed by opponents the "slavery bill") enables the Minister of the Interior to limit the geographical area in which migrant caregivers can work and the number of their transfers among employers (Natan, 2011:6–7).¹⁴ Thus, after a period in which migrants were somewhat freer to switch employers, binding has been reinstated, exacerbating the already precarious and unfree status of migrant women in the domestic caregiving sector. The new legal restrictions

¹³Evaluations of the effectiveness of this new arrangement in the construction sector are mixed. Some indicate that the new method improves the supervision of employment conditions. Others point out that the workers are still "bound" to and exploited by their employers (Hotline for Migrant Workers, 2007; Natan, 2007). Although the new system led to a rise in foreign construction workers' wages, as intended, workers must now also pay higher fees and commissions to work in Israel. In addition, deposits are not confiscated from corporations that violate workers' rights (Eckstein, 2007).

¹⁴The bill, passed in 2011, introduced an amendment to the Entry into Israel Law (Amendment N. 21, 5771-2011 SB 926). Its provisions are likely to increase caregivers' dependence on their employers, thereby deterring workers from claiming their rights or leaving abusive employers. Moreover, the bill is inconsistent with the High Court of Justice's ruling against binding (HCJ, 4524/02).

on movement among employers are likely to increase the recruitment of new workers overseas, providing manpower agencies with additional profits.

As for the agriculture sector, the 2004 reform proposed by the Endorn Committee has not been carried out. The farmers opposed it because it would give work permits to the employment corporations and not to the farmers, thereby annulling the binding of the worker to the farmer. Implementation of the reform collapsed under strong political pressure from the agricultural lobby to block any change that would affect the status quo on the binding of workers. For example, in 2006, after the H CJ decision ending the binding system, the Farmers' Association of Israel issued a statement asserting that the Supreme Court had violated the farmers' right to make a living:

The relationship between the foreign worker and his employer requires both sides... As the farmer cannot dispose of the employee and throw him into the street, the situation whereby the foreign worker would be able at any moment to leave the farm in which he is employed, leaving the farmer without workers in the middle of the season, cannot be allowed... The Court decision turns the farmer into a gambler because he runs the risk that foreign workers will refuse to stay on at work until the end of their contract. The High Court ruling will result in restaurants owners and building contractors being able to raid the farms and lure foreign workers to abandon their employers. Without doubt, working in a restaurant is certainly much more appealing than working in a greenhouse at a temperature of 45 degrees
(Haaretz, 2.4.2006).

The workings of clientelist politics aimed at blocking the binding reform became evident in 2006, when the Israeli government announced a new arrangement (the so-called "Bureau System") regulating the recruitment and employment of migrant workers in the agriculture sector. Under the system, a bureau was charged with recruiting labor migrants but the permits were still granted to the farmers so the employee–employer relationship and the benefits it entailed for the farmers remained unchanged. The 2010 State Comptroller's report criticized the government for promoting the new system, arguing that (1) the government's reasons for not adopting the corporation system were not explained and (2) the decision "was not based on a careful analysis of alternative options" as required by government regulations.¹⁵ The State Comptroller

¹⁵The State Comptroller's report observes that there were documents attesting to the existence of an inter-ministerial committee that designed the bureau system, but protocols or any other documentation attesting to the committee's activities and members were lacking (2010:1046–1047).

was concerned that the government's decision was influenced by "interest groups and conflicting market forces" that did not want the system to affect their benefits (2010:46).

The state's reluctance to forgo all types of binding and to fully implement official decisions is, however, only partly explained by strong pressures exerted by employers' lobbies. Binding is a particular, albeit extreme, example of more general governance logic structuring Israeli public policy, whereby "outsourcing" control and management capacities allows public actors to gain greater autonomy from societal demands.

The same logic of outsourcing drives the withdrawal of public agencies from the screening and recruitment process in the countries of origin. This has led to the creation of a private brokerage industry that operates transnationally and whose prosperity depends on profits from recruitment fees collected before the labor migrants arrive.

PRIVATE BROKERS IN LABOR: A NEW ISRAELI INDUSTRY

Private brokerage agencies have come to dominate recruitment and deployment of labor migration in many labor-sending and labor-receiving countries, raising concerns that their interest in the brokerage fees paid by low-wage migrants may and often do differ from the interests of the migrants themselves, as well as those of employers and governments (Martin, 2005:8). But in the Israeli labor market, the role of manpower agencies far exceeds that in most countries (Fisher, 1999; Pilovsky, 1999). Private agencies are involved in all stages of the process, from screening and recruitment in the countries of origin to employment conditions in Israel (Kemp, 2010). The growth of a brokerage industry responsible for the recruitment of labor migrants and its expansion in a manner entirely unrelated to fluctuations in the local labor market indicate that the "economic utility" of bringing labor migrants to Israel derives not solely from their actual employment but also from the high recruitment fees they pay.

Governmental decisions constituted a major driver for the development of a private mediation industry rendering it a necessary building block in the labor import scheme. Although alternative modes for managing recruitment such as the operation of public agencies, non-profit national or international organizations, or bilateral agreements with migrants' countries of origin have been suggested time and again by domestic and international critical observers of the Israeli labor scheme,

these were consistently discarded (*see* Kemp, 2010). As we shall see, paradoxically, privatization of labor migrants' recruitment has not prevented the need for governmental engagement as mediation-related issues reappear constantly on the policy makers' and government ministries' agendas, albeit under the guise of such pathologies as "corruption" or "irregularities," to which the state invariably responds that it has "limited resources" or lacks "the ability" for effective state action.

The Israeli Manpower Contractors Law (1996) explicitly forbids Israeli companies to take broker's fees from overseas jobseekers, but because its application is territorial, agencies simply sidestep it by charging labor migrants fees outside Israel's borders (Haaretz, 2000). Amendments to the Employment Service Law in 1999 and again in 2004 explicitly prohibit this practice by Israeli manpower agencies, but this legislation failed to terminate it. "The manpower agencies make fun of the Ministry of Labor and Social Affairs," said the Deputy Director-General for the Emergency Workforce Unit of the Ministry of Labor and Social Affairs in a debate on the 1999 amendment, "because instead of bringing the money to Israel, it will just stay overseas."¹⁶

Following the intervention of Israeli NGOs, these issues came to the attention of the U.S. State Department in 2003. The U.S. TIP report defined the practice of Israeli manpower agencies that requires labor migrants to mortgage their properties to guarantee that they uphold their labor contract in Israel as "debt bondage" and demanded that the Israeli government investigate and address the matter immediately. The trade in labor migrants was also assessed by the Israeli Minister of Labor and Social Affairs as one of the most "profitable businesses in Israel, a business that makes an estimated \$3bn [annually]" (State Comptroller, 2002). A follow-up report published by the State Department in 2004 maintained that despite an improvement in the Israeli government's efforts to combat human trafficking, not enough progress had been made to meet the minimal standards necessary for eradicating it (U.S. Department of State, 2004:194–195). And indeed, despite limited governmental efforts, the situation continued to deteriorate. In July 2006, state regulations established a maximum fee of about \$900 for private agencies to charge workers wishing to work in Israel. This sum included fees paid to agents abroad and to the Israeli agency beyond the air fare. Israeli law also prohibited

¹⁶See the Protocol 4 of the Knesset Committee for the Problem of Foreign Workers, March 3, 2001.

the collection of recruitment fees from foreign workers for a new placement once the worker was already in the country.¹⁷ But as we shall see, manpower agencies continue to flout the rules and charge sizable recruitment fees, which have actually risen over time.

Below, we identify the irregularities and abuses in the recruitment of workers for Israel. They comprise three main categories: (a) illegal fees, (b) fraud and deceit, and (c) outright human rights abuses.

Illegal Recruitment Fees

Excessive illegal brokerage fees are at the center of most recruitment irregularities and become the “first step in a cycle of dependency and coercion” (Agunias, 2010:12). As noted above, Israeli law puts a cap on such fees collected from migrant workers; however, ample evidence indicates that payment of excessive fees is in fact the norm.

Data recently collected among 200 migrant workers from Nepal, Sri Lanka, the Philippines, China, and Thailand (Rajjman and Kushnirovich, 2012) reveal that migrants were asked to pay exorbitant recruitment fees for work permits in Israel (see Table 2). The lower average fees, in the caregiving sector, ranged between \$5,000 (Philippines) and \$ 6,600 (Nepal and Sri Lanka). Fees in the agriculture sector were much higher as Thai workers were asked to pay on average \$8,720 for a work permit, and Chinese workers were charged the highest fee – \$22,000 on average – to go to work in Israel.

The maximum fee also varied according to employment sector. In the caregiving sector, it was \$9,000–\$9,500; in the agriculture sector, Thai workers paid a maximum of \$12,000. The highest fee, however, was again paid by Chinese workers in construction (about \$32,000). Those few who paid minimum fees (\$1,500–\$2,000 in the caregiving sector, \$3,300 in agriculture, and \$12,000 in construction) were migrants who managed to circumvent paying commissions to Israeli manpower agencies in their country of origin as many had friends or family members were themselves subagents of these agencies (Rajjman and Kushnirovich, 2012:86).

To evade the penalties on illegal fee collection, many migrant workers are instructed to lie about the recruitment fees paid to the manpower agencies in their interview with Israeli immigration authorities. Such

¹⁷See Regulation 3, Regulations of the Employment Service (Payments from job seekers for broker’s fees), 2006.

TABLE 2
RECRUITMENT FEES BY SELECTED COUNTRIES OF ORIGIN

	Nepal	Sri Lanka	Philippines	China	Thailand
Recruitment fees(\$)					
Mean	6,582	6,580	5,039	21,759	8,720
Standard deviation	1,590	1,565	1,544	5,470	2,093
Median	7,000	6,750	5,050	22,000	8,852
Minimum	2,000	1,500	1,700	5,588	3,302
Maximum	9,286	9,500	9,090	31,704	11,874

Source: Rajjman and Kushnirovich, 2012

instructions are especially common in the caregiving sector, where migrants must be interviewed at the Israeli embassy in their country of origin. Most migrants are willing to lie about the real amount paid to the manpower agency because they are afraid that telling the truth will result in the revocation of their visa (Rajjman and Kushnirovich, 2012:84,110–111). Given that they have invested considerable amounts of money to go to Israel, migrant workers become “silent partners” of the manpower agencies (*see also* Knesset Committee, 2009a,b).

To pay the fees, most migrants are obliged to take high-interest loans and/or mortgage their land or house. Through this process, they become extremely dependent on overseas jobs and, as described below, more susceptible to further exploitation by manpower agencies and employers alike. One important concern is the time it takes migrant workers to repay their debts. Average loan repayment times are 1.3 years for Chinese workers, 1.4 years for Sri Lankans, 1.5 years for Thais, 1.7 years for Filipinos, and 1.8 years for Nepalese migrants. In other words, roughly one-third of migrant workers’ average five-year stay is spent repaying the cost of the fees (Rajjman and Kushnirovich, 2012:85). This issue is important, among other reasons, because migrants in debt and afraid to lose their jobs tend not to report legal violations and cases of fraud (Natan, 2011).

Recruitment fees have increased in recent years for all migrant workers, although this has been more pronounced in the case of Chinese workers. For example, workers arriving from Nepal and Sri Lanka in 2005 paid brokerage fees of \$5,000 to \$6,000 (Knesset Committee, 2005). By 2008, migrants arriving from Nepal, Sri Lanka, and India paid \$7,000–\$8,000, while Filipinos paid \$4,200–\$5,500 (Worker’s Hotline’s, 2007a, 2008a,b). The rise in the fees demanded was especially drastic in the case of Chinese workers. In 2004, the average fee for a work permit in construction (where most Chinese workers concentrate) was \$ 9,400; it rose to \$20,000 by 2006 and skyrocketed to \$30,000 by 2010 (Worker’s Hotline’s, 2010).

The changes in migrant worker regulations since the mid-2000s explain this enormous rise in fees paid by Chinese workers. In 2005, the Ministry of the Interior extended migrant workers' permissible period of stay from 27 months to 63 months. The brokers saw this extension as an opportunity to demand higher sums from Chinese workers looking for job opportunities in Israel. Moreover, two additional regulations led manpower companies to increase their fees: They were required (1) to pay new taxes when employing migrant workers and (2) to deposit monthly ILS 700 for each worker as part of a sum to be released to him or her upon leaving Israel. In consequence, manpower agents simply increased their brokerage fees and transferred the new costs to the migrant workers (Worker's Hotline's, 2008b). This act exemplifies how the introduction of pro-worker regulations can be ineffective because increased brokerage fees are simply passed on to the migrant workers.

While the Israeli authorities are aware of irregularities and malpractices in the recruitment system, difficulty in proving such misconduct impedes their effective elimination (Worker's Hotline's, 2008b). Israeli manpower agencies report only a fraction of the brokerage fees that they receive from manpower agencies in the countries of origin to the tax authorities. The ways profits are divided between Israeli agencies and local recruiters in the countries of origin remain unclear, but the Israeli agencies apparently receive roughly 50–70% of the fees paid by migrant workers. The money is transferred to the Israeli brokers through deposits in overseas bank accounts, or it is sent in cash in sealed envelopes with the migrant workers leaving for Israel (Raijman and Kushnirovich, 2012).

Fraud and Deceit

In September 2008, Ran Cohen MK, Chairman of the Knesset Committee, stated:

A major problem we confront...is the one concerning [migrant] workers in Israel... Companies gave them vouchers [*i.e.* illegally assigned work permits] to come here, but [after they arrive] these companies do not want to profit from the [migrant workers'] labor but only from selling the vouchers. [The workers] pay a ransom, these brokerage fees – a fortune in the countries they come from, but once they arrive here nobody wants them because the profit [from bringing them] has already been made. (Knesset Committee for the Examination of the Problem of Foreign Workers, 2008a)

The above statement describes a common fraud termed in Israel the “*flying visa*” – a method, which operated mainly until the mid-2000s, of bringing in migrant workers who had no actual employer waiting for them. Manpower agencies realized that it was more profitable to bring workers to Israel – after being paid thousands of dollars to do so – than to employ them once they arrived. Migrants arriving with a flying visa were stranded as soon as they landed or were fired soon after arrival despite the promise of a 5-year work permit. If they did not find alternative employers, they were detained and deported, and agencies could reuse the permits to import new workers.¹⁸

The economic advantages of importing labor migrants, under conditions of lack of effective official supervision and enforcement, served as an incentive for brokers to apply for more work permits than were actually needed and to trade in them. Indeed, thanks to the flying visa, manpower agencies operated as a kind of “workers’ bank,” offering a constant supply of workers with permits who could be traded. One consequence of this labor-importing industry was the inundation of the Israeli labor market with permit-holding labor migrants in numbers well beyond those needed by employers: It was a situation of “importing new unemployed foreigners.”¹⁹

This method clearly required the cooperation of officials responsible for allocating permits, as well as those above them in governmental agencies, if only by turning a blind eye. How did this “workers’ bank” operate? Representatives of the manpower agencies approached employers who were permitted to bring workers to Israel and undertook to supply these workers, provided employers applied for more than they actually needed. As a contractor in the construction sector explained: “It’s a loop that starts at the [public] Employment Service, passes through the manpower agencies, and sometimes through the contractor. And who pays for it? The . . . worker.”²⁰ According to the State Comptroller, manpower agencies, especially in the agriculture sector, also offer employers willing to use their worker import services payments in cash of up to \$3,000 (State Comptroller, 2010:1048).

¹⁸ See Knesset Committee, 2008b, pp. 15, 26; Worker’s Hotline’s, 2007a.

¹⁹ See Yediot Aharonot, Dec. 7, 2001. For more on the media exposure of the labor migrant trafficking industry, see the television program *Chasifa* [Exposure], Israeli TV, Channel 1, 27 Feb. 2002.

²⁰ See Yediot Aharonot, 2001.

The first cases of the flying visa were detected among Chinese construction workers.²¹ Despite the marked slowdown in the sector, the import of Chinese migrants became a flourishing business for manpower agencies during the 2000s. They were charged exorbitant fees and were legally transferred to work in construction, only to discover on arrival that there was no work. Many reported that their passports were taken from them; then, they were driven off in a car, only to be told after a couple of kilometers that, as one of them put it, they had to “get out of the car because there was no work and everyone had to look for work himself.”²² Unemployed and without the legal possibility to work for another employer, migrant workers became “illegal,” hence at risk of arrest and deportation. If deported, once back in their countries of origin, most would face insolvency because of the loans they had taken out to get to Israel for work.

Various state officials confirmed the press reports that uncovered the political and economic interests behind this scam, which entailed the commodification of migration, and in essence of human beings.²³ Yet, as discussed below, despite some public pressure and the interest taken by the Knesset Committee, no official commission of inquiry has been appointed to study the allegations.

Another sector in which fraud and deceit became widespread was caregiving. Manpower agencies, motivated by profit maximization, began replacing Filipino workers with workers of lower skills from Nepal, Sri Lanka, and India, who were more vulnerable to fraud and exploitation. According to data published by the CBS, in 2009, some 5,100 caregivers arrived with permits from the Philippines, compared with 6,800 in 2005 – a decrease of 25%. But in 2009, about 6,300 caregivers arrived from Nepal, India, Sri Lanka, and other Asian countries, compared with 2,900 in 2005 – an increase of 220%.

In addition to paying higher commissions, many of the Nepalese and Sri Lankan workers who were brought to Israel lacked basic qualifications as they spoke no English or had no relevant experience and training. Many were soon fired; others were never even employed once they arrived

²¹ See Haaretz, Oct. 2, 2002; Hotline for Migrant Workers, 2003.

²² See Yediot Aharonot, Dec. 7, 2001.

²³ On suspicions of the involvement of the Employment Service in the Ministry of Labor, representatives in trafficking in labor migrants, see Yediot Aharonot, 8 Dec. 2000:4–7; Haaretz, 2 Dec. 2001.

in Israel.²⁴ Manpower agencies created a pool of unemployed foreign workers who were deportable, hence replaceable, allowing the companies to bring new workers who generated new profits (Bar-Tzuri, 2010:34). In a discussion of these issues at a meeting of the Knesset Committee, the committee chairman at the time, Ran Cohen MK, commented, “Something very, very fishy going on.” Anat Kidron of the Worker’s Hotline responded: “The advantage of bringing workers who do not know the language is that they are deported within a short time and new ones can be imported in their place” (Knesset Committee, 2009a:33).

The malpractices associated with flying visas and illegal fees led to a government decision in 2007 to halt further recruitment from Nepal. In August that year, Nepal inaugurated an embassy in Tel Aviv. The Nepalese Deputy Minister of Labor met with officials from the Israeli Ministry of the Interior and requested they resume issuing work permits to Nepalese (Knesset Committee, 2009b; Natan, 2009). However, once the import of Nepalese workers resumed, the influx of unqualified workers became a problem yet again. Within three months, about 1,000 Nepalese workers were brought to Israel. Most of them did not speak English and had no training in caretaking. Consequently, many were soon fired and lost their legal status. Yaakov Ganot, then director of Israel’s Population, Immigration and Border Authority (PIBA), commented: “We know that a large share of these workers pay thousands of dollars to an employer to bring them to Israel, but once they arrive at Ben Gurion Airport they are abandoned” (Ynet, 2009). As a result, following the whistle-blowing of a consular worker about fraudulent malpractices in the recruitment process at the Israeli Embassy in Nepal, the Ministry of the Interior once again decided to freeze the issue of work permits to Nepalese workers (Knesset Committee, 2009b; Natan, 2009). However, in 2011, the recruitment of Nepalese migrants was renewed yet again.

Other Forms of Fraud

Some manpower agencies in the caregiving sector practice another form of fraud, namely dispatching workers to employers other than those specified in the visa – usually for various jobs such as domestic work or even agricultural labor; they thus cause the violation of the terms of the visa and place the workers at risk of arrest and deportation (Knesset Committee, 2007).

²⁴ See Natan, 2009; Worker’s Hotline’s, 2007b; Raijman and Kushnirovich, 2012.

One recent lawsuit involved M.S., a female caregiver from the Philippines. She had paid U.S. \$4,500 to a Philippine agency for the promise of being legally employed as a caregiver. However, on arrival in Israel, she discovered that Adiv (Hebrew for courteous), the Israeli manpower agency contracted in the deal, had brought her over only to profit from the brokerage fees she had paid. Instead of placing her with the employer specified in her visa, she was sent to do cleaning jobs for various other employers (Worker's Hotline's, 2007b). In another case, a female Nepalese worker was brought to Israel with a caregiving visa but was forced to work in agriculture against the terms of her visa. She had to work eight to thirteen hours a day, at an hourly wage of ILS 11 (the hourly minimum wage at the time was ILS 17.93) (Worker's Hotline's, 2007b).

Other types of fraud attest to a gray economy of labor import, such as agents promising to arrange work visas to the family or friends of migrants already residing in Israel. For example, K., a Nepalese female migrant, reported that a car dealer from Jerusalem promised to obtain work visas for her family or friends for the price of U.S. \$4,000 per visa. K. paid a total of U.S. \$16,000 and in return was provided with forged Ministry of Interior receipts. By the time she discovered the deceit, the dealer had disappeared, although he was later apprehended (Crim. Ct. Jerusalem 17973/08, Feb. 9, 2010).

Some agents forged documents stating that they possessed permits to import workers, thereby defrauding foreign workers of hundreds of thousands of dollars.²⁵ Others recruited workers on the promise of non-existent jobs. For example, the Philippine Department of Labor and Employment published a warning concerning Israeli recruiters offering Filipinos jobs as nurses at the "Jordan Valley Medical Center" (Philippine Official Gazette n.d.). In fact, Israel never issues work permits for nurses, and there is no such place as the Jordan Valley Medical Center.

The large sums of money associated with the business of importing workers also gave rise to corruption involving state officials. The highest ranking official charged to date is the former Minister of Welfare and Labor, Shlomo Benizri, of the Shas party. Benizri assisted a businessman, Moshe Sela, to obtain permits for employing migrant workers in the construction sector. In return, the Minister received U.S. \$200,000. In April 2008,

²⁵An example is the case of Y.F., who was sentenced to two and a half years in prison for using falsified documents to import workers from China (Crim. Ct. 005001/04 Tel Aviv-Yafo, May 30, 2006).

Benizri was convicted of bribery and other corruption charges (Haaretz, 2008). However, as we argue below, bribery and corruption do not seem to be the major driving logic structuring the trade but its symptoms.

LACK OF ENFORCEMENT, AVOIDANCE, AND NON-IMPLEMENTATION OF VIABLE SOLUTIONS

As noted above, paradoxically, the privatization of labor migrants' recruitment has not eliminated the need for governmental engagement. Israeli authorities and policymakers have been aware over the years of the existence of a gray market profiting from trafficking in human beings. The subject has been repeatedly discussed in Knesset committees and plenary sessions, in the media and in reports submitted by special committees, such as the Rachlevsky Report (2002) and the yearly State Comptroller's reports. Following the introduction of a computerized work-permit monitoring system in 2002, the State Comptroller's report for 2002 included a long chapter on the trade in surplus work permits, in violation of the conditions under which they were provided. The report pointed to serious defects in the allocation process of thousands of permits, which led to a significant rise in the number of labor migrants with permits in the agricultural and construction sectors. A representative sample of permits distributed in these two sectors showed that more permits had been allocated than should have been, according to fixed criteria (an excess of about 17% in each sector). The report blamed the Public Employment Service, the Ministry of Agriculture and the Ministry of Housing (State Comptroller, 2002:651–652).

The authorities were also well acquainted with the industry of procuring fraudulent permits to flood the market with labor migrants. In a discussion in the Knesset Committee held in September 2003, representatives of such ministries as Industry and Employment, the Interior, and Interior Security (Police) Ministry spoke sternly about the issue. It was commonly known, they asserted, that practices of manpower agencies and cooperation between employers and government officials played a central role in creating a black market in permits, yet the issue was not being adequately addressed. Still, the discovery of surplus permits was just a "drop in the ocean" in the fraud industry, according to Effi Tibi, Deputy Head of the Immigration Authority. He noted that the main issue was the existence of around 200 fictitious, illegal manpower agencies (Knesset Committee, 2003). Companies such as these brought in workers in the guise of tourists or pilgrims, and

even used work permits issued to people long deceased. Some creative ways whereby these brokers used the import of labor migrants to make “easy money” were discussed at the meeting (Knesset Committee for the Examination of the Problem of Foreign Workers, 2003:19).

Yet, despite the plethora of reports on the loopholes created by the system and recognition that very little was being done to deal with them, official explanations tended to ascribe trafficking to “corruption” of individuals undermining the influence of institutional patterns structuring the system, and to clientelist politics as described in detail above.

Only in 2006 did officials begin to address trafficking for purposes of labor more seriously. Following U.S. pressure and Israel’s demotion to the Tier 2 Watch List in the 2006 TIP report, Israel’s Law against Human Trafficking came into force (Efrat, 2012:200), prescribing stringent penalties on trafficking in persons.²⁶ The new law is distinct in that it relates to the classic form of trafficking (sex trafficking), but also includes new categories, among them forced labor, keeping persons in conditions of slavery, and organ trafficking.

Despite the new legislation and awareness of the abuses, government antitrafficking efforts in labor migration have until recently focused mainly on protection and rehabilitation of victims. Much less has been done to prevent traffic in persons and to prosecute, convict, and punish forced-labor offenders. In December 2007, the government decided to open a new shelter for foreign male victims of labor trafficking, and to expand the mandate of an existing shelter to assist foreign female victims of both sex and labor trafficking (Hacker and Cohen, 2012:36–37). The decision, which was made under threat of the U.S. State Department to relegate Israel to Tier 3 in its human trafficking ranking due to harsh conditions in the Israeli agriculture and construction sectors, came into effect in 2009. Since then, the U.S. reports mention the continued efforts by the Israeli government to improve the identification and protection of trafficking victims. These efforts include training for law enforcement officers and judicial officials in victim identification, cultural sensitivity, and distribution of trafficking prevention and labor rights brochures for use by the Israeli consulates in countries of origin (U.S. State Department TIP Report, 2009).

²⁶The Law against Human Trafficking prescribes penalties of up to 16 years’ imprisonment for sex trafficking of an adult, up to 20 years’ imprisonment for sex trafficking of a child, up to 16 years’ imprisonment for slavery, and up to seven years’ imprisonment for forced labor.

Still, the reports also comment that antitrafficking efforts are not entirely satisfactory. For instance, while Israel has a formal system of proactively identifying victims of trafficking among high-risk people, this procedure is largely limited in practice to identifying foreign sex trafficking victims, whom the government refers to shelters (U.S. State Department TIP Report, 2009).

According to various local reports, although the government has adopted international standards for the fight against human trafficking, government agencies in charge of identifying victims often view them as undocumented migrants and proceed to detain and deport them. Antitrafficking efforts have in fact diminished since the August 2008 replacement of the Foreign Workers Unit in the Ministry of Industry, Trade and Employment by the Population, Immigration and Border Authority, which operates under the Ministry of the Interior. The former unit, responsible for granting work permits and enforcing labor laws, has now been supplanted by a governmental body whose main role is to enforce immigration laws against migrants residing unlawfully within Israel (Natan, 2011). Thus, migrant protection policies display a clear tension between the desire to help victims and the desire to enforce policies that prevent foreign nationals from settling in Israel (Hacker and Cohen, 2012:38).

Regarding prosecution and punishment of violators, some progress has been made in law enforcement efforts against labor trafficking; however, these efforts have been far less forceful than those against prostitution traffickers.²⁷ Moreover, NGOs indicate that the government is focusing on prosecution of offenses that allow civil penalties rather than on the criminal prosecution of trafficking crimes (Natan, 2011:4,9). Government authorities acknowledge this claim, noting three main factors: the slower progress of criminal proceedings than of civil proceedings against abusive employers; the difficulty in identifying labor traffickers and their victims; and the difficulty in securing conviction and penalties that will serve as deterrents (Hacker and Cohen, 2012:155–159).

What has not been done? The improvements cited above attest to the development of an institutional infrastructure, albeit partial and

²⁷Since July 2009, the police have opened 61 investigations of forced labor and 28 investigations of withholding passports. In 2009, the government initiated the prosecution of 32 suspected offenders on charges of forced labor, exploitation of vulnerable populations, and withholding a passport (Natan, 2011:4,9).

imperfect, to deal with traffickers and trafficked victims. Yet, they fall short of addressing the two pillars that have so far catalyzed the degeneration of the labor migration scheme into a trafficking industry: the binding system and recruitment fees.

Despite Israel's High Court of Justice (HCJ) declaration in 2006 of binding as a violation of "the inherent right of liberty" and a form of "modern slavery," the practice is still very much alive. State authorities have taken limited steps to improve the system or have chosen not to intervene at all. For instance, the 2004 government decision to move from individual binding to an agency binding system (*see* section The Binding System: State Regulations, Clientelist Politics and Unfree Labor above) was meant to intensify supervision of permit allocation and ensure employers' compliance with labor laws through a license system accorded to a limited number of private agencies. Yet, while agency binding has yielded mixed results in superseding the deficiencies of individual binding, the new licensing regulations have in fact transformed the state into a new partner, benefiting from the cumulative profits in the sector. According to the Ministry of Industry, Trade and Labor, since the new method of employment was implemented in the construction sector (2005–2007), state income from the employment of labor migrants by large manpower corporations has amounted to \$45,659,769. As one NGO notes: "[T]he fact that the State benefits from the brokers' fees through taxes makes the state an accomplice to trafficking in human beings."²⁸

Moreover, as noted earlier, new legislation has reintroduced binding into the LTC sector – the largest sector employing labor migrants (Natan, 2011:6–7). So, although the HCJ defined labor market mobility as a constitutional right, and crucial in preventing abuse and forced labor, this development proves the authorities' retreat from ensuring critical rights which they had already granted to migrant workers.

Similarly, attempts to reinforce government supervision of the screening and recruitment process through bilateral agreements with labor-exporting countries did not lead to substantial results until 2013. Reliance on private mediators for the recruitment of labor migrants is not unique to Israel. The ILO has indeed endorsed the use of private agents to facilitate international labor migration, but it has also urged governments to strengthen their regulatory capacities to prevent malpractice and abuse often associated with private brokerage, among other policies,

²⁸ *See* Workers' Hotline, 2007c.

through bilateral agreements with exporting countries and through the use of international non-profit brokerage mechanisms (Martin, 2005).

As noted, through the years, Israeli governments have been reluctant to sign bilateral agreements or to allow international public agencies to intervene in recruitment – allowing private agencies to operate instead. However, in July 2005, the government announced a different recruitment method in the agriculture sector. It was to include the signing of bilateral agreements with Thailand (where most agricultural workers are recruited) and to engage the services of the International Organization for Migration (IOM) in the recruitment process instead of private agencies (Israel Government, 2005; Government Decision #4024). But implementation was repeatedly postponed, allegedly due to bureaucratic difficulties (Natan, 2009:4) or, as explained by the secretary of the Farmers Association, due to IOM inability to shoulder such an undertaking (Haaretz, 2007). Yet missing from these explanations were recurrent patterns of political pressure exerted by the agricultural lobby and manpower agencies in the agriculture sector lobbying both in Israel and in Thailand. As explained by the Director of Migrant Workers Unit in the Ministry of Industry, Trade and Labor, “interested parties in Israel – manpower agencies and employers – are working to sabotage the implementation of the new system of recruitment, because they do not want to give up the high profits.” He asserted that a delegation of Israeli manpower agencies, operating with local Thai agencies that profit from recruitment fees, traveled to Thailand to prevent the change in the recruiting system (Haaretz, 2007) – that time to no avail. Only in 2013 did the implementation of a bilateral agreement begin. It replaced profit-seeking agencies by a newly created public agency, Thailand–Israel Cooperation on the Placement of Workers (TIC), to direct the recruitment of migrant workers, under the management and supervision of IOM (PIBA, 2011a).

Finally, official policies have made relatively little progress in promoting the prosecution and conviction of abusive private brokers for amassing illegal recruitment fees within Israel. A lengthy investigation by several government agencies, including the Tax Administration, into the illegal collection of fees led to a crackdown on manpower agencies in April 2011. Several suspects, including owners of manpower corporations in the construction and agriculture sectors, were arrested on charges of collecting exorbitant brokerage fees from migrants arriving from China and Thailand (Globes, 2011). This was the first time that authorities opened criminal proceedings against manpower corporations suspected of collecting illegal fees.

CONCLUSIONS

This article illuminates the complex ways whereby legality and illegality, choice and coercion, and private and public agents intertwine to facilitate labor trafficking. Human trafficking is widely recognized as a global crime and an affront to democratic values and human rights; however, Israeli labor migration evinces a complex relation between legitimate and illegitimate practices that culminate in forced labor, bondage, and the turning of “transported” labor migrants into trafficked human beings.

The Israeli case yields some insights into this trade. First, it highlights the need to introduce into trafficking research a meso-level analysis that pays closer attention to institutional mechanisms, public and private actors’ logics of action and patterned interactions that make possible human trafficking and shape its meaning (Kyle and Dale, 2001). Investigation of the intermediary system in global migration and the range of public and private agents that facilitate trafficking are crucial, particularly in light of the tendency to portray trafficking as a result of either transnational and global networks or individualized criminal actions (Salt, 2000; Kyle and Dale, 2001). In this article, we have drawn attention to the intersection of state policies, legitimate private brokers, and local employers at the receiving end of labor migration, and how they interact in fueling trafficking practices and forced labor. Focusing on the Israeli case, we analyzed the active role of official labor migration schemes in the growth of a private brokerage industry driven by profit considerations, and in the deliberate reconfiguration of state capabilities in the managing and controlling of the labor migration process. Thus, the picture emerging from our analysis is not one of state weakness and loss of control, but rather one in which neo-liberal governance configurations intersect with the commodification of migration to facilitate trade in human labor. Moreover, we showed how by rolling out the recruitment and control of labor migrants to private agents, state agencies attempt to divert public responsibility over the protection of labor migrants from abuse and deceit.

Secondly, through an in-depth analysis of the Israeli case, we documented how corruption in state and non-state actors (from active involvement in corrupt practices to passivity that tolerates the abuse of public power) allows abuse and exploitation to take place and feeds the industry of labor migration trafficking. But, our institutional analysis also shows that the conditions for trafficking cannot be fully explained merely by the

existence of fraud, deceit, and abusive practices driven by profit seeking. Corruption and criminality should not overshadow the ways in which institutional configurations that favor privatized recruitment policies and official mechanisms that work consistently to the benefit of employers (such as the binding system and the threat of automatic deportation), coupled with flimsy state prosecution of law-breaking employers, have provided the means and the opportunity for the *legal* labor migration system to degenerate into a human trafficking industry. As stated by Richards (2004:160), “markets with a tolerance for restriction on freedom of movement, withholding wages and inhumane or unsafe working conditions” form opportunistic environments for the emergence of trafficking practices. Our study of the Israeli case has shown how the institutional and normative setting that guides non-citizens’ recruitment and employment meets this basic definition.

Thirdly, our analysis highlights the modes wherein official arrangements blur the distinction between legal and illegal and voluntary and forced migration. One of the most common problems in Israel is the abuse of indentured labor migrants. They are promised well-paid jobs, yet on arrival, some find themselves trapped in substandard living and working conditions. These conditions drive many of them into the realm of “illegality” as they abandon their original employer. Hence, through the binding system, “legally” exploited migrants become free “illegal” workers. Paradoxically, in Israel, migrants with permits who embark on their journey as *voluntary* migrants are those who risk falling victim of trafficking. Because illegal migrant workers operate in a free market, they are able to negotiate better salaries and working conditions while breaking free of debt-bondage situations in which they must pay for high recruitment fees.

Fourthly, although not the focus of this article, our analysis suggests that local NGOs, advocacy networks, professionals and international standards and tools can be crucial in prompting antitrafficking campaigns. Equally important are reforms that absorb international conventions and normative standards into national legislation. However, these institutions alone cannot eliminate trafficking altogether. Antitrafficking efforts evince tensions between human rights approaches, which recognize labor migrants as victims of abuse and offense, and a utilitarian approach that places systematically employers and citizens’ interests over labor migrants’ rights. As the Israeli case shows, the latter are deeply linked to a deeper institutional logic which views labor migrants as “necessary” and yet as a latent threat to national sovereignty and identity.

NGO and IOM reports often note the Middle East's status as a destination area for trafficking in women and labor, but scant research exists on trafficking in the Middle East in general, and in Israel in particular (Calandrucio, 2005; Limoncelli, 2009).²⁹ Although we pointed at similarities between Israel and other Middle Eastern countries, particularly in regard to the centrality of the patronage system and the types of abuses in which it typically results, the present paper concentrates on the specific case study of Israel. Notwithstanding, we believe that the theoretical arguments we advance in the paper regarding the contribution of a meso-level institutional analysis for understanding the conditions under which legal practices, official and legitimate actors and mechanisms catalyze trafficking in labor, can be applied and examined in other contexts. Considering that Israel has become a significant importer of labor migration in the last two decades, we hope that a contextualized analysis of the local processes that facilitate the transnational business of trafficking in Israel can better inform human trafficking policy and programs, which are swiftly proliferating in the regional and transnational scene.

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²⁹For a recent exception focusing on the shelter system for victims of trafficking, see Hacker and Cohen, 2012.

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