

Palestinian Workers in Israeli Settlements: Their Status and Rights

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After the establishment of the Palestinian Authority (PA) in 1993, the economic situation in the West Bank (WB) and Gaza Strip (GS) became difficult because of the absence of an efficient economic system and complete reliance on foreign funds. One result of that hardship was the tendency of Palestinian workers, who could not find jobs in the WB, to move to the Israeli Occupying Authority's (IOA) settlements in the WB seeking employment opportunities there. The Palestinian workers in these settlements consist of two types: first, legal workers with Israeli permits to get there, and second, illegal workers smuggled into these Settlements. In 2011, 25,000 Palestinians were working in IOA settlements in the WB; 10,000 of them were smuggled workers. In fact, the IOA was benefitting a lot from both types of workers. The economic, governmental committee of the IOA stated that Palestinian workers were helping both the Israeli economy and Israeli employers. This paper analyzes the economic situation in the WB and the reasons for the unique treatment meted out to the Palestinians by the IOA. Next, it defines the status of the Palestinian legal workers and their rights according to the applied laws, and the violations of these rights by the Israeli employers. Lastly, it analyzes the status of illegal Palestinian workers and their rights according to the applied laws, and the violations of these rights by the Israeli employers.

Introduction

After the establishment of the Palestinian Authority (PA) in 1993, the economic situation in the West Bank (WB) and Gaza Strip (GS) became so difficult because of the absence of a self-sufficient economic system and complete reliance on foreign funds.¹ One result of that hardship was the tendency of Palestinian workers, who could not find jobs in the WB, to move to the Israeli Occupying Authority's (IOA) settlements in the WB seeking employment opportunities there. The Palestinian workers in these settlements consist of two types: first, legal workers with Israeli permits to get there and second, illegal workers who are smuggled into these settlements.²

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¹ Karnit Flug (2014), "The State of Israel's Economy: Bank of Israel Annual Report 2013", Bank of Israel, March.

² International Labor Office (2012), "The Situation of Workers of the Occupied Arab Territories", International Labor Organization, 23.

In 2011, 25,000 Palestinians were working in the IOA settlements in the WB, 10,000 of them were smuggled workers. In fact, the IOA was benefitting a lot from both type of workers. The economic governmental committee of the IOA stated that Palestinian workers were helping both the Israeli economy and Israeli employers.³

Historical Background

The WB Economic Situation

Amongst the Palestinian people who have been represented by the PA, there were a huge number of workers who were employed in the Israeli Settlements in the WB. The number approximately was 20,000 workers in 1993.

The Oslo Accords regulated particularly the economic relationship between the PA and the IOA. These Accords gave the IOA and the PA, the ability to establish a committee to, inter alia, manage the entrance and employment conditions of the Palestinians inside the Israeli Settlements as IOA desires. Article 11 of the Accords states that:

Recognizing the mutual benefit of cooperation in promoting the development of the West Bank, the Gaza Strip and Israel, upon the entry into force of this Declaration of Principles, an Israeli-Palestinian Economic Cooperation Committee will be established in order to develop and implement in a cooperative manner the programs identified in the protocols attached.⁴

In fact, the IOA systematically prevented the establishment of a Palestinian independent economy. This was done through economical agreements that laid down many restrictions and obstacles around the PA. For example, the Paris Agreement was a contractual one that regulated the labor issue between both sides.⁵ Article 7(1) affirms that:

[B]oth sides will attempt to maintain the normality of movement of labor between them, subject to each side's right to determine from time to time the extent and conditions of the labor movement into its area.⁶

The IOA's right to determine the extent of the labor movement granted it to decide significant restrictions on the Palestinian workers. One of these restrictions was regulating a quota of Palestinian workers to work in the Israeli settlements. This quota

³ Alan Sipress (1994), "Separation No Longer Seems a Good Idea to Many in Israel Despite the Violence, Israel Needs Palestinian Labour", *Philadelphia Inquirer, The (PA)*, p. 36, available at <https://ezp.lib.unimelb.edu.au/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=edsnba&AN=0EB32B375640CCE0&site=eds-live>

⁴ Declaration of Principles on Interim Self-Government Arrangements between the Government of the State of Israel and the Palestinian Liberation Organization (PLO), September 13, 1993.

⁵ Protocol on Economic Relations between the Government of the State of Israel and the Palestinian Liberation Organization (PLO), representing the Palestinian People, Paris, April 29, 2004.

⁶ *Ibid.*

was always less than the number of unemployed Palestinians who could work in these settlements. Consequently, the number of unemployed Palestinians started to rise, and they commenced seeking jobs from Israeli employers.⁷

In 2011, 25,000 Palestinians were working in the Israeli settlements in the WB.⁸ 10,000 of them were illegal workers, which meant that they entered these Settlements without valid permits. This made them illegal workers in these settlements.⁹

The Palestinians' preference for working in Israeli settlements was supported by two factors:¹⁰ first, the significant difference between the wage in the WB and the Israeli settlements. The difference was about 2,000 shekels between both the areas; second, the continuous rise in unemployment among the Palestinians who saw working in these settlements as their only option (around 125,000 Palestinians were unemployed in the end of 2011).¹¹

Actually, 28% of the unemployed workers were young Palestinians between 20 and 24 years old. These workers were ready to accept any type of work in the Israeli settlements. They believed that their bodies can bear any kind of working conditions. Moreover, their need for establishing a new family by building a house and getting married required them to get any job at whatever cost.¹²

Uniqueness of Palestinian Workers

As an industrial entity, Israel relies heavily on migrant labor. In 2009, a study showed that 12% of the labor force in Israeli are migrant workers.¹³ This percentage is considered very high compared to other states.¹⁴ Israeli companies employ migrant workers in three main sectors: first, geriatric nursing, most of this sector's employees are Filipinos; second, agriculture, the majority of agricultural workers are from Thailand; third, construction, a majority of this sector's workers are from China and Romania.

Normal agricultural and construction jobs do not need an academic certificate or high skills. Therefore, the first obstacle that Israel placed before the Palestinians,

⁷ B Tselem (2007), "Crossing the Line", p. 10.

⁸ Knesset Research and Information Centre (2011), "Non-Israelis in Israel (Foreign Nationals, Foreign Workers, Refugees, Infiltrators and Asylum Seekers", December, p. 11.

⁹ B Tselem (1999), "Builders of Zion, Human Rights Violations of Palestinians from the Occupied Territories Working in Israel and in the Settlements", p. 9.

¹⁰ Noga Kadman (2012), "Employment of Palestinians in Israel and the Settlements: Restrictive Policies and Abuse of Rights", Kav LaOved, August, p. 6.

¹¹ Palestinian Central Bureau of Statistics (2012), "Labour Force Survey (October-December 2011)", February, p. 18.

¹² *Ibid.*

¹³ Z Eckstein (2010), "Labour Migrants Employment", p. 10.

¹⁴ A Kemp (2010), "Contesting the Limits of Political Participation: Latinos and Black African Migrant Workers in Israel", p. 94.

to prevent them from earning potential livelihood in Israeli settlements, was to employ migrants in jobs that Palestinians could do.¹⁵

There are many restrictions that are exclusively faced by Palestinian workers in the Israeli settlements, unlike the other migrant workers: first, finding an employer, second, dependency on an employer, third, switching an employer, fourth, revocation of a work permit because of the employer's violation of rules and regulations.

Starting with the first one, IOA adopted a highly secure plan for hiring Palestinian workers, because it assumed that some Palestinians would require entering Israeli settlements in order to commit 'violent' actions as a revenge for what IOA did to them.¹⁶ Many Palestinian children, women and men were killed by the IOA. As a result, IOA prevented giving any Palestinian a work permit unless an Israeli employer submits an application to the Israeli Civil Administration Department (CAD) to grant Palestinian a work permit. Palestinian workers get access to Israeli employers through direct contact with them or through Palestinian middlemen who provide Israelis with Palestinian workers.¹⁷

Moving to the second restriction, the IOA's plan of employing Palestinian workers authorized the Israeli employers with full control over the work permit of the Palestinian workers because of the fact that all Palestinian workers are linked with the IOA through their Israeli employer. If an Israeli employer cancels a Palestinian worker's application, then the Palestinian's work permit will automatically stands canceled.¹⁸

The third restriction, which is switching the employer, is factually harmful. Even if the Palestinian worker is dissatisfied with his current Israeli employer, that Palestinian is not allowed to switch employer, because once the Palestinian stops working for his Israeli employer, his work permit will be canceled, and he will not be able to re-enter the Settlements. In fact, many Israeli employers request blacklisting Palestinians if they ask for ending their contract with their current Israeli employers.¹⁹ Moreover, Palestinians cannot appeal for preclusion to the IOA without the help of their Israeli employers.²⁰ However, Palestinians kept working with their employers despite the difficult working conditions.

¹⁵ Senussi Bsaikri (2011), "The Predicament of Palestinian Workers in Israel", *Middle East Monitor*, 7.

¹⁶ G M Massey (2014), "Palestinians in the Israeli Labor Market: A Multi-Disciplinary Approach", Vol. 51, No. 10 (06), *Choice: Current Reviews for Academic Libraries*, 1848.

¹⁷ "Palestinian Working Women in Israel: National Oppression and Social Restraints", *Journal of Middle East Women's Studies*, Vol. 8, No. 2, Spring 2012, p. 78.

¹⁸ "Palestinian Workers: A Comprehensive Report on Work Conditions, Priorities and Recommendations", (Arab World for Research and Development (AWRAD), 2012), 36.

¹⁹ Saleh AlKafri (2005), "The Palestinian Labor Force Dynamic Under the Israeli Occupation: An Impact Study and Lessons to Be Learned for Restructuring the Labor Market", *Palestinian Central Bureau of Statistics*, 34.

²⁰ Leila Farsakh (2002), "Palestinian Labor Flows to the Israeli Economy: A Finished Story?", *Journal of Palestine Studies*, Vol. 1, No. 125, p. 13.

The fourth restriction is the most severe. Because Palestinians depend on Israeli employers to get work permits, any violation or infringement of Israeli laws by the Israeli employer will cause his application to be revoked. Subsequently, the Palestinian worker will lose the work permit to enter the Israeli settlement. This link between the Palestinians and Israeli employers has resulted in punishing Palestinian workers for the violations of their employers.

Difficulties Faced by the Palestinian Workers

The Israeli policy for employing Palestinian workers is based on the assumption that they might pose a security threat to the Israeli settlers in the WB. This assumption is even extended to include the family members of Palestinians who were subject to Israeli army actions. For example, the family members of Palestinian martyrs and prisoners are considered a serious threat to the welfare of the Israeli settlers in the WB.²¹

In order to avoid any 'violent' actions against the Israeli settlers, the IOA regulated a long and complicated process of employing Palestinian workers. The main tool for controlling employing Palestinians was the security preclusion.

The security preclusion is a label that the Israel Security Agency (ISA) put on Palestinians files to restrict their mobility and prevent them from entering Israeli settlements for 'security reasons' that are unknown to the Palestinians.²² They can appeal to the ISA, but only via their employers.²³ However, if the ISA rejected the appeal, then they can challenge the preclusion in the Israeli Labor Court (ILC), otherwise they must wait for 12 months to submit a fresh application for work permit.²⁴

Machsom Watch is a non-governmental organization that helps Palestinians working in Israeli settlements to get their security preclusion removed. In 2011, it filed 283 petitions asking the ISA to remove preclusions applied on the Palestinians who wanted to work in the Israeli settlements. The ISA responded to the petitions by removing 75% of the preclusions. This indicates that the verdict of the preclusion is groundless and unsupported by any proper method of collecting information about the Palestinian workers.²⁵ In addition, some reports allege that such preclusion is imposed on pedestrians, young workers to force them to spy for ISA, or some times because the Palestinians refused to comply.²⁶

²¹ Israel Governmental Commission (2011), "Response to Freedom of Information Petition", July, 2.

²² PIBA, Administration Head Circular No. 33/11, 3.

²³ "Palestinian Workers in Settlements: Who Profits' Position Paper", Coalition of Women for Peace, 2013.

²⁴ Juval Portugali and Michael Sonis (1991), "Palestinian National Identity and the Israeli Labor Market", *Professional Geographer*, Vol. 43, No. 3, p. 31.

²⁵ Amir Paz-Fuchs and Yaël Ronen (2012), "Occupational Hazards", *Berkeley Journal of International Law*, Vol. 30, No. 2, p. 580.

²⁶ Machsom Watch (2007), "Invisible Prisoners", April, p. 20.

The reason behind preferring to hire Palestinian workers, who are excluded from security preclusion, by Israeli employers is the low wages and unsupervised Palestinian labor. It is true that the Israeli employers provide higher salaries to the Palestinians than Palestinian employers. However, when compared to the salaries that Israeli workers receive, which are on an average amounting to \$2800 on the one hand, and the salaries that Palestinian get are on an average \$1800 on the other hand, shows that Palestinians salaries are significantly lower than what Israeli workers receive.²⁷

The long, complicated process of hiring Palestinian workers has created an environment to indulge in corruption and lack of transparency.²⁸ These can be primarily noticed at two levels: first, the Israeli employers, as it happened back in 2009 when an Israeli police officer was accused of bribery after giving an Israeli contractor more than 130 work permits to Palestinians for NIS15000, which is approximately \$4300;²⁹ second, the CAD employees, as it occurred in 2011, when Amram Kavilo, the head of the CAD, was accused of breach of confidence and accepting bribes in order to issue work permits to Palestinians.³⁰ Both these instances show how permits issuing procedures has contributed to the exploitation of the Palestinian workforce by the Israeli employers and CAD employees forcing them to offer bribes to the Israelis.³¹

Legal Palestinian Workers

Their Status Under Israeli Applied Laws

The legal status of the Palestinian workers, those who have work permits, in the Israeli settlements went through two main phases: the first phase was after the occupation of the WB in 1967 till October 2007. All the Palestinian workers' rights and obligations were regulated by the Jordanian law because Jordan was in control of the WB till 1967. Accordingly, no Israeli laws were governing the Palestinian workers in Israeli settlements in the WB.

The second phase was post October 2007. The Israeli High Court (IHC) received a petition from Kav LaOved, an Israeli non-governmental organization for protecting the Palestinian workers in the Israeli settlements, which two Palestinians workers joined as independent applicants. The three applicants in the petition, Kav LaOved and the two Palestinians, based their claims on the fact that Palestinian workers are discriminated, disadvantaged socially and economically because of excluding them from the ambit of the Israeli labor laws.

²⁷ Hedva Isachar (2013), "Non-Enforcement of the Law on Israeli Employers in the Occupied Territories: A Selective List of Israeli Companies Violating Palestinians Workers' Rights", October, p. 21.

²⁸ Juval Portugali (1989), "Nomad Labour: Theory and Practice in the Israeli-Palestinian Case", *Transactions of the Institute of British Geographers*, Vol. 2, p. 207.

²⁹ *State of Israel vs. Sofer*, CrimC 1568/04, 26 May 2005, 21.

³⁰ *State of Israel vs. Amarm Kavilo*, CrimC 6202/11, December 14, 2011.

³¹ Idit Lebovitch (2013), "National Insurance and Non Israeli Workers: Failures in Treatment of Claims Presented by Migrant, Asylum Seeker, and Palestinian Workers", Kav LaOved, December

The court issued a long verdict regarding that petition³² and many rules of constitutional rights and private international law were referred to in the ruling of the court. In summary, the court declared that applying Jordanian labor laws on the employment relationship between Palestinian workers in the Israeli settlement and Israeli employers is:

[A] "violation of equality in the field of employment law ... [it] can also constitute a violation of rights protected by the Basic Law: Human Dignity and Liberty, and rights protected by the Basic Law: Freedom of Occupation³³ ... and [it] externally [contradicts] the principle of public policy and ... constitutional rights of the parties."³⁴

Consequently, the Court held that:

"We grant the petition and make an absolute order setting aside the judgment of the National Labor Court and holding that, in the circumstances of the cases before us, Israeli law governs the employment relationship between the Israeli employers and the Palestinian workers who are inhabitants of the territories."³⁵

The Palestinian workers considered that verdict as a huge victory for them, because Israeli labor laws are better than Jordanian and Palestinian labor laws in respect of minimum wage, social benefits, and insurance.³⁶

After that verdict, the legal status of Palestinian workers in the WB Israeli laws. Article 1 of the Foreign Workers Law states that:

In this law ... a [f]oreign worker [is] [a] worker who is not a citizen of Israel or a resident of Israel.³⁷

Palestinian workers meet the criteria established in the previous definition. First, they are not Israeli citizens, and secondly, they are not residents of Israel.

However, a report published by Kav LaOved argued that Palestinian workers are not in the same category with other foreign workers, because IOA is obliged to compensate them for closing and preventing developing the economic projects in the WB.³⁸ In fact, there is no legislative provision in the Israeli laws that would support such argument. Foreign Workers Law clearly shows that Palestinians, Turkish, Philippines, and Chinese are all foreign workers.³⁹

³² *Kav LaOved et al. vs. National Labour Court in Jerusalem et al.*, HCJ 5666/03, October 10, 2007. "Kav LaOved Case" [kav LaOved's trans].

³³ *Ibid.*, p. 274.

³⁴ *Ibid.*, p. 275.

³⁵ *Ibid.*, p. 280.

³⁶ Asem Khalil (2009), "The Vicious Cycle of Palestinian Workers in Israeli Settlements", (Euro-Mediterranean Consortium for Applied Research on International Migration), p. 6.

³⁷ Foreign Workers (Prohibition of Unlawful Employment and Assurance of Fair Conditions) Law 5751-1991. 'Foreign Workers Law'.

³⁸ B Tselem, above n 8, 10.

³⁹ Ronnie Olesker (2014), "National Identity and Securitization in Israel", *Ethnicities*, Vol. 14, No. 3 (06//), p. 371.

Workers' Rights

Before the IHC verdict, which gave Palestinians the labor rights under Israeli laws, Palestinian workers' minimum wages were protected by special legislation. That special legislation was a military order issued in 1982.⁴⁰ Such military orders were a legislative instrument given to the militant commander of the occupied land in the WB. However, that military order aimed to give Palestinians the minimum wages as regulated under the Israeli laws. The order did not include any other rights for the Palestinians.

As a result of the IHC verdict, the Palestinian workers were able to enjoy all the workers' rights that are mentioned in the Israeli laws. In fact, these applied laws do not consist of Israeli legislation only. They include international conventions too. For example, the IOA adopted Convention 111 of the International Labor Organization in 1959.⁴¹ Moreover, the Universal Declaration of Human Rights enshrines principles of equality that the Palestinian workers can fall back on against the discrimination they faced in Israeli settlements.⁴²

The most relevant rights of the Palestinian workers under the Israeli laws can be categorized into three main categories: first, workers-safety rights, second, wage-protection rights, and third, legal-documentation rights.

In the workers-safety rights, Article X in the Israeli National Insurance Law states that:

The workers' accident compensation system is applied compulsorily to all employers to insure their ... those regularly or temporarily employed ...⁴³

This article endows every worker, including the Palestinians, the right to get an insurance in order to benefit from the compulsory application of the national insurance law. The rights of the Palestinian workers are protected under Article B in the Labor Inspection Law which requires health procedures to be adopted in the workplace in an effective manner:

(1) [P]rocedures as to safety, hygiene and occupational health at the workplace, and the holders of functions thereof in these fields; (2) emergency procedures for special risk situations and for cases of work accidents.⁴⁴

In order to ensure that the Israeli employers abide by these safety requirements, Article 2 in the same law gives the labor inspector the authority to require the employer to implement the safety orders given by the inspector:

⁴⁰ Israel Government, *Order Regarding Employment of Workers in Certain Locations (Judea and Samaria)* (No. 967) 5742-1982, 6.

⁴¹ International Labour Organization (1958), C111 – *Discrimination (Employment and Occupation) Convention*, (No. 111).

⁴² Universal Declaration of Human Rights (December 10, 1948).

⁴³ National Insurance Law.

⁴⁴ Labor Inspection (Organization) Law 5714-1954. 'Labor Inspection Law'.

[R]equire the occupier of the workplace to take within the time specified in the order, such measures as are set out in the order for the purpose of removing the danger.⁴⁵

Furthermore, Article 2 under the Employment Protection Law prohibits the employer from dismissing the workers if they complain about the violations of their safety rights:

An employer must not impair an employee's terms of employment and must not dismiss the employee if he/she has submitted a complaint against the employer or against any other employee of that employer, or that he assisted another employee in submitting a complaint as aforesaid.⁴⁶

Regarding wage-protection rights, Article 2(a) in the Minimum Wage Law stated that:

An employee of the age of 18 years or over (hereinafter referred to as an 'employee') who is employed in a full-time position in his place of employment is entitled to receive from his employer a wage not less than the minimum-wage-per-month, the daily minimum wage or the hourly minimum wage, as the case may be.⁴⁷

In order to prevent the Israeli employers and other contractors from unfair deduction of workers' wages, Article 12(a) in Manpower Contractor Employment Law states that:

A manpower contractor must not accept and shall not demand—in any manner whatsoever, directly or indirectly—any consideration for his services or any refund of expenses from any employee employed by him or from any candidate for employment with him.⁴⁸

Moreover, the Wage Protection Law defines the wage in a manner to include:

[P]ayments in respect of festival days, productivity and overtime, and other payments due to an employee by reason of and during his employment;⁴⁹

This definition makes all these payments essential part of the wage of the employee so that the employer cannot deduct any amount from it. The rest hours' law require every employer to keep a register for the workers' attendance. This requirement aimed to prohibit Israeli employers from employing Palestinians in sectors other than what their permits allowed them for. Article 25(a) states that:

⁴⁵ *Ibid.*

⁴⁶ Protection of Employees (Exposure of Offences of Unethical Conduct and Improper Administration) Law 5757-1997. "Protection of Employees".

⁴⁷ Minimum Wage Law 5747-1987. "Minimum Wage Law"

⁴⁸ Employment of Employees by Manpower Contractors Law 5756-1996.

⁴⁹ Wage Protection Law 5718-1958.

Every employer shall keep a register of working hours, hours of weekly rest, over-time hours, [and] pay for over-time hours and for work during the weekly rest, and such particulars shall be entered therein as shall be prescribed by regulation.⁵⁰

With respect to the legal-documentation rights, Article 1C (a) affirms that:

The employer [must] [enter] into a written employment contract with the foreign worker, in a language understood by the foreign worker.⁵¹

This Article declares the right of Palestinians workers to have written contracts and proofs for their own need. The Employment Services Law protected these contracts by requiring the employer to provide details of the working conditions of the employees to the Payment Division in the CAD. This requirement is essential for the good governance principles and disclosure of workers' information. Article 61D (a) states that:

Employers shall deliver to the payments section, on forms to be prescribed by regulations, monthly reports on every employee employed by the place, category and scope of the employment.⁵²

Violations of Their Rights

Here the author categorizes the violations against the Palestinian workers into identical groups: first, workers-safety violations, second, wage-protection violations, and third, legal-documentation violations.

First, the workers-safety violations, human rights reports from Israeli organizations show that many of the Palestinian workers do not have health insurance in the Settlements. This means that they are not insured enough for any work accidents.⁵³

In 2008, Kav LaOved reported that 59% of the Palestinian workers in the WB are unprotected from dangerous health conditions while not being provided the required safety equipment. 20% of them stated that they received safety equipment which does not meet the minimal standards of protection. 17% of them have no monitoring or observation over the usage of this equipment to guarantee the correct use of them.⁵⁴

Moreover, reports show that the Israeli employers threaten Palestinian workers that they will dismiss them if they kept asking for improving working conditions. The Israeli employers deliberately fight unionization and require Palestinian workers to withdraw their petitions from labor courts.⁵⁵

⁵⁰ Hours of Work and Rest Law 5711-1951, Chapter 6. "Rest Law".

⁵¹ Foreign Workers Law, above n 38.

⁵² Employment Services Law 5719-1959, Chapter 3.

⁵³ Inquirer Staff Writer Alan Sipress (1996), "Migrants Reshaping Israeli Labor – Borders Sealed, Palestinians Lose Jobs to Low-Paid Foreigners", available at <https://ezp.lib.unimelb.edu.au/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=edsnba&AN=0EB32D1A04DFAC81&site=eds-live>

⁵⁴ Kav LaOved (2008), "Poor Work Safety for Palestinian Workers at Israeli West Bank Settlements", p. 23.

⁵⁵ John Gal and David Bargal (2009), "Labor Welfare in Israel", *Journal of Workplace Behavioral Health*, Vol. 24, Nos. 1/2, p. 185.

Moving to wage-protection violations, an Israeli governmental committee published a study in 2007. It stated that among the Palestinians working in the Settlements, 18,000 of them are paid less than half of the minimum wage specified by applied Israeli laws.⁵⁶

Furthermore, in 2008, a report showed that some Israeli employers deducted the recovery period's days from the wage of an injured Palestinian worker,⁵⁷ other employers deduct the days of paid holidays and overtime payments from workers' wages.⁵⁸

Reports also emphasized that Israeli employers use two more illegal ways to deduct the wage of Palestinians: first, they deduct from their wages the amount that Israeli employers are supposed to pay to the Payment Division in the CAD, which is required to cover the social insurance and taxes for registered workers, which should be paid by the employer;⁵⁹ second, Israeli employers request permits from Palestinians to employ them in the agricultural sector, but in fact they employ them in the construction industry, and pay the minimum wage applicable for agricultural jobs which is less than the construction one.⁶⁰

Lastly, the legal-documentation violations, which are violations that prohibit or make it difficult for the worker to complain and make claims for his legal rights in the judicial institutions like the labor courts.

Reports affirm that the Israeli employers intimidate Palestinian workers if they require a written proof for the working days or hours, stating that they will leave them with no work and cancel their permits if they insist on such documents.⁶¹ The negligence of preparing compulsory documents is not just with the employers. In fact, the CAD and the Payment Division suffer from a lot of negligence and are not responsive to the requests to provide the legal documents of the workers to the concerned organizations.⁶² Gisha, a non-governmental organization that supports

⁵⁶ Rebeca Raijman and Adriana Kemp (2011), "Labor Migration in Israel: The Creation of a Non-Free Workforce", *Protosociology: An International Journal of Interdisciplinary Research*, Vol. 27, p. 177.

⁵⁷ Izenberg Dan (2007), "Labor Law Applies to Palestinians Who Work for Israelis in W. Bank, Court Rules", Vol. 3, available at <https://ezp.lib.unimelb.edu.au/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=edsnbk&AN=11C5879D5C604C28&site=eds-live>

⁵⁸ G Mundlak (2009), "The Israeli System of Labor Law: Sources and Form", *Comparative Labor Law and Policy Journal*, Vol. 30, No. 2, p. 159.

⁵⁹ "Israeli, Palestinian Labour Ministers Discuss Palestinian Employment in Israel", 1998, available at <https://ezp.lib.unimelb.edu.au/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=edsnba&AN=0F98E39BD48E6329&site=eds-live>

⁶⁰ Elizabeth Ruppert Bulmer (2003), "The Impact of Israeli Border Policy on the Palestinian Labor Market", *Economic Development and Cultural Change*, Vol. 51, No. 3, p. 657, The University of Chicago.

⁶¹ *Ibid.*

⁶² Rebeca Raijman (2013), "Foreigners and Outsiders: Exclusionist Attitudes Towards Labour Migrants in Israel", *International Migration*, Vol. 51, No. 1, p. 136.

Palestinian workers, requested information from the Payment Division, but it received fake answers after six months rather than 30 days.⁶³

Moreover, in 2011, Kav LaOved received plenty of enquires from Palestinian workers, in which they questioned some Israeli employers' precondition. That condition was an agreement between the employer and the worker, in which the worker agrees not to sue or claim for their violated rights in the judicial institutions. In addition, that condition required them to waive all their rights after being dismissed. Furthermore, some of the Israeli employers threatened Palestinians that will dismiss them if they refuse to sign that agreement.⁶⁴

Illegal Palestinian Workers

Their Status Under the Israeli Applied Laws

It is not easy to define the legal status of the Palestinian workers who smuggle into the Israeli settlements in the WB. The Israeli Applied Laws offer a complicated net of related provisions with regard to that issue. What makes it more complicated is the way of smuggling that the Palestinian workers use to get into Israeli settlements. Mainly, every one of them has his/her own way of violating Israeli laws. However, the focus will be on the common rights emerging from each legal status.

The first way is through job seekers. Palestinian workers enter into a contract with the van drivers to get them into the Settlements illegally by crossing the borders. Then, Palestinians gather at a specific point to meet the Israeli employers who agree to hire them for some days.⁶⁵

Secondly, by getting forged work permits from corrupt employees in the CAD and the Israeli Ministry of Interior. In 2009, Israel reported the arrest of a group of corrupt Israeli employees who gave Palestinian workers fake work permits, in exchange of hundreds of dollars from each worker.⁶⁶

Thirdly, by obtaining a special kind of permit that does not allow the carrier of it to work, but they work in the Settlements once they get there. This kind of permit is a business permit, which allows the carrier to make commercial deals and transactions with the Israelis.⁶⁷

With respect to the Israeli laws, there is one provision that contain all the previous conditions. Article 2(a) of Foreign Workers Law states that:

⁶³ Bethany M Nikfar (2005), "Families Divided: An Analysis of Israel's Citizenship and Entry into Israel Law", *Northwestern Journal of International Human Rights*, Vol. 3, No. 1.

⁶⁴ Noga Kadman (2012), "Employment of Palestinians in Israel and the Settlements: Restrictive Policies and Abuse of Rights", Kav LaOved, August.

⁶⁵ Hani Mansour (2010), "The Effects of Labor Supply Shocks on Labor Market Outcomes: Evidence from the Israeli-Palestinian Conflict", *Labour Economics*, Vol. 17, No. 6, p. 930.

⁶⁶ Ayala Hananel (2014), "Palestinian Laborers Smuggled for Bribes", (February 21). [Kav LaOved's trans].

⁶⁷ See <http://www.cogat.idf.il/1035-en/IDFG.aspx>

Unlawful Employment ... [is] [where] an employer has employed a foreign worker who is not entitled to work in Israel by virtue of the Entry into Israel Law 5712-1952 and the regulations made thereunder.⁶⁸

By referring to the Entry into Israel Law, the first and second ways of smuggling are in violation of Article 8(a) that states:

The master of any ship or the person in charge of any aircraft, train, motor-car or other means of transportation which has come to Israel shall deliver to a frontier control officer, on his demand, a list of the persons in such means of transportation, including the personnel thereof; the list shall contain the particulars prescribed by the Ministry of the Interior by regulations under this Law.⁶⁹

In addition, the third way, which is through a fake permit; Article 12(2) declares that:

Any person who ...supplies false information in order to obtain, for himself or for another ... a permit ... is liable to imprisonment for one year.⁷⁰

This Article clearly states that entering Israeli settlements by providing false information will be penalized. Therefore, it is also a violation of the Enter into Israel Law.

In conclusion, every one of the above-mentioned ways violates the Entry into Israel Law, so all the Palestinian workers who resort to these ways are Unlawful Foreign Employees (UFE). This is their status under the Israeli Applied Laws.

Their Rights

Because these Palestinian workers are considered as unlawful employees under the Israeli law, some could propose that they have no rights with regard to their working for Israeli employers. This assumption is completely flawed, because international conventions, Israeli courts' rulings, and Israeli laws state the opposite of that. In fact, entering Israeli settlements and having human labor rights are two different things. It cannot be claimed that entering an entity unlawfully will deprive workers of their human rights.

Convention 111 of the International Labor Organization, which Israel is a part of, declares in Article (1) and Article (3) that:

(1) For the purpose of this Convention, the term 'discrimination' includes: (a) any distinction, exclusion or preference made on the basis of race, color, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. ...

(3) For the purpose of this Convention, the terms—employment—and—occupation—

⁶⁸ Foreign Workers Law, Chapter 5, above n 38.

⁶⁹ Entry into Israel Law 5712-1952.

⁷⁰ *Ibid.*

include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.⁷¹

By linking the two parts together, nullifying or impairing of equality between the workers' employment conditions is considered as discrimination according to this Convention. This convention does not require being lawfully employed in order to be eligible for these rights, because these rights are basic human rights of the worker and not related to lawful employment.

Also, the Universal Declaration of Human Rights states in Article (1) that:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.⁷²

Notwithstanding the fact that the Universal Declaration of Human Rights is not legally binding, but it provides a direction in understanding the functions of these rights. Primarily, it aims to put equality between humans as an unconditional right.

The IHC affirmed that "[t]his [C]ourt has held in the past that the right to equality is one of the most important human rights. It is the heart and soul of our whole constitutional regime".⁷³ In one of its earlier verdict in October 2007, it emphasized the same. The Court said that "no departure should be allowed from the principle of treating all the workers of one employer at a given plant uniformly".⁷⁴ Moreover, it asserted that discriminating between lawful and unlawful Palestinian workers violates the Israeli Basic Law. The court said that the "violation of equality in the field of employment law can also constitute a violation of rights protected by the Basic Law: Human Dignity and Liberty and rights protected by the Basic Law: Freedom of Occupation".⁷⁵

Based on the above, UFEs have their recognized rights in the laws applied in Israel. Three groups of UFEs are the most violated in Israeli settlement: first, work-rest rights, second, judicial-appeal violations, and third, injured-nursing rights.

With respect to the first group, Article 2(a) of the Hours and Work Rest Law declares that:

A working day shall not exceed eight working hours.⁷⁶

Thus, any work for more than eight hours is considered as overtime work. This kind of work should be paid more than the ordinary wages as Article 16(a) of the same law states:

⁷¹ Discrimination (Employment and Occupation) Convention, above n 42.

⁷² Universal Declaration of Human Rights, above n 43.

⁷³ *Bergman vs. Minister of Finance Case*, Israeli High Court, 698.

⁷⁴ *Kav LaOved Case*, above n 33, 261.

⁷⁵ *Ibid.*, p. 274.

⁷⁶ Rest Law, Chapter 2, above n 51.

[A]n employer shall pay an employee who is employed for over-time hours a wage not less than 1¼ times the ordinary wage for the first two over-time hours in any one day, and not less than 1½ times the ordinary wage for all subsequent over-time hours.⁷⁷

The right of having rest hours daily and rest day weekly is regulated in the same law. As Article 20(a) states:

In any working day of six or more hours, work shall cease for rest and refreshment for not less than ¾ of an hour, including one continuous break of not less than half an hour. On the day preceding the weekly rest or a festival, the break shall be for not less than half an hour.⁷⁸

And Article 9(d) declares that:

[A]n employee who has not previously worked on days of weekly rest and whom his employer requests so to work or notifies that he intends so to request him may state to his employer, not later than three days after the date of the request or notification, that in accordance with a prohibition imposed by commandments of his religion observed by him, he does not agree to work on days of weekly rest.⁷⁹

Moving to the second group, judicial appeal rights are fundamental to any human being because they are the only guarantee for fair and just trial. Article 14(3) of the International Convention on Civil and Political Rights, which Israel has ratified,⁸⁰ states that:

In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing; (c) to be tried without undue delay; (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) to have the free assistance of an interpreter if he cannot understand or speak

⁷⁷ *Ibid.*, Chapter 4.

⁷⁸ *Ibid.*, Chapter 5.

⁷⁹ *Ibid.*, Chapter 3.

⁸⁰ https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec

the language used in court; (g) not to be compelled to testify against himself or to confess guilt.⁸¹

With regard to the last group, the Israeli law gives UFEs the right to be evacuated by the Israeli paramedic service ambulances.⁸² This service provides the injured workers with the urgent nursing attention they need. After providing them with such help, the law asks Israeli police to start the procedures regarding the unlawful employment of that injured worker. Accordingly, the health of that worker is a priority.

The National Insurance Law gives injured workers the right of hospitalization, compensation for absence while taking medication, and compensation for disabilities caused while at the workplace. It is true that the UFEs have no insurance in the first place. However, the National Insurance Institute is obliged to provide them with such assistance because UFEs are de facto employees of Israeli employers, and those employers are obliged to pay for full insurance coverage to the institute.⁸³

Discrimination Against the UFEs

The UFEs suffer from many violations that legal Palestinian workers suffer from in the Israeli settlements. Violations against UFEs include safety and wage-payment rights' violations. The following three groups of violation are identical with the groups of rights mentioned earlier against the UFEs: first, rest-time violations, second, judicial-appeal violations, and third, injured-nursing violations.

Initially, the rest-time violations were reported by the Israeli organizations. UFEs receive lower payment even when they put in overtime hours.⁸⁴ Additionally, their Israeli employers do not pay them extra wages for working during the holidays and resting hours as per the law. Israeli employers make them work for more than eight hours, with no rest, and seven days a week.⁸⁵ The employers threaten them with dismissal if they do not obey.⁸⁶

As far as the judicial-appeal violations are concerned, they are considered the most negative ones because they snatch away UFEs fundamental human right, which is the right for a fair trial. As statistics indicate, the majority of UFEs are under security preclusion. First, IOA issues these preclusions without prior notification to the

⁸¹ *International Covenant on Civil and Political Rights* (New York, December 16, 1966) Entry into force generally (except Article 41): March 23, 1976.

⁸² Hanna Zohar (2010), "The Economy of the Occupation: A Socioeconomic Bulletin", The Alternative Information Centre, January 21.

⁸³ Anastasia Gorodzeisky (2013), "Does the Type of Rights Matter? Comparison of Attitudes Toward the Allocation of Political Versus Social Rights to Labour Migrants in Israel", *European Sociological Review*, Vol. 29, No. 3, p. 630.

⁸⁴ Gitit Ginat (2006), "Dates of Infamy", September 8.

⁸⁵ Michael M Karayanni (2009), "Choice of Law Under Occupation: How Israeli Law Came to Serve Palestinians Plaintiffs", *Journal of Private International Law*, Vol. 5, No. 1, p. 1.

⁸⁶ Miri Gal-Ezer and Chava Tidhar (2012), "Arab Labor'S Alternative Vision: The 'Liberal Bargain' in the Welfare State of Israel", *Language & Intercultural Communication*, Vol. 12, No. 2, p. 146, (05//).

concerned Palestinian, nor mention the reasons for the same.⁸⁷ In fact, Palestinian workers come to know about such issues through their contacts at the CAD, which indicates a serious lacunae in the administrative process of the CAD itself.⁸⁸

An Israeli organization stated that after communicating with thousands of UFE, it arrived at the conclusion that the vast majority of them are not a source of danger to the Israeli settlers. The organization emphasized that they are people looking to earn money merely for a living. They have not committed criminal offence, and they have clear profiles.⁸⁹ The organization itself noticed that many security preclusions are issued after a dispute with the Israeli employers. This connection points to the corruption in the CAD administration because theoretically these preclusions are not subject to the arbitrary decisions of Israeli employers. It is apparent that Israeli employers pay bribes to the CAD employees to avenge Palestinian workers by issuing security preclusions against them.⁹⁰

Other violations that happen during the appeal process are like the information to file applications in the court is only in Hebrew language. Many UFEs do not understand that language and the IOA does not offer Arabic language they need in order to use the right of filing these applications.⁹¹

Furthermore, the lawyers do not have access to the material that the IOA uses to justify issuing the preclusions. IOA justifies that by stating that exposing these material is a threat to the person who collected them. Ironically, sometimes Palestinians who file petitions to remove security preclusion are prohibited from attending the court's session because IOA does not consider attending courts' sessions as an acceptable reason to give them entry permits.⁹²

Lastly, the injured-nursing violations. These are very common amongst UFEs because no employer would like to take responsibility for the UFE as that would expose the employer to the accusation that he unlawfully employed that injured worker. Accordingly, that employer will be punished under the Israeli law. As a result, Israeli employers deny any relationship between them and the UFEs once they are injured. When accidents happen, they sent them with Palestinians to drive those injured workers to the nearest Israeli checkpoint in the WB and send them in Palestinian ambulances to the Palestinian hospitals. Israeli employers have never

⁸⁷ Daphna Golan and Zvika Orr (2012), "Translating Human Rights of the 'Enemy': The Case of Israeli Ngos Defending Palestinian Rights", *Law & Society Review*, Vol. 46, No. 4, p. 781.

⁸⁸ *The Association for Civil Rights in Israel vs. IDF Commander in Judea and Samaria et al.*, HCJ 8155/06. February 2004.

⁸⁹ MachsomWatch, above n 27, 16.

⁹⁰ *Ibid.*, p. 17.

⁹¹ Karnit Flug (2014), "The State of Israel's Economy: Bank of Israel Annual Report 2013", Bank of Israel, March, 36.

⁹² International Labor Office (2012), "The Situation of Workers of the Occupied Arab Territories", International Labor Organization.

called the Israeli ambulance to provide injured workers with the emergency assistance they need.⁹³

The Effectiveness of Available Judicial Avenues

Comparing the Availability of Judicial Avenues for Both Types of Workers

Both the legal and illegal Palestinian workers have judicial avenues to claim their rights. As mentioned earlier, even UFEs have the rights to access the judicial institutions in order to protect their human rights, even though they entered the Israeli settlements unlawfully.

The Ministerial committee affirmed that the Palestinian workers are “entitled to the same social benefits to which any worker in Israel who has the same particulars is entitled”.⁹⁴ Therefore, being entitled for social benefits would be meaningless and ineffective if the judicial avenues to claim these benefits are not available for the workers.

In addition, the Israeli Supreme Court justice Joubran, in the verdict of October 2007 talking about the judicial protection of Palestinian workers’ right had stated that “In my opinion, removing this protection in the circumstances of the case constitutes improper discrimination and it de facto creates a distinction that is neither objective nor ethical in the employment terms”.⁹⁵

However, the fact that the UFEs do not have legal permits has excluded them from availing particular judicial avenues. There are two main reasons for that exclusion. The first, the Israeli employers refuse to do anything that can prove the relationship between them and the UFEs because the employers know the penalties for unlawful employment.⁹⁶ The second, the fact that they are unlawfully employed prevents them from participating in arbitration or collective agreements, which in turn can help them in judicial institutions.

As a result, according to the legal status of the worker, there are two types of judicial avenues available for Palestinian workers: common avenues and avenues exclusively for legal workers. Starting with the common ones, they are first, the Regional Labor Court (RLC) that has the jurisdiction to hear all employment-related violations as Article 3 of Employment Protection Law declares:

⁹³ Kav LaOved (2009), “Palestinian Injured on the Job are Not Evacuated to Hospitals”, October, 16.

⁹⁴ Israeli Ministerial Committee for Security Affairs Resolution No. B/1 (October 1970) 9.

⁹⁵ Kav LaOved Case, above n 33, 286.

⁹⁶ Alan Sipress (1994), “Separation No Longer Seems a Good Idea to Many in Israel Despite the Violence, Israel Needs Palestinian Labour”, *Philadelphia Inquirer, The (PA)*, available at <https://ezp.lib.unimelb.edu.au/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=edsnba&AN=0EB32B375640CCE0&site=eds-live>

The Regional Labor Court shall have sole jurisdiction to hear any proceedings for a breach of the provisions;⁹⁷

Secondly, electing a representative to claim their rights in the RLC. This provision is available for both the legal and illegal workers. Article 3 of the Settlement of Labor Disputes Law states that:

In a labor dispute between an employer and his employees or part of them, the parties to the dispute are the employer and the employees' organization representing the majority of the employees concerned in the dispute or, where there is not such employees' organization as aforesaid, the representative elected by the majority of those employees either for any matter or for that labor dispute.⁹⁸

Moving to the exclusive avenues, legal workers can, first, sign arbitration contract to settle any dispute with their Israeli employers, especially disputes about collective agreements. Article 15 of the same law declares that any labor dispute which the parties have consented in writing to refer to arbitration under this chapter.⁹⁹

Secondly, Palestinian workers can go on strikes and lockout to exercise pressure on their employers. However, workers should serve 15 days notice to their employer before the strike or the lockout. Article 5(a) of the same law announces that:

[A] party to a dispute is bound to give the other party and the Chief Officer ... of every strike or lockout, as the case may be, at least 15 days before the beginning thereof.¹⁰⁰

Success of the Judicial Avenues

The documents related to Palestinian workers' attempts for claiming their rights show that they achieved considerable success. In addition, the workers did not achieve these on their own. In fact, many Israeli organizations helped them significantly to in their efforts.¹⁰¹

The reason for the need for such help is the inability of the Palestinian workers to comprehend the complicated procedures and requirements on the one hand and on the other, many of the workers are not even aware of the fact that such avenues are available to them.

The court was the most-used judicial avenue by the workers. In 2011, Kav LaOved provided assistance to many Palestinian workers to claim their payment and wages' rights, particularly by giving the workers a ledger to help them document the working hours and days they have put in.¹⁰² 76% of them have been awarded a part of their

⁹⁷ *Protection of Employee*, Chapter 3, above n 47.

⁹⁸ *Settlement of Labor Disputes Law*, pp. 5717-1957, Chapter 3.

⁹⁹ *Ibid.*

¹⁰⁰ *Ibid.*

¹⁰¹ *Kav LaOved Case*, above n 33, 286.

¹⁰² Miri Gal-Ezer and Chava Tidhar (2012), "Arab Labor 'S Alternative Vision: The 'Liberal Bargain' in the Welfare State of Israel", *Language & Intercultural Communication*, Vol. 12, No. 2, (05//), p. 146.

claims.¹⁰³ Moreover, many cases in the RLC ended through the compromise formula arrived between the workers and their employers. It is true that the claims of these compromises are less than what the law entitles to these workers. However, many of the workers are forced to accept these compromises because of the urgent need of money for their families.¹⁰⁴

In another case, MachsomWatch sued the Israeli police because it did not publish the criteria for prohibiting Palestinians from working in Israeli settlements. The IHC affirmed that the Israeli police's concealment of the criteria is in violation of the principle of good governance. As a result, some of the Palestinians were made aware of the things they should avoid in order to survive such prohibition.¹⁰⁵

In 2006, Kav LaOved assisted Palestinian workers to sue the Israeli government for the attempt to apply the restrictive employment arrangement on them rather than arranging for their employment based on proper provisions according to the agreement between the IOA and the Palestinian Authority (PA).¹⁰⁶ These cases show that the courts were significant avenues for Palestinian workers and other organizations interested in their welfare.

The strike as a right was also used by Palestinian workers. Nevertheless, that rarely happened because most disputes were settled even before or during the strike period. In a solar factory in the Israeli settlements, workers became so upset because of working continually from 6 am until 9 pm that the workers decided to go on strike in order to put pressure on the factory's management to improve their working conditions. The strike lasted more than two months. The factory was shut down and it was sold. The new management promised the workers to improve their conditions if they accepted to call off the strike. The workers consented and they are enjoying significant improvement in their working conditions.¹⁰⁷

The Usage of Judicial Avenues

There is a major threat that faces all legal Palestinian workers who want to use available avenues to claim their rights. This threat is contained in the Employer and Foreign Worker Service Administration of Israeli Settlements' circular. The circular states that "employers who break labor laws with respect to their Palestinian employees ... are penalized ... with proactive, immediate and automatic suspension

¹⁰³ Michael M Karayanni (2009), "Choice of Law Under Occupation: How Israeli Law Came to Serve Palestinian Plaintiffs", *Journal of Private International Law*, Vol. 5, No. 1, p. 1.

¹⁰⁴ Anastasia Gorodzeisky (2013), "Does the Type of Rights Matter? Comparison of Attitudes Toward the Allocation of Political Versus Social Rights to Labour Migrants in Israel", *European Sociological Review*, Vol. 29, No. 3, p. 630.

¹⁰⁵ MachsomWatch (2010), "Obstacle Course", December 20.

¹⁰⁶ *Kav LaOved Worker's Hotline vs. Government of Israel*, HCJ 4542/02, (March 2006) 23.

¹⁰⁷ *Kav LaOved (2010), "Sol-Or Factory in West Bank Industrial Zone Nitzaney Shalom Lacks Basic Safety Equipment"*, August 18.

of employment permits to workers whose employers have breached their terms of employment."¹⁰⁸

This statement shows how this penalty is de facto applied against the will of Palestinian workers. Moreover, it shows that those workers are de facto the ones who are penalized. The administration punishes the employer by canceling the employees permit. This clause prohibited many Palestinian workers from suing their employers because they did not want their permits to be canceled, which is more beneficial in their point of view than 'potential' awards.

In addition, reports from Israeli organizations do not show any attempt to use available avenues like courts or employees' representative elected by the UFEs. This is because UFEs understand that if the IOA knows about their unlawful presence in Israeli settlements, then they will be put behind bars for at least two years.¹⁰⁹ Therefore, they would accept any conditions while they can guarantee that they still receive wages for their work even though that is less than what they lawfully deserve.

For the aforesaid reasons, only a minority among the legal Palestinian workers take recourse to the courts as judicial avenues to claim their rights. In addition, the use of arbitration has not been recorded so far. One of the main reason for that is what the IOA does at the checkpoint, which is preventing Palestinian workers from attending hearing sessions in the courts. This prevention is justified by 'confidential reasons' that those Palestinians do not know anything about.¹¹⁰ Accordingly, Palestinian workers distrust arbitration as an avenue because they know that they would be prevented from attending arbitration sessions as well.¹¹¹

Penalizing Israeli employers by canceling Palestinians' permits has also affected using the right to strike. Unfortunately, the majority of those workers cannot guarantee that declaring a strike will not affect their work permits. They tend to accept their rights being violated rather than a strike that would end by canceling their work permits. What makes the Palestinian workers less motivated is the absence of monitoring working conditions by the IOA. None of enquiries carried out by the IOA has resulted in suing the employer.¹¹²

In contrast, UFEs have different reasons for not using judicial avenues than the legal workers. In addition to the fear of being jailed for unlawful entrance, they are ignorant about the existence of these avenues in the first place.¹¹³ An Israeli

¹⁰⁸ Employer and Foreign Worker Service Administration, Administration Head Circular No. 26/11, "Automatic Suspension of Employment Permits of Palestinian Workers," (May 2011), 30.

¹⁰⁹ MachsomWatch, above n 106, 9.

¹¹⁰ Hani Mansour (2010), "The Effects of Labor Supply Shocks on Labor Market Outcomes: Evidence from the Israeli-Palestinian Conflict", *Labour Economics*, Vol. 17, No. 6, p. 930.

¹¹¹ Noga Kadman (2012), "Employment of Palestinians in Israel and the Settlements: Restrictive Policies and Abuse of Rights", *Kav LaOved*, August.

¹¹² Bethany M Nikfar (2005), "Families Divided: An Analysis of Israel's Citizenship and Entry into Israel Law", *Northwestern Journal of International Human Rights*, Vol. 3, No. 1.

¹¹³ Daphna Golan and Zvika Orr (2012), "Translating Human Rights of the 'Enemy': The Case of Israeli Ngos Defending Palestinian Rights", *Law & Society Review*, Vol. 46, No. 4, p. 781.

organization interested in supporting workers declared that the majority of the UFEs were completely unaware of these avenues.¹¹⁴

Reforms in the IOA's Arrangements with Regard to Palestinian Workers

The Israeli Government

Monitoring the application of workers correctly is the biggest problem in the Israeli labor system. Gisha, which is an Israeli organization looking into this matter, many a time reported the absence of a monitoring authority in the workplace. Moreover, it reported the malfunctioning of the CAD employees. When the organization required those employees to stick to a specific enacted protocol, the organization was surprised when it discovered their ignorance of that protocol.¹¹⁵

The negative effects of such ignorance are endless. The main effect is the complicated and contradicting procedures that those employees require the workers to go through. In addition, the payment of wages to the workers does not come under the purview of the authority's observation. The reports show that Palestinian workers are receiving wages relatively less than the minimum wage regulated by law.¹¹⁶

In fact, the dependency of Palestinian workers on Israeli employers is the root of most of the problems. This dependency encourages the Israelis to exploit and violate the workers' right keeping the threat of dismissal alive.¹¹⁷ Accordingly, IOA must think seriously in a way to end that dependency by linking these workers to the administrative divisions directly.

Gisha suggested a procedural modification to guarantee the constancy between the working days recorded by the employer and the actual working days. The suggestion was to compare the times a worker entered Israeli settlements with the employers' records. Unfortunately, the Israeli minister of interior refused this suggestion by stating that such information is secret and unpublishable.¹¹⁸

However, the IOA, as an administrative authority, can take two decisions to help Palestinian workers in the Israeli settlements: the first, adding the 'closure proof' right to workers' permits; the second, simplify the procedures of claiming payments from the National Insurance Institute.

¹¹⁴ Rebeca Raijman (2013), "Foreigners and Outsiders: Exclusionist Attitudes Towards Labour Migrants in Israel", *International Migration*, Vol. 51, No. 1, p. 136.

¹¹⁵ Senussi Bsaikri (2011), "The Predicament of Palestinian Workers in Israel", *Middle East Monitor*.

¹¹⁶ G M Massey (2014), "Palestinians in the Israeli Labor Market: A Multi-Disciplinary Approach", *Choice: Current Reviews for Academic Libraries*, Vol. 51, No. 10, (06//), p. 1848.

¹¹⁷ G Mundlak (2009), "The Israeli System of Labor Law: Sources and Form", *Comparative Labor Law and Policy Journal*, Vol. 30, No. 2, p. 159.

¹¹⁸ "Israeli, Palestinian Labour Ministers Discuss Palestinian Employment in Israel", 1998, available at <https://ezp.lib.unimelb.edu.au/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=edsnba&AN=0F98E39BD48E6329&site=eds-live>

Starting with the first decision, 'closure proof' right means that when the security closure is announced at all Israeli checkpoints, the workers must be excluded from the closure and they must be allowed to enter the Settlement. This right is justified by the fact that issuing a permit in the first place for any Palestinian worker indicates that he is not a source of threat to the Israelis. As a result, that worker must be able to earn his living through working in these Settlements. This decision is supported by a report of an Israeli governmental committee which asserted that if the worker meets the criteria to grant a permit, then any security closure is not acceptable to prevent him from entering his workplace.¹¹⁹

The legal base for such decision can be found in the Israeli Basic Law of Human Dignity and Liberty. Article 9 states that:

There shall be no restriction of rights under this Basic Law held by persons serving in the Israel Defense Forces, the Israel Police, the Prisons Service and other security organizations of the State, nor shall such rights be subject to conditions, except by virtue of a Law, or by regulation enacted by virtue of a Law, and to an extent no greater than is required by the nature and character of the service.¹²⁰

Moving to the second decision, simplifying these procedures can help Palestinians to get urgent financial support as and when need, especially when the worker is injured and hospital bills payment is required. Thus, applications to claim that support should be simple and easy to fill by the workers' family. Moreover, the National Insurance Institute itself should allocate a sufficient amount of money for all regular health checkups and medical treatments that workers need.¹²¹

The Israeli Laws

Any attempt to reform the Israeli laws that are applicable to the Palestinian workers in the Settlement must take the penalties' application as a first priority. To elaborate, the Israeli laws penalize Israeli employers by canceling the work permits issued to the Palestinian workers upon their request. This is the fundamental obstacle against effective protection for Palestinian workers. The IOA can penalize the employers by way of financial penalties which is more effective and cause no harm to the Palestinian workers.¹²²

With regard to the false reporting issue of Palestinians' working days by their employers, a possible solution is to issue a regulation that declares the records written by the Palestinian worker to be correct until proven otherwise by the Israeli employer,

¹¹⁹ Rebeca Raijman and Adriana Kemp (2011), "Labor Migration in Israel: The Creation of a Non-Free Workforce", *Protosociology: An International Journal of Interdisciplinary Research*, Vol. 27, p. 177.

¹²⁰ *Basic Law: Human Dignity and Liberty*, 5752-1992.

¹²¹ Inquirer Staff Writer Alan Sipress (1996), "Migrants Reshaping Israeli Labor< Borders Sealed, Palestinians Lose Jobs to Low-Paid Foreigners", available at <https://ezp.lib.unimelb.edu.au/login?url=https://search.ebscohost.com/login.aspx?direct=true&db=edsnba&AN=0EB32D1A04DFAC81&site=eds-live>

¹²² Ronnie Olesker (2014), "National Identity and Securitization in Israel", *Ethnicities*, Vol. 14, No. 3, (06//), p. 371.

i.e. to make the burden of proof fall on the employer, not the Palestinian employee, if such records are contested.¹²³ The assumption should be that all these records are true, and the employer is the one who holds the burden to prove otherwise. This modification will help Palestinian workers to document their rights and not allowing the employers to unfairly deduct from their wages.¹²⁴

Furthermore, Israeli laws can require the Israeli Security Services to clarify their criteria to grant Palestinians with work permits and to give Palestinians the legal education they need to be aware of their rights and how to document any violations against them. This clarification must limit its exploitation of its discretionary powers. This discretion gave the services' employees the ability to exercise unlawful pressure over Palestinians by resorting to bribes. For instance, this text in the criteria's official document shows how restrictive this process is, "the police [can] prevent residents of the WB who have no criminal record ... if [its] officer believes that allowing this individual to enter Israel raises concern for public order and safety".¹²⁵

In addition, linking the security aspect of a Palestinian to the general situation of his family is not less unlawful than punishing Palestinian workers for their employers' violations. The IOA prohibits granting Palestinians work permits if their relatives are considered as a source of threat to the IOA, or if they are prisoners in Israeli jails.¹²⁶

Regarding the UFEs, Israeli laws should provide them with assistance in times of accidents at the workplace. The fact that they entered the Settlements unlawfully should not affect the medical assistance that Israeli administration can give to them.¹²⁷ One of the ways to achieve this is by delaying all investigations against the injured UFEs in the Israeli health centers after guaranteeing their mental and physical well-being. Another way is to penalize the UFEs not through imprisonment, which will negatively affect their families' financial conditions.¹²⁸

Israeli Labor Organizations

In 2011, The Israeli State Comptroller summarized the ineffective measures that Israeli administration took to monitor the application of Israeli laws on Palestinians and

¹²³ Idit Lebovitch (2013), "National Insurance and Non Israeli Workers: Failures in Treatment of Claims Presented by Migrant, Asylum Seeker, and Palestinian Workers", Kav LaOved, December.

¹²⁴ Hedva Isachar (2013), "Non-Enforcement of the Law on Israeli Employers in the Occupied Territories: A Selective List of Israeli Companies Violating Palestinians Workers' Rights", Kav LaOved, October.

¹²⁵ Amir Paz-Fuchs and Yaël Ronen (2012), "Occupational Hazards", *Berkeley Journal of International Law*, Vol. 30, No. 2, p. 580.

¹²⁶ "Palestinian Workers in Settlements: Who Profits' Position Paper" (Coalition of Women for Peace, 2013).

¹²⁷ Juval Portugali (1989), "Nomad Labour: Theory and Practice in the Israeli-Palestinian Case", *Transactions of the Institute of British Geographers*, Vol. 2, p. 207.

¹²⁸ Elizabeth Ruppert Bumler (2003), "The Impact of Israeli Border Policy on the Palestinian Labor Market", *Economic Development and Cultural Change*, Vol. 51, No. 3, pp. 657-676, The University of Chicago.

to guarantee the availability of their rights' protection in accordance with the laws.¹²⁹ He affirmed that the "ongoing failure over many years to carry out meaningful supervision and enforcement in the realm of safety and hygiene in Israeli factories in [the WB], which indicates an ongoing contempt for human life".¹³⁰

The obligation of supervising and inspecting working conditions is mentioned in Article 6(1) of Foreign Workers law. It declares that one of the authorities granted to the inspectors is to:

[R]equire from the employer ..., from any person who is acting on behalf of the employer, or from any employee of the employer, information and documents concerning the implementation of the provisions of this Law.¹³¹

This aforementioned statement of the Comptroller indicates that supervision and monitoring should be the main strategies for all organizations interested in enforcing the applicability of Israeli laws on Palestinian workers. Reports show that many Israeli employers do not provide their employees with safety equipment as per the Applied Law requirement because they are expensive. The Israeli organizations can request the IOA to finance buying of the equipment to be provided to the workers and then require the employers to pay back. That way, employees' safety is ensured because the IOA is responsible for providing the equipment and the Israeli employers will pay directly to the IOA.¹³²

Forming a committee by all the labor rights organizations will be helpful too because the Payment Division in the CAD, which is obliged to observe the employers' abiding the laws, showed significant negligence in doing so.¹³³ This committee will exercise considerable pressure over the authorities to do their job effectively.

Also, this committee can require the Israeli authorities to adopt official ranking of Israeli employer, especially companies that are specialized in labor recruitment. Such action should be linked with financial penalties on the employers who regularly violate Palestinian workers' rights.¹³⁴

In applying this ranking, the committee should be aware of the fact that many Palestinians are employed through contractors.¹³⁵ This employment method is exploited by the Israeli businessmen to deny their obligations under the law. These Israelis allege that there is no employment relationship between them and the employees. However, the court had already refuted that allegation when it declared

¹²⁹ Israeli State Comptroller, "2011 Report", p. 1666.

¹³⁰ *Ibid.*, p. 1681.

¹³¹ *Foreign Workers Law*, Chapter 5, above n 38.

¹³² Bethany M Nikfar (2005), "Families Divided: An Analysis of Israel's Citizenship and Entry into Israel Law", *Northwestern Journal of International Human Rights*, Vol. 3, No. 1.

¹³³ Kav LaOved (2010), "Israel Owes Billions of Shekels to Palestinian Workers", January 26.

¹³⁴ Idit Lebovitch (2013), "National Insurance and Non Israeli Workers: Failures in Treatment of Claims Presented by Migrant, Asylum Seeker, and Palestinian Workers", Kav LaOved, December.

¹³⁵ "Palestinian Workers: A Comprehensive Report on Work Conditions, Priorities and Recommendations", Arab World for Research and Development (AWRAD), 2012.

that “responsibility for the violation of the employment terms lies with both the contractor and the [de facto] employer”.¹³⁶

In the end, providing legal assistance and advocating for Palestinian rights is significantly effective, because many workers, as it has been indicated before, avoid strikes and arbitration agreements. This fact vindicates that courts are, in most cases, the only hope for Palestinians. In fact, the labor rights organizations have recorded many success stories in Israeli labor courts, and they have sufficient experience they need to keep providing Palestinians with legal assistance.

Conclusion

The aim of this study was: first, to identify the status of both types of Palestinian workers who work in the Israeli Settlements of the WB under the Israeli Applied Laws, as legal and ‘smuggled’ workers; second, to record the violations that Israeli employers commit against the workers’ rights; third, to show how successful available judicial avenues are to the workers while claiming their rights, and how often these avenues were used; and fourth, to suggest reasonable reforms to improve the conditions of the workers.

First of all, the study found that legal Palestinian workers are considered as foreign workers under the Israeli law, and ‘smuggled’ workers are considered as unlawful employees. After that, the study recorded three types of violations against each type of workers. Israeli employers violated the legal workers’ safety rights, wage-protection rights, and legal-documentation rights; and they also violated the illegal workers’ working-rest rights, judicial-appeal rights, and injured-nursing rights.

Furthermore, the courts were the most successful judicial avenue that workers had taken recourse to, especially by the legal workers. Other avenues like arbitration, strikes, or labor unions were ineffective, because they were constrained by security provisions that operated against the workers.

At the end, the study suggests that the Israeli government should terminate the dependence of Palestinian workers on Israeli employers to grant work permits. Moreover, the Israeli laws should be amended to give the workers, who were subject to security preclusion, the right to appeal against such decisions; and the right to have clear information about the reason for it. Additionally, the study proposes Israeli NGOs who are interested in Palestinian workers’ rights to form a committee that can operate as one united entity before the Israeli government and its labor officials.

Further research could be conducted in order to identify the judicial avenues that can be used by the PA to call for more protection and monitoring of Palestinians working in the Settlements. Such research should focus on agreements and treaties signed by both the parties keeping in view the international conventions that Israel is a party to. ▣

¹³⁶ Asem Khalil (2009), “The Vicious Cycle of Palestinian Workers in Israeli Settlements”, Euro-Mediterranean Consortium for Applied Research on International Migration.

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