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Worker's Hotline
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Hotline for Refugees and Migrants

In Broad Daylight

The Deposit Law:
Implementation & Impact



May 2019

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Implementation and Impact

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About Kav LaOved

Kav LaOved – Workers Hotline is a non-profit, non-governmental organization committed to the defense of the most disadvantaged workers in the Israeli labor market. Since its establishment in 1991, Kav LaOved has helped workers who are Israeli citizens, migrants, Palestinians from the occupied territories, refugees, asylum seekers and human trafficking survivors to realize and uphold their rights. In addition, the organization works to alter legislation and raise public awareness about workers' rights. The NGO provides individual assistance, engages in legal proceedings, collects information and documents the labor market from the point of view of workers.

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About the Hotline for Refugees and Migrants

The Hotline for Refugees and Migrants is a nonpartisan nonprofit organization that aims to protect and promote the human rights of refugees and migrants and to prevent human trafficking in Israel through client services, detention monitoring, legal action and public policy initiatives.

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Table of Contents

| | |
|--|-----------|
| 1. Introduction | 1 |
| 2. Background | 3 |
| 3. Main Elements of the Deposit Law | 7 |
| a. Deducting 20% of Asylum Seekers' Salaries and Placing the Sums in the Deposit Fund | 7 |
| b. Depositing 16% of Asylum Seekers' Salaries Paid by Employers | 8 |
| c. Tax Deductions | 11 |
| d. Providing Information to Workers and Lack of Oversight Over the Funds' Investment and Management | 11 |
| e. Deductions from the Employer's Contribution to the Fund | 12 |
| 4. The Law's Unethical Purpose | 15 |
| 5. Flaws of the Deposit Law | 20 |
| a. Erosion of Labor Laws and Unreported Employment | 20 |
| b. Pushing Asylum Seekers to Extreme Poverty, Impairing their Health, Social Security and Living Standards | 20 |
| c. Non-Access of Workers to the Deposit Fund | 22 |
| d. Violations by Employers and Lack of Enforcement | 23 |
| e. Payment of Debts for Bankrupt Employers from State Funds | 26 |
| f. Asylum Seekers Who Are Not "Infiltrators" | 27 |
| g. Excessively High Deductions in the Cleaning Sector | 28 |
| h. Hours of Operation of the Bank Managing the Deposit Fund | 29 |
| 6. Consequences of the Deposit Law | 31 |
| 7. Exclusion of Humanitarian Cases | 33 |
| a. Formulation of Regulations for Exclusion of "Humanitarian Cases" | 33 |
| b. Substantive Failings of the Exemption Arrangement | 34 |
| c. Failings in Implementing the Waiver | 36 |
| 8. Summary and Recommendations | 39 |

1. Introduction

"I took out my eldest daughter (she's 8) from the after-school program at school to save money. She comes home and stays by herself. Because my husband works all day and night, I sometimes leave the children alone at home, and the eldest, the eight-year-old, takes care of the three-year-old boy. For example, when I go to the doctor. I don't have money to hire someone to help them or send them to a "babysitter" [unregulated overcrowded kindergarten]. Today we have health insurance for the children, but now we no longer have the money. My husband will have to work all day and night, I don't know how else we'll manage otherwise. I'm so worried I can't sleep at night." From an affidavit of A. A., September 19, 2017.

In May 2017, the Deposit Law came into effect, obligating Israeli employers to deduct 20% of the wages of asylum seekers they employ, and deposit them in a designated Deposit Fund where the money is kept until the worker leaves Israel. The deposit was originally created to force employees to pay social benefits for migrant workers employed in Israel, and the original intention was to protect the rights of migrant workers. For asylum seekers, however, the government drafted a law with the opposite intention: push asylum seekers into poverty to coerce them into leaving Israel. The outcome of the law is the deduction of a fifth of the meager wages of asylum seekers, one of the most vulnerable groups of workers in the Israeli labor market.

The implementation of the law has been characterized by multiple failings, and the negligent handling of the funds has resulted in the *de facto* confiscation of millions of shekels from workers by their employers, who fail to deposit the money in the Deposit Fund. The principle guiding the Population, Immigration and Borders Authority (PIBA) at the Ministry of Interior is that it is not their responsibility to address this problem. Instead, it is left to NGOs – chief among them Kav LaOved – or employers, to solve problems that arise. There are three main reasons for these flaws in implementation: the body which controls the millions of shekels deducted from the wages of this marginalized and poor population is ignoring its responsibilities; the total lack, until recently, of enforcement by PIBA; and the absence of any effort

2 In Broad Daylight

by the authorities to inform employees about the transfer of their money, so that many discover, too late, that the money deducted from their wages is not being deposited and is instead confiscated by their employers.

This report provides background information about the Deposit Law legislation; it details the slipshod process in which the law was passed, as part of expedited proceedings; it explains the main articles of the law and the law's abusive aim; it examines the multitude of failings characterizing the implementation of the law; and finally, details the actions that should be taken to prevent the extensive harm it causes to the population of asylum seekers: women, children, the elderly, victims of torture and human trafficking, and survivors of genocide and persecution whom Israel failed to protect and shelter. Instead, Israeli officials have met asylum seekers with intransigence, deliberate obstacles and maltreatment, with the Deposit Law playing an important role in these policies.

2. Background

"I am voluntarily departing Israel and I have a flight ticket on April 30, 2018. Now I found out that all the money deducted from my wages was not transferred to the Deposit Fund... I am missing several thousands of shekels that were deducted from my wage for the Deposit Fund, and I don't know if I can receive them before the upcoming flight date. If I do not receive the money, I will have to cancel the flight." From the affidavit of B. S. T., April 17, 2018.

The first asylum seekers began arriving in Israel in significant numbers in 2005, and increasingly so in 2010-2012. In wake of these arrivals, Israeli governments adopted policies intended to make their lives miserable, deter them from seeking protection in Israel, and compel them to leave the country, supposedly of their own volition, using oppressive and coercive measures. As Eli Yishai, Minister of Interior at the time, stated: "Until I can deport them I'll lock them up to make their lives miserable."¹

In January 2011, the Knesset passed the 3rd amendment to the Anti-Infiltration Law (1954), which allowed the detention of "infiltrators," undocumented migrants who did not enter Israel through a border crossing and who cannot be deported, under the law, for at least three years. The declared purpose of the law was to deter asylum seekers from entering Israel and seeking shelter there, and to prevent their integration into society. The High Court of Justice (HCJ) abrogated the amendment on September 16, 2013, as part of *HCJ Adam*.² The State then rushed to pass the 4th amendment of the Anti-Infiltration Law, "the same policy under a different name," as the High Court later ruled, which allowed asylum seekers to be held in detention for a year and then hold them indefinitely in the Holot Detention Center. The High Court struck down this amendment as well, as part of *HCJ Eitan*, on September 22, 2014.³

¹ Omri Ephraim, *Yishai: Next phase – arresting Eritrean, Sudanese migrants*, Ynet, August 16, 2012. Available online: <https://bit.ly/2DM6EXu>.

² HCJ 7146/12 *Adam vs. the Knesset*, September 16, 2013.

³ HCJ 7385/13 *Eitan – the Israeli Immigration Policy Center vs. the Government of Israel*, September 22, 2018.

Nov 19, 2014

A memorandum of the bill is published.

Nov 26, 2014

One week for public comments.

Nov 27, 2014

One work day to address the comments.

Nov 30, 2014

The draft is approved by the government.

Dec 1, 2014

The bill passes the 1st reading in the plenum.

Following these court decisions, the Israeli government proposed another iteration of the law on November 19, 2014. Under the new law, asylum seekers could be held in detention for three months and then held at the Holot Detention Center for 20 months. The law was passed in expedited proceedings and was later partially voided in *HCJ Desta*.⁴ This law, whose main focus was the deprivation of liberty, included a section mandating that 20% of the salaries of asylum seekers be deposited by the employers in a fund run by the State through the Mizrahi Tefahot Bank, which won the bid to operate it. In addition, the employers must transfer 16% of the gross (pre-tax) salaries to the Deposit Fund. The sums in the fund, having no insurance value, accrue for years, during which the asylum seekers are unable to withdraw them or receive a pension in times of need.

The purpose of the Deposit Fund was made apparent, again and again, throughout the hearings during the legislative process: "preventing their desire to remain," and "encouraging them to leave the country." In line with this purpose, asylum seekers can only receive the funds if they leave Israel. In reality, only some of the funds can be withdrawn, as a share of the employer's deposit can be deducted for different reasons: if asylum seekers do not leave shortly after a (theoretical) decision is made to deport them, some of the funds are deducted for delays in departure. The shares deducted range between 35% to 100% of the funds, according to the length of delay in departure. In addition, some of the funds are taxed at a rate of 15%, and costs of "removal" are deducted as well, if the State incurs such costs.

The Deposit Law claims to rely on Section D of the Foreign Workers Law (1991) which was amended in 2000. There is, however, very little similarity between them.

The Foreign Workers Law, in its original setup, entitles the Minister of Welfare to require employers of migrant workers to deposit, on a monthly basis, a set sum to a designated fund. These funds are to be given to workers upon their departure from Israel after a deduction of a 15% tax. The Foreign Workers Law was amended in 2000

⁴ HCJ 8665/14 *Desta vs. the Knesset*, August 11, 2015.

Dec 2, 2014

Back-to-back hearings in the committee to prepare the bill.

Dec 3, 2014

Only one session to address the section regarding the deposit.

Dec 8, 2014

The bill passes into law after the 2nd and 3rd readings.

Jan 3, 2017

Another amendment to the law.

May 1, 2017

The Deposit Law goes into effect.

to protect the labor rights of migrant workers who are entitled to all labor protections and rights stemming from Israel's labor laws. The amendment established a mechanism that guarantees the transfer of sums to migrant workers residing in Israel for limited durations, and ensured that these sums, which cover pensions and other social rights, are given to the migrant workers upon their departure, when their permit elapses, to encourage them to meet the deadline for departure.

In contrast, the Deposit Law imposed on asylum seekers included an obligatory deduction of wages, which does not exist in the 2000 law. The purpose of the deposit in the Foreign Workers Law, to protect the rights of migrant workers, is wholly absent in the Deposit Law, which obligates the asylum seeker, and not just their employer, to deposit a share of their wages. The deposit thus became a mechanism for a punitive and discriminatory taxation of asylum seekers, which has nothing to do with the original purpose of the deposit in the Foreign Workers Law.

As mentioned above, during the legislative process of the Anti-Infiltration Law, the deposit arrangement was nothing but a footnote; only a single hearing was dedicated to this issue at the Knesset Internal Affairs and Environment Committee. This was the last hearing before the vote in committee on the entire amendment to the Anti-Infiltration Law. The position of the Office of the Knesset's Legal Counsel was that it was impossible to draft a formal legal opinion on the deposit arrangement in such an expedited legislative process, and should therefore be proposed and debated separately from the law on detention. The lawmakers, however, rejected this position.

The law was deliberated on and passed in committee in a rush. The memorandum of the bill was issued on the evening of Wednesday, November 19, 2014,⁵ and the public given only a week to respond to it. One work day was dedicated to address the public's comments. On Sunday, November 30, 2014, the government discussed the draft of the bill.

⁵ The memorandum of the Anti-Infiltration Law and Guaranteeing the Exit of Infiltrators from Israel (Amendments and Temporary Provisions), 2015, published on November 19, 2014.

The government approved the draft and authorized the Ministerial Committee on Legislation to approve the bill. The Committee met immediately after the governmental meeting and approved the bill. On Monday, December 1, 2014, the bill was presented to the Knesset plenum.⁶ The same evening, the law passed in the first reading. On the following two days, Tuesday and Wednesday, December 2-3, 2014, the Knesset Internal Affairs and Environment Committee held a marathon of back-to-back hearings, concluding the discussion on the bill and reservations to it late on Wednesday. Only one session was dedicated to the section regarding the deposit. On Monday, December 8, 2014, the Committee approved the bill's language and rejected the reservations. That same evening – on the eve of the government's collapse and a declaration of elections – the second and third readings were held in the plenum and the bill passed into law.

The law stipulated that the deposit arrangement would not go into effect until six months from the publication of a writ by the Minister of Finance, who did so only in late 2016. The deposit arrangement came into effect on May 1, 2017, after the 2017 amendment of the law was passed.⁷ A petition against the law was filed on March 13, 2017, and remains pending as of the writing of this report.⁸

⁶ See the version of the law from Dec 1, 2014, available in Hebrew (PDF): <http://bit.ly/2mhWft6>.

⁷ The Anti-Infiltration Law and Guaranteeing the Exit of Infiltrators from Israel (Amendments and Temporary Provisions) (Amendment), 2017. Available in Hebrew: <https://bit.ly/2QczcQg>.

⁸ HCJ 2293/17 *Gersegheer vs. the Knesset*.

3. Main Elements of the Deposit Law

"Since arriving in Israel, I worked as a cleaner. After the deposit [law], I increased my work hours from nine to 12 hours per day. Otherwise, I cannot survive. My children are at a kindergarten for 12 hours per day. The kindergarten costs me NIS 700 [\$190] per month for every child. My hourly rate is NIS 26.88 [\$7.3]. Since the start of the Deposit Law, 20% of my salary is deducted. About NIS 1,000 [\$271] is taken out of my salary for the deposit. This is in addition to other taxes, such as 14% in income tax, National Insurance tax and health insurance." From the deposition of F. M., September 19, 2017.

The Deposit Law stipulates mandatory deposits into a fund, totaling 36% of the salaries of asylum seekers. The deposit is made up of two components: a 20% deduction from the salary of the employee, and a 16% deposit paid entirely by the employers of asylum seekers. Article 1(xi)1(A) of the law codifies the obligation of depositing both elements, tying them to each other.⁹

A. Deducting 20% of Asylum Seekers' Salaries and Placing the Sums in the Deposit Fund

The deposit arrangement entails an unprecedented deduction from the salaries of workers, both in terms of the nature of the deduction and its high portion of the salary, leaving asylum seekers with salaries below the minimum wage. This dramatically hurts their ability to sustain themselves with dignity over a period of time that may be quite prolonged (currently, it is open-ended).

An asylum seeker who earns, like most asylum seekers in Israel, minimum wage for a full-time position, NIS 5,000 (\$2,000) before taxes, will be left with NIS 4,500 (\$1,256) after paying 10% in taxes and about NIS 1,000 (\$280), deducted and deposited in the fund (20% of the gross salary). On top of this, there are additional deductions. This means that an asylum seeker earning minimum wage will be left with less than NIS 3,500 (\$977) per month.

⁹ Foreign Workers Law, 1991, available in Hebrew: <https://bit.ly/2BZKFTW>.

The deduction into the Deposit Fund does not offer asylum seekers any insurance or assurance of benefits in return. Compare this to Israeli employees who deposit 6% of their salaries into a pension fund. This deposit provides the employee with an actual benefit to his or her family upon retirement, or in cases of disablement or death. For example, an Israeli employee who made monthly deposits into a pension fund together with her employer and loses her ability to work: not only is she ineligible for any stipend, but the funds deducted from her salary and accumulated in the Deposit Fund are only available when she departs Israel. In addition, the incredibly high share of the salary deducted into the fund, 20% of the gross salary, is unprecedented in Israel, and in fact violates the Law of Salary Protection, which caps the total deductions from salaries at 25%, whatever the purpose. As mentioned above, deductions to pension funds currently stand at 6%. Employee contribution to professional development funds are voluntary and are capped at 2.5% of salaries.

B. Depositing 16% of Asylum Seekers' Salaries Paid by Employers

The share of the employer's deposit into the fund is 16% of the asylum seeker's salary, of the total 36% deposited in the fund. This deduction is intended as a replacement for social benefits paid for by employers that originate in regulations and collective agreements between employers and Israeli workers. But in reality, a 16% deduction for social benefits is hardly the norm. The current rate of employers' contribution to funds covering pensions and benefits in cases of termination is 12.5%, in accordance with a 2016 regulation.¹⁰ Particularly powerful groups of employees, those with an established collective safety net, enjoy higher employer contributions.

The contribution of employers of migrant workers (set forth in the Foreign Workers Law of 2000) is inextricably linked to employee benefits, and the rates of this contribution are set forth in Israeli regulations. In the case of asylum seekers, however, the rate was set arbitrarily because it has nothing to do with the obligations of employers toward their employees. It is important to note that the contribution rate of migrant worker employers is lower than the rate set for asylum seekers. In addition, most migrant worker employers are currently not obligated to make these contributions, since the regulation concerning the application of the law is yet to be stipulated (this includes all private households, which employ tens of thousands

¹⁰ The Expansion Regulation on Increasing Contribution for Pensions in the Israeli Labor Market, 2016.

of migrant caregivers, and all employers of the thousands of migrant agricultural workers in Israel).

Thus, an article that was intended to allow the implementation of collective agreements and regulations expanding benefits of employees, is now being used to levy another tax on employers of asylum seekers. This levy joins a slew of fines and other taxes imposed on these employers through other regulations (the main one being a 20% levy on gross salaries),¹¹ all of which are intended to deter the employment of asylum seekers and diminish their bargaining power vis-à-vis employers. These levies and taxes end up burdening and hurting asylum seekers by negatively affecting their wages and labor rights protections.

The contributions of employers, like the deductions from employees, do not offer the worker any social benefits or insurance. Originally, the purpose of the Deposit Fund was to serve as a replacement for social benefits for migrant workers, who remain in Israel for a relatively short period of five years. However, asylum seekers remain in Israel for much longer periods, and naturally cannot seek health care in their countries of origin, which they fled. Thus, denying insurance to these employees harms them to a greater extent.

| Asylum Seekers | Migrant Workers | Israeli Employees |
|--|--|---|
| <p>The monthly share of the employer's deposit into the fund: 16%*</p> <p>(Replaces contributions to a pensions fund and compensation in the event of termination).</p> | <p>Monthly deposit (replaces contributions to a pensions fund and compensation in the event of termination):</p> <p>Construction sector: NIS 710 (\$200)</p> <p>Companies employing caregivers: about 15%*</p> | <p>6.5% allowance for provident funds; 6% for severance pay, totaling 12.5%* of the salary (or 15.8% if the employer provides the full allowance).</p> |

¹¹ Based on article 45 of the Law to Bolster Israel's Economy (legislative amendments to achieve budgetary and financial policy goals for the fiscal years 2003 and 2004) passed in 2003.

| Asylum Seekers | Migrant Workers | Israeli Employees |
|---|---|--|
| <p>National Insurance⁺</p> <p>Up to 60% of the average wage in the market: 0.49%</p> <p>Over 60% of the average wage in the market: 2.55%</p> | <p>National Insurance⁺</p> <p>Up to 60% of the average wage in the market: 0.49%</p> <p>Over 60% of the average wage in the market: 2.55%</p> | <p>National Insurance⁺</p> <p>Up to 60% of the average wage in the market: 3.45%</p> <p>Over 60% of the average wage in the market: 7.5%</p> |
| <p>Foreign Worker Levy[*]</p> <p>In the agriculture and nursing sectors – 0%</p> <p>In the ethnic restaurant, industry and construction sectors – 15%</p> <p>Other sectors[△] – 20%</p> | <p>Foreign Worker Levy[*]</p> <p>In the agriculture and nursing sectors – 0%</p> <p>In the ethnic restaurant, industry and construction sectors – 15%</p> <p>Other sectors[△] – 20%</p> | - |
| <p>Private health insurance for foreign workers[§] – about NIS 250 (\$70)</p> | <p>Private health insurance for foreign workers[§] – about NIS 250 (\$70)</p> | - |
| <p>* Of the determining gross salary.</p> <p>+ Employers of asylum seekers and migrant workers pay lower sums of the National Insurance Tax for these employees (who do not pay the health tax), as they are not entitled to the full social benefits provided by the National Insurance Institute, but only to insurance directly tied to their employment (such as workplace injury). The National Health Law does not cover these workers.</p> <p>△ The sectors employing migrant workers who hold work permits have been exempted or receive tax breaks. As a result, the employers of asylum seekers who are largely employed in cleaning services, restaurants, hotels, etc. are the only ones to pay the full levy.</p> <p>§ Employers are allowed to deduct some of the costs of the private health insurance from the employees' salary.</p> | | |

C. Tax Deductions

Article 1(xi)(E)(3) of the law describes the taxation of deductions to the Deposit Fund made by workers and employers.¹² A tax is imposed on the deduction from the asylum seekers' pay upon transfer to the fund, on the day they receive their salary. Thus, asylum seekers pay a tax on parts of their salary that they have not received, years before they finally receive these funds (if at all).

A 15% tax is imposed on the employers' part of the deposit upon the departure of asylum seekers from Israel and withdrawal of funds. This is an extraordinarily high tax on funds originally intended to ensure the social benefits of employees. These social benefit funds, when accrued by Israeli employees in their pension funds, are not taxed at all.

D. Providing Information to Workers and Lack of Oversight Over the Funds' Investment and Management

Article 1(xi)3 of the law obligates the financial institution managing the fund to provide information to foreign workers who are "infiltrators,"¹³ but only if the workers request the information. The Deposit Fund, for its part, is not obligated to send periodic reports. This arrangement is not covered by the Law of Oversight over Financial Services,¹⁴ which regulates the management of provident funds that serve as savings accounts or insurance. Asylum seekers have no say on whether to contribute sums to the fund and how much is deducted; the selection of the fund and the terms and conditions for managing it are also not decided by the workers. Israeli workers, on the other hand, can choose the funds they use for savings or insurance.

Compared to the overall harm done by the Deposit Law, these are comparatively inconsequential issues, but they serve as another example for the blatant disregard and discriminatory approach of Israeli authorities as they manage large sums of money belonging to a marginalized community for an open-ended period. This is also an example of the disregard of the autonomy of asylum seekers.

¹² Foreign Workers Law, see footnote 9.

¹³ Ibid.

¹⁴ The Law of Regulating Financial Services (Provident Funds), 2005.

E. Deductions from the Employer's Contribution to the Fund

Article 1(xi)4(A) of the law stipulates that asylum seekers will receive the entire share of the funds deducted from their wages only upon departure from Israel, while the employers part will be received following certain deductions, including the above mentioned 15% tax. Another possible deduction from the employer's part of the deposit occurs in the event asylum seekers do not leave Israel until the predetermined date.¹⁵ Thus, basic labor rights enshrined in Israel's labor laws become a tool to punish one of the most marginalized group of workers in the Israeli labor market.

The law stipulates deductions from the money in the Deposit Fund due to delays in departing Israel, to be deducted from 33% of the funds in the deposit. According to the table below (from the second annex of the law), a delay in departure of one to two months will result in a deduction of 25%; a delay of two to three months – 35%; three to four months – 50%; four to five months – 65%; five to six months – 80%. After six months, the deduction will reach 100% (one-third of the overall sum in the Deposit Fund).

Article 1(x)2 of the law stipulates that "The duration of remaining in Israel, on the matter of a foreign worker who is an infiltrator, is the date when he must leave Israel as determined by a final judgment or in a notice issued by the Minister of Interior or the Director of the Population and Immigration Authority at the Ministry of Interior."

This is a draconian and discriminatory mechanism that imposes fines on delays in departing Israel, even when it is a tiny fraction of the duration of legal residence in Israel, which lasts for many years. This mechanism is also discriminatory toward asylum seekers compared to migrant workers: regulations approved by the Knesset Committee on Labor and Welfare on May 24, 2016,¹⁶ which deal only with the construction sector and manpower companies for caregivers, stipulate much lower deductions for migrant workers who do not depart Israel by the predetermined date set. The deduction rates for migrant workers are 15%, 25%, 35%, 50% and 65% respectively for the same periods set for asylum seekers:

¹⁵ Foreign Workers Law, see footnote 9.

¹⁶ Foreign Workers Regulations (Deposit for Foreign Workers), 2016.

| Duration of Delay | Asylum Seekers | Migrant Workers |
|----------------------|----------------|-----------------|
| One to two months | 25% | 15% |
| Two to three months | 35% | 25% |
| Three to four months | 50% | 35% |
| Four to five months | 65% | 50% |
| Five to six months | 80% | 65% |
| Over six months | 100% | 100% |

This means that money originally intended to ensure the social benefits of workers have become part of a mechanism to fine those who remain in Israel for a month beyond the announced departure date. Asylum seekers who have lawfully resided in Israel for years are thus expected to quickly pack their belongings, terminate their leases, quit their jobs, remove their children from school and arrange all their bureaucratic affairs. Compared to migrant workers who know ahead of time when their visa will elapse and can prepare their departure from Israel, asylum seekers are uncertain how long they will remain in Israel. It is difficult to predict, certainly years in the future, when the Minister of Interior will announce the end of the "non-removal policy" applied to these asylum seekers and that they now must leave Israel.¹⁷

F. The Combined Effects of the Law

The various facets of the law result in multiple violations of the rights of asylum seekers that, when combined, push asylum seekers into poverty with the aim of encouraging them to leave Israel "voluntarily". These different aspects are inextricably linked and hence hard to isolate.

The Deposit Law stipulates a drastic and unprecedented deduction of wages, which deprives asylum seekers of the right to human dignity, for possibly long periods of time. The 20% deposit follows the payment of a tax on the gross salary (though this 20% will not reach the worker on pay day), thus further reducing the net salary. In parallel, the arrangement allows the transfer large sums originally intended to

¹⁷ See for example: The Hotline for Refugees and Migrants and ARDC, *Do Not Send Us So We Can Become Refugees Again – From 'Nationals of a Hostile State' to Deportees: South Sudanese in Israel*, February 2013, available online: <https://bit.ly/2VBDLFt>.

ensure the social benefits of working asylum seekers (the employer's contribution) to the State's coffers, through high taxation and fines due to delays in departing Israel. Lastly, the intentionally high rate of contribution by employers impacts the labor market for asylum seekers, as it is an additional levy imposed on employers.¹⁸ Since asylum seekers are not eligible for various stipends set forth in the National Insurance Law, for health insurance or other social benefits, this law further pushes them below a minimal standard for human dignity.

¹⁸ The effects of this policy can already be observed in the restaurant industry. See for example: Lee Naim, *The Tax on Foreign Workers: Anxiety among Restaurant Owners*, Mako Food, September 25, 2017, available in Hebrew: <https://bit.ly/2ViZxed>; Rita Goldstein, *A Headstone for Every Shuttered Restaurant*, Mako Food, December 26, 2018, available in Hebrew: <https://bit.ly/2QZLI5G>.

4. The Law's Unethical Purpose

"At the end of 2004, I left the Darfur region in Sudan. I left because of the war in Darfur. Before I left, they burned down the entire village where I was raised and where I lived and when they burned the village, my father was killed. Following this, we fled from Darfur... Even if they deduct 20% of my salary, I will not return to Darfur. The situation in Darfur today is very difficult. The genocide is ongoing. I [belong to] one of the Darfuri tribes persecuted by the government. If I return, I will lose my life." From the affidavit of Y. J., January 19, 2017.

During the legal proceedings of the Deposit Law, the State claimed that its main purpose was to "encourage" the departure of people (whose lives are in danger in their countries of origin), even if there is no clear destination to which they must leave. The departure the State aims to achieve cannot be considered voluntary when it stems from violations of basic rights – including the right to property, the right to equality and right to human dignity. The purpose of the law is not only unjust and discriminatory, it is unconstitutional.

On January 1, 2018, the Ministry of Interior announced a plan to deport asylum seekers from Eritrea and Sudan. This plan continued to guide government policy for four months, until it became apparent that it was based entirely on false information and an interpretation of Israeli law that lacks a legal foundation. The plan was to be applied with some exceptions, and as the State admitted in its response to the petition filed against the plan on April 10, 2018,¹⁹ only about 7,000 of the asylum seekers from Eritrea and Sudan were actually "potential deportees". This means that a fifth of the people subject to the Deposit Law were supposed to be deported, while the rest would continue to reside in Israel lawfully, with 20% of their wages deducted every month.

The events that occurred during those months were documented by the media

¹⁹ HCJ 679/18 *Cook Avivi vs. the Prime Minister*, and HCJ 733/18 *Feldman vs. the State of Israel* (dismissed on April 10, 2018).

Jan 1, 2018

PIBA announces the deportation plan.

Jan 18, 2018

1st deportation hearings in Holot.

Feb 4, 2018

1st deportation hearings outside of Holot.

Feb 20, 2018

First detainees in Saharonim.

Mar 12, 2018

1st HCJ hearing.

and in petitions filed against the deportation plan.²⁰ During this period, about 300 asylum seekers were placed in open-ended detention, without trial, for their refusal to be deported to Rwanda, which denied the existence of an agreement concerning their reception. Dozens more lost their permits and became, as of April 8, 2018, "illegal residents" who can be detained. In addition, the Deposit Law "clock" began ticking, threatening those who refused to leave with draconian taxes on the share of the funds deposited by their employer in lieu of social benefits.

Finally, the only bureau in Israel assigned by the PIBA to handle these individuals, witnessed the emergence of huge lines outside the office in Bnei Brak, where thousands gathered each day, with no protection from the rain and sun, waiting to renew their permits or to receive a deportation notice.²¹ Those in line were joined by thousands of others (including citizens of other countries) trying to apply for asylum, after the only other office responsible for accepting asylum applications, was closed.²² This inevitably resulted in some asylum seekers being unable to enter the office to file their claim or to renew their permits.

On March 12, 2018, the HCJ held hearings on two of the petitions against the deportation plan,²³ during which the State announced that an agreement has been reached with Rwanda to allow deportations. Only three weeks later, on April 2, 2018, while hundreds were held in detention, the Prime Minister and Minister of Interior

²⁰ Ibid. See also: HCJ 2445/18 *Hotline for Refugees and Migrants vs. the Prime Minister* (dismissed on April 30, 2018). Additional information on the "Voluntary" Departure Policy and the deportation to "third countries" can be found here: <https://bit.ly/2AowWuY>.

²¹ For more information see: Hotline for Refugees and Migrants, *Languishing in Line: The Queues at the PIBA Office in Bnei Brak in Early 2018*, December 2018, available online: <https://bit.ly/2Wcsx01>.

²² See HCJ 7501/17 *Hotline for Refugees and Migrants vs. the Minister of Interior*, dismissed on May 9, 2018. See also: Hotline for Refugees and Migrants, *Falling On Deaf Ears, Asylum Proceedings in Israel*, October 2018, available online (PDF): <https://bit.ly/2FaNHPT>; and Hotline for Refugees and Migrants, *Knocking at the Gate – Flawed Access to the Asylum System due to the influx of applicants from the Ukraine and Georgia*, September 2017, available online: <https://bit.ly/2CisQpl>.

²³ See footnote 19.

Apr 2, 2018

Announcement of the UNHCR deal.

Apr 3, 2018

The UNHCR deal is cancelled.

Apr 10, 2018

Another HCJ hearing.

Apr 15, 2018

The detainees in Saharonim are released.

Apr 24, 2018

The state announces: "No deportation agreements."

publicly announced that in reality, there was no way to deport asylum seekers to Rwanda. Instead, they announced that Israel had signed a memorandum of understanding with the United Nations High Commissioner for Refugees (UNHCR) under which over 16,000 Eritrean and Sudanese asylum seekers residing in Israel would be resettled over a five-year-period to Western countries (where they would be recognized as refugees and granted full rights); the same number of people would remain in Israel with a legal status that would provide them with social rights and the right to work. These asylum seekers were to be dispersed across the country, ensuring their integration in multiple municipalities.²⁴

This arrangement, which was much more humane and appropriate than the collapsing deportation plan, was cancelled within hours, after the Prime Minister backtracked on the agreement due to backlash from his support base. A few weeks later, on April 24, 2018, the State, during a hearing as part of a third petition against the deportation plan filed by human rights organizations, stated that it "appears " that Rwanda never intended to allow for forced removal to its territory,²⁵ as Rwandan officials had stated repeatedly.

The farce did not end there. After it became apparent that there was no agreement with Rwanda, and after the Prime Minister backtracked from the agreement he signed with the UNHCR, the State told the High Court that there is "a strong likelihood" that an agreement would be reached with Uganda, and that this should allow the State to keep some of the detainees in the Saharonim Detention Center and continue holding pre-deportation hearings for hundreds of others. On April 10, 2018, an *ex parte* hearing was held at the High Court with only the State present to discuss sensitive information.²⁶ Following the hearing, the Court determined that it was currently impossible to deport asylum seekers to Uganda, and that, if no agreement was reached with Uganda by April 15, 2018, the detained asylum seekers

²⁴ Press conference from April 2, 2018. Available in Hebrew: <https://bit.ly/2FR8PdE>.

²⁵ HCJ 2445/18 *Hotline for Refugees and Migrants vs. the Prime Minister*.

²⁶ See footnote 19.

must be released. Those were indeed released on April 15, but this did not prevent PIBA from continuing to hold pre-deportation hearings and to refuse to renew the permits of those it had previously decided to deport, even after that date. Only on April 24, 2018, after the State notified the High Court (as part of case 2445/18) that there was no agreement that would allow deportations to Uganda, did it halt deportation procedures.

Despite all of this, the State, in legal proceedings against the Deposit Law, continues to claim that even if citizens of Sudan and Eritrea cannot be deported, they can still be "encouraged" to leave Israel by applying pressure on them. This is an illegitimate and disproportionate purpose that erodes the most basic rights of asylum seekers, while depriving them of their earnings and forcing them to the brink of starvation. The High Court addressed this issue in its ruling during the legal proceedings filed against the deportations to Rwanda in 2015, determining that if an agreement with the third country requires the consent of deportees, such consent cannot be "extracted" by violating the human rights of asylum seekers.²⁷ As Chief Justice Naor wrote:

"For consent to serve as the basis of removal, it must be ensured that this 'consent is indeed a true consent' that reflects the autonomy of the individual... a consent that is based – as well-stated by Justice H. Melcer, on "'informed choice' – free and willing"... Indeed, "free choice can only be possible when a person is sovereign to make an informed decision based on a number of options that can be selected, **which do not place him before impossible life choices" (HCJ Eitan, paragraph 111, in Justice Fogleman's ruling and referenced there)... Therefore, for the consent of removal to serve as part of the legal basis for the removal of an undocumented migrant, it must be true consent; and true consent requires freedom of choice and the ability to make an informed decision. In my view, to obligate the appellants... to agree to their removal... is in contravention of the abovementioned principles and does not allow for the emergence of true consent. First, the interpretation of the respondent [State] effectively deprived the appellants... of real choice. They can indeed 'choose' not to be deported, but as a result, they will continue to be held in detention. **This situation places them** – in the words of Justice Fogelman –**

²⁷ Administrative Appeal 8101/15 *Tsegeta vs. the Ministry of Interior*.

before impossible life choices... Second, enforcing a sanction in the form of detention contravenes the obligation not to punish the appellants... for their lack of consent... and in reality, deprives them of the right not to consent. It entails measures that negate their will (HCJ *Desta*, paragraph 83 of my ruling). As a result, it negates the consent made in agreeing [to be deported] – if such an agreement is secured – as well as the ability to make a free choice.”²⁸ (Emphasis added)

This means that pressure cannot be exerted on asylum seekers to “agree” to be deported to their countries of origin or a “third country.” If the State believes that they can be deported, it has the authority to remove the “group protection” currently offered to them and carry out their deportation. In such a case, the Deposit Law would become irrelevant for those individuals, since their permits would be revoked, their employers would be fined and they would be detained and deported. If, on the other hand, the State finds that they are entitled to protection and are not required to leave Israel, even if the protection is temporary until conditions change in their countries of origin, it cannot apply pressure on them to break their will and forego essential rights and protection.

²⁸ Ibid. paragraphs 120-121 of Chief Justice Naor’s ruling.

5. Flaws of the Deposit Law

A. Erosion of Labor Laws and Unreported Employment

"About a month and a half ago I left my job because of the deductions to the Deposit Fund. I decided to start searching for work without pay slips in the construction sector, knowing full-well that I am putting my safety and rights in jeopardy." From the affidavit of I. Y. A. October 23, 2017.

Following the implementation of the Deposit Law, many asylum seekers were driven to work off the books, without pay slips, to avoid the 20% deduction from their salary. This phenomenon was documented in affidavits given as part of the legal proceedings against the law,²⁹ and in an online survey conducted by Kav LaOved in Tigrinya and Arabic in July 2018. The participants in the survey were asked whether as a result of the Deposit Law, they had to resort to unreported employment. 59.2% of the respondents (99 out of 167 participants) responded positively.

This indicates that the labor market of asylum seekers is becoming a black market, to the detriment of the workers, their labor rights and their working conditions. This also hurts Israeli employees in these sectors and the Israeli labor market as a whole. Unreported employment, has the potential to harm the Israeli economy in its entirety, not just the labor market, and not only in the spectrum of asylum seekers.

B. Pushing Asylum Seekers to Extreme Poverty, Impairing their Health, Social Security and Living Standards

"The money taken from my salary to the Deposit Fund resulted in me buying less food for the children this month. The children cried when they wanted more food, but we did not have enough money." From the affidavit of E. M., June 27, 2017.

The implementation of the Deposit Law had grave consequences for asylum seekers and their children. Among the participants who responded to the Internet survey conducted by Kav LaOved in July 2018, 88.8% of respondents reported that they have

²⁹ See for example, update notice from the appellants in H CJ 2293/17 *Gersegher vs. The Knesset*, from November 5, 2017.

had to reduce their spending on food, medicine and hygiene; 82.2% reported that their ability to pay rent had been negatively impacted; and 93.5% reported that the Deposit Law compelled them to take on more physically demanding jobs, for longer hours each day.

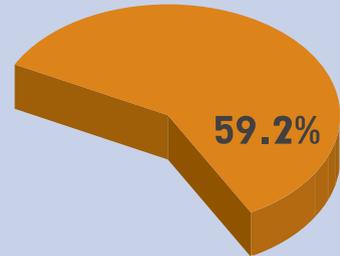
Asylum seekers who provided affidavits for the petition against the law, reported halting health insurance coverage for their children due to reductions in their income; moving to even more overcrowded apartments with other tenants and families; reducing the consumption of food; moving children from regulated kindergartens to unregulated, overcrowded and under-resourced communal kindergarten ("babysitters"), thus endangering their children; leaving young children alone at home in order to work longer hours to make up for the loss of income; and more.

Deducting a fifth of the salaries of impoverished individuals without any social support networks has resulted in a humanitarian crisis among members of this community.³⁰ Unlike Israelis, this is a community lacking family support, real-estate assets or investments; asylum seekers are not eligible for national health insurance, stipends from the National Insurance Institute, welfare services, assistance in rent payment or legal assistance.

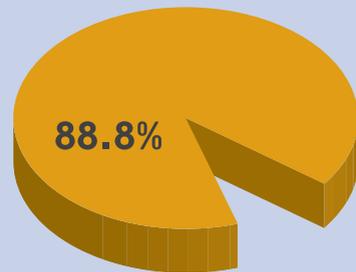
As part of the legal proceedings against the Deposit Law, on November 2018, the State

³⁰ See also: ASSAF, *They Starve Me So I Would Leave Israel – The Effects of the Deposit Law on Asylum Seekers*, July 2018, available in Hebrew (PDF): <https://bit.ly/2DZuCNA>.

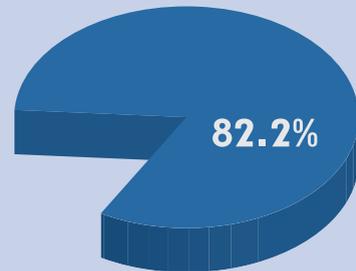
Resorted to unreported employment



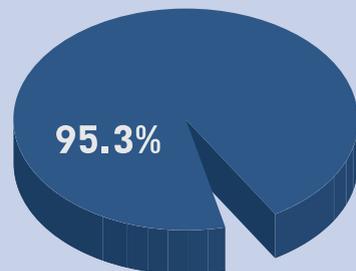
Reduced spendings on vital needs



Reduced ability to pay rent



More physically demanding jobs and longer working hours



provided a breakdown of the salaries of working male asylum seekers. According to the State's data, 36.8% of workers earn less than minimum wage, and 13.11% now earn less than minimum wage as a result of the Deposit Law deduction. This means that after the law came into effect, the income of about half the male asylum seekers fell below minimum wage.

C. Non-Access of Workers to the Deposit Fund

"I did not receive any information indicating where the funds were deposited. I was not given an account number; I was not given a confirmation that the money had been transferred; I was not given any other official notice about the transfer. I was not told how the deduction from my salary is calculated." From the affidavit of A. M., June 27, 2017.

Until May 2018, employers and workers did not receive any official confirmation of the transfer of funds to their destination; only in May 2018 did PIBA begin sending confirmations to employers, addressed to the workers, regarding deposits made on their behalf. However, workers did not receive the account number in which their funds are managed and it appears that the funds are being managed in some form of pooled account.

The system handling the funds is not accessible to asylum seekers: there is no phone number or email address workers can contact and receive a response in their own languages (Tigrinya or Arabic); the department running the Deposit Fund does not have reception hours; the only way for asylum seekers to access information about the funds, if they do not speak Hebrew or English, is to rely on their employers, members of the community who do speak those languages, or the NGO Kav LaOved. As a result, Kav LaOved has been overwhelmed by requests from workers who want to know – each and every month – where their funds are held and what is happening to those funds, as they themselves struggle to get this information from the body holding their funds.

According to a survey conducted by Kav LaOved in July 2018 among asylum seekers, to which 353 workers responded, 93% of the survey participants do not receive information from PIBA about their funds when they arrive to renew their permits. Only 7% of the respondents requested, and therefore received, information about the deposits made on their behalf. However, when they reviewed the printout provided by PIBA and some discovered that the entire sum deducted from their paycheck

had not been transferred to the fund, they were sent to Kav LaOved, to deal with the matter. Apparently no one in PIBA's department responsible for issuing permits considered transferring the information about payment irregularities to the department in charge of enforcement within the same authority. As a result, more and more workers are reaching the offices of Kav LaOved, reporting that PIBA itself directed them to the NGO to address irregularities in the handling of their deducted funds. These cases clearly demonstrate the need to provide workers with unmediated access to their deposit accounts.

Following multiple appeals by Kav LaOved, PIBA realized that it is indeed responsible for providing information to employees regarding their deposits. On January 31, 2019, PIBA launched a computerized system with the goal of providing this information. Soon after the launch, it became apparent that the system does not provide any services to asylum seekers. Despite repeated appeals, and contrary to PIBA's statement, as of the writing of this report, asylum seekers working in Israel cannot use the system, although it was purportedly established to serve this population.

Asylum seekers who leave Israel and are eligible to receive the money in the Deposit Fund are required to fill out a form in Hebrew prior to their date of departure and send it by email to the department handling deposits. The form is not available in the native languages of the asylum seekers. Asylum seekers who depart Israel thus encounter multiple challenges stemming from the joint management of all deposits, the lack of documentation and account ID numbers, and the absence of information in their mother tongue.

D. Violations by Employers and Lack of Enforcement

"Starting in June 2017, the company deducted 20% of my salary to the Deposit Fund. The pay slip lists the sum deducted, which amounted to about NIS 900 (\$250) per month. In a few days, I am flying to the United States to join my son. My son received refugee status there, and the United States granted me an entry visa. If I do not leave Israel to the United States now, I may lose my entry visa to the United States. A week ago, I found out about the flight and that I received a visa to the United States. The flight is financed by the United States and the date was set for me. I tried to contact those managing the Deposit Fund through Kav LaOved so I can collect the thousands of shekels that were deducted from my wage since the implementation of the law. Only after Kav LaOved approached my employer...

it turned out that he did not deposit the funds for me. They apparently remained with him. Because I am flying the day after tomorrow, I will not be able to sue the employer, so it turns out that I lost thousands of shekels for which I toiled a great deal.” From the affidavit H. K., September 26, 2017.

Employers of asylum seekers often violate both labor laws and the Deposit Law. In these instances, officials need to intervene to ameliorate the situation and even sanction employers. Such an intervention is even more urgent when the population in question may need to leave the country in a speedy fashion, and due to circumstances beyond its control. An oft-repeated situation is of workers who receive refugee status in other countries, which then dictate the date of the flight.

To assist employees in collecting the funds in the deposit account, Kav LaOved provides PIBA's deposits department the details of the employee, including his or her pay-slips. Between June 14, 2017 and until November 14, 2018, representatives of Kav LaOved sent 2,573 requests to the Deposit Fund on behalf of asylum seekers wishing to find out the sums accrued on their behalf in the fund. The pay slips of those approaching Kav LaOved indicate that a fifth of their pay has been deducted. Out of the total number of asylum seekers who approached Kav LaOved and whose pay slips indicated that sums were deducted for the fund, in 405 (15%) of the cases, no funds were transferred to the account and it remained empty. For 700 additional workers (about 30%) the deposits did not include the entire funds deducted from the workers' salaries (either because they were employed by multiple employers, only some of whom made deposits; or because the same employer made deposits on certain months, but not all). This means that parts of the salaries of half of asylum seekers approaching Kav LaOved on this matter remained in the hands of their employers.

In cases where employers failed to deposit the full amounts deducted from the salaries of their workers, or when the fund only includes the sums deducted from the workers, but not the employer's contribution, Kav LaOved enters a race against time to ensure workers are able to receive the full amount upon departing Israel. Kav LaOved approaches the employers to pressure them to complete the transfer of all funds into the deposit. Unless employers do so before the worker leaves, the funds will remain in the hands of the employer, as asylum seekers will find it extremely difficult to sue for the funds once they depart. Some of the employers approached by Kav LaOved were concerned about breaking the law, and hence

refused to transfer the funds directly to the workers. All attempts by Kav LaOved to compel PIBA's deposits department and the Ministry of Labor and Welfare to allow employers to release the funds to their workers were unsuccessful. PIBA and the Ministry of Labor and Welfare refused to tell employers what to do. At the end of the day, the money remained with the employers and dozens of workers left Israel without the funds deducted from their salaries. Only a handful left the country with the entire sum, due to the intervention of Kav LaOved, while others delayed their departure from Israel or decided not to leave at all after discovering that the sums deducted from their salaries were not deposited in the fund.

Based on testimonies of the workers and their pay slips, which indicate the sums deducted from their salaries, Kav LaOved conservatively estimates that the total sum deducted from asylum seekers and remaining in the hands of Israeli employers equals, at the very least, to the sum deposited in the fund in its first year of existence – NIS 120 million (\$33.5 million).

PIBA employees who interact with asylum seekers and the department responsible for receiving and managing the deposits do not believe it is their responsibility to report cases of irregularities in payments or missing payments to relevant authorities (the enforcement department within PIBA itself and the Administration of Enforcement at the Ministry of Labor).

Ever since the law came into effect, Kav LaOved, representing individual workers, has sent over 2,500 requests for information about the sums collected, to compare the funds in the account with the sums deducted from the workers' wages. During this period, PIBA has inspected only 42 accounts, about a third of the number of accounts examined by Kav LaOved in a single day of reception.

PIBA's enforcement activities against employers who failed to make the deposits are even rarer. Although the law came into effect in mid-2017, PIBA did not sanction a single employer in that year. In 2018, ten employers received an administrative notice for failing to transfer the deposits to the fund, while only one employer was forced to pay a fine (PIBA did not report whether the fine was actually paid). By comparison, in that same year, the Ministry of Labor and Welfare handed out 5,600 administrative notices to employers, levied 538 fines and filed 99 indictments against Israeli employers.

As part of the legal proceedings against the Deposit Law, on July 7, 2018, the head of

PIBA's Enforcement Administration, Yossi Edelstein, sent a letter requesting proof of the arguments made by the appellants in the proceedings against the Deposit Law regarding the grave violations of the law. This means that more than a year after the law came into effect, the head of the Enforcement Administration is unfamiliar with the situation on the ground: the data collected by PIBA itself and the wealth of correspondence each month between representatives of Kav LaOved and PIBA's deposits department. Instead of turning to officials within PIBA, who have already dealt with hundreds of requests; instead of asking the Deposits Department for a list of employers who deposit funds irregularly; instead of ensuring that PIBA employees are able to provide asylum seekers with information regarding the deposits; instead of demanding that PIBA clerks, who review the pay-slips of asylum seekers as a precondition for renewing their permit, ensure that sums are deducted and transferred to the deposits in accordance with the law; instead of moving to ensure enforcement and oversight – PIBA ignores its responsibility and places the burden on the under-resourced NGOs representing the asylum seekers, asking them "to provide us with full documentation of cases of which you are aware."

E. Payment of Debts for Bankrupt Employers from State Funds

"I worked for a year and eight months in the "Zroa' HaZahav" [Golden Arm] manpower company, which sent me to work in restaurants and nursing homes. I earned minimum wage, and worked most of the time 11 hours per day, six days per week. The whole time, they deducted 20% of my salary to the Deposit Fund. This means over NIS 1,000 (\$280) per month... I found out that Golden Arm went bankrupt. I knew this because my last salary from the company was not deposited. Kav LaOved approached the Deposits Department on my behalf, and it turned out that the company did not deposit any of the sums it deducted from my wage. It also didn't deposit its share as the law requires, the additional 16%." From the affidavit of S. S., April 17, 2018.

In cases when employers go bankrupt, as in the case of Golden Arm, a manpower agency that employed hundreds of asylum seekers, the workers are left without the funds deducted from their wages and without an employer whom they can sue to demand those funds. The body obliged to return those funds to the workers upon their departure is the National Insurance Institute; i.e. the payments are financed by Israeli taxpayers. The Deposit Law thus creates an opportunity of theft by employers of asylum seekers, resulting the unlawful enrichment by corrupt employers at the

expense of the weakest workers in the Israeli labor market and at the expense of public funds.

Many of those directly hurt by Golden Arm's bankruptcy were women. These workers currently are entitled to receive a 70% reimbursement of the deposit deducted from their salary (see below: "Exceptions for 'Humanitarian Cases'") but due to poor management by the company and the fact that the funds were not deposited in the account, they cannot receive anything.

F. Asylum Seekers Who Are Not "Infiltrators"

"Since I arrived in Israel, I work in cleaning. Sometimes 11 hours per day, sometimes nine hours per day. My hourly wage is NIS 26.88 (\$7.5) and since the imposition of the Deposit Law, 20% of my wage is deducted to the Deposit Fund. I came to Kav LaOved and I was told that my employer was not transferring the money to the fund itself. I was also told that he was not supposed to make those deductions, since I entered Israel through a border crossing, the Ben Gurion Airport. I explained all of this to my employer. He insisted that the money remain with him and that I'll receive it only when I leave Israel. He wrote to me on WhatsApp that he doesn't care how I entered Israel." From the affidavit of A. O., September 26, 2017.

The Deposit Law does not apply to asylum seekers who entered Israel through a border crossing, since they are not "infiltrators." However, the point of entry to Israel is not consistently mentioned in permits given to asylum seekers. Since employers are not given information telling them what to do with asylum seekers whose permits do not indicate how they entered Israel, they have no way of knowing whether the law applies to the workers without questioning them. Many employers are unaware of the intricacies of the law and the definition of the population to which it applies. Therefore, employers also deduct the deposit from the wages of workers who entered Israel through a border crossing.

In some cases, these employers were unable to deposit the funds online, but still thought they should deduct the sums and refused to return the money to their workers. Employers who tried to deposit funds for workers who are not "infiltrators" were not told that the deposit should not be deducted from their wages. Instead, they received a general error message without explanation. Many employers believed that this was the result of a temporary technical failure and held onto the funds, believing that they are obligated to do so under law.

In other cases, the funds were deducted from salaries of those who are not “infiltrators” and successfully transferred to the Deposit Fund, where they are held without any legal basis or authority.

In addition to the illegal deduction of wages, there is currently no mechanism to reimburse funds that were mistakenly deducted or that exceed the amount to be deducted, as in the cleaning sector described below. Following an appeal by Kav LaOved, PIBA began indicating the points of entry in permits given to asylum seekers, and also created a tool to examine the worker’s permit through the website that manages the deposits.

G. Excessively High Deductions in the Cleaning Sector

“As far as I know and according to the advice I received from Kav LaOved, the deduction was for the entire components of the wage, including ones that should not be included, such as reimbursements for travel. According to legal advice I received at Kav LaOved, the excessive deduction from my salary amounts to about NIS 100 (\$27.7) per month. The money taken from my salary every month to the Deposit Fund led to us foregoing health insurance for our children this month.”
From the affidavit of A. M., June 27, 2017.

Under the law, employers are required to deduct 20% of a worker’s wage, in accordance with the definition of wages under article 13 of the Law of Compensation in the Event of Termination. The deposit should not be deducted from additional components on top of the base wage, such as compensation for overtime work, recuperation pay, reimbursement for travel, etc. Despite this, according to information provided by several employers, the official guidance issued by PIBA to employers is to calculate the deduction based on the full wage and benefits, the sum used to calculate pension contributions. This results in higher deductions in sectors subject to an Expansion Writ. This Writ determines that contributions for pensions include wage components not listed in the law and regulations, and are therefore not part of the full wage and benefits, used to calculate contributions for pensions. As a result, the Expansion Writ – issued after much effort and negotiation between employers and labor unions, recognizing the need to compensate employees in the cleaning sector because of its hard nature – has become a double-edged sword that violates the rights of the most marginalized employees in the cleaning sector.

PIBA’s regulation concerning the deduction refers to the law, which does not

elaborate on the calculation of wages in different sectors. It appears that Israeli authorities did not conduct a thorough legal examination of the wage components from which 20% are deducted, in accordance with the different definitions of a full wage in different sectors. This translates into excessive deductions, sometimes amounting to hundreds of shekels per month for each worker. As a result, employees in the cleaning sector – the most common employment sector for asylum seekers in Israel – had higher sums deducted than those allowed under law, based on incorrect guidance from PIBA. These sums continue to be illegally held by PIBA, and PIBA refuses to provide clarifications on the matter.

H. Hours of Operation of the Bank Managing the Deposit Fund

In response to Kav LaOved appeals on behalf of asylum seekers who left Israel during the holidays, PIBA's Deposits Department stated that "the offices of Bank Mizrahi are closed on Saturdays and holidays, and therefore the worker will not be able to withdraw the money." It should be noted that the funds can only be collected at Ben Gurion airport on the date of departure. In these cases, PIBA asks workers to provide bank account details in their country of destination to which the funds will be transferred.

There are several problems with this solution. First, the cost of wiring the funds is deducted from the sum transferred to the worker, although the asylum seekers act in accordance with regulations and naturally do not determine the bank's hours of operation. Often, asylum seekers have no say in their departure date. A bank that willingly assumes the management of huge sums deducted from the salaries of workers should operate on Saturdays and holidays to prevent a situation in which it keeps money that should be returned to the workers.

Most asylum seekers who leave Israel move to countries that are not their countries of origin, and it sometimes take months or even years to obtain the documentation required to open a bank account, if ever. Testimonies of asylum seekers who have left to the "third countries" indicate that they are completely barred from opening bank accounts there.

Another problem arises because the names written on permits issued to asylum seekers are often incorrect. The names, partial at times, are spelled as the PIBA clerk who met them when they entered Israel saw fit. The "passport number" written on the permits of asylum seekers is an internal PIBA number. The bank accounts

opened by asylum seekers in their destination countries, feature their actual name, often spelled differently from the way it was written in Israel, and will include a different identification number. This causes multiple technical problems when transferring funds and results in many asylum seekers never receiving their hard-earned money.

In addition, the bank's hours of operation are not mentioned in the "Regulation Concerning Deposits of Foreign Workers Who Are Infiltrators" published on PIBA's website.³¹ Only when they send a request to cash out the deposit, mere days before they leave Israel, do asylum seekers discover that their departure date will prevent them from receiving the funds then and there, as they had expected, and as stipulated under the law.

³¹ PIBA, Regulation of Deposits for Infiltrators, no. 9.0.0004, April 25, 2017. Last updated on December 16, 2018. Available in Hebrew: <https://bit.ly/2Qq7Wsz>.

6. Consequences of the Deposit Law

To examine the repercussions of the Deposit Law, we randomly sampled 44 cases opened by Kav LaOved over the past year to gain insight into the effects of the law on the salaries and employment conditions of asylum seekers. The cases selected were of 15 women and 29 men, ages ranging from 28 to 71; the average age of the employees selected was 38.

In these cases, we examined pay slips from months shortly before the implementation of the law, i.e., pay slips primarily from April and May 2017, with a few exceptions where the deduction of wages began at a later date.

Data collected in previous years by Kav LaOved shows that asylum seekers are largely employed in jobs that are physically draining, dangerous and dirty.³² The cases show that despite the passing of many years since asylum seekers arrived in Israel, they continue to be employed in those sectors as they have in the past: 25 workers were employed in the cleaning sector, eight in restaurants, three in construction, three in hospitality, two in bakeries, two in factories, and one at a nursing home.

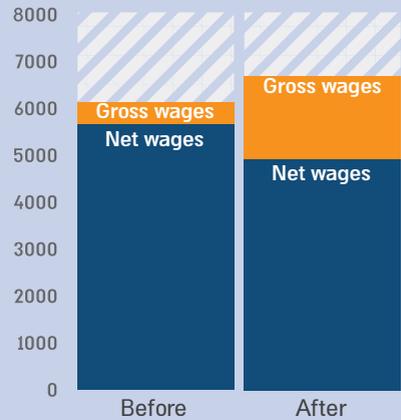
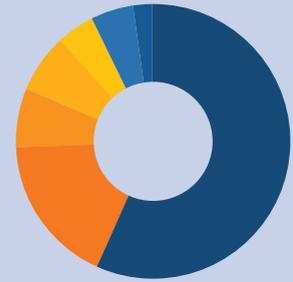
Of all the employees whose cases were selected, 30 (68%) were employed through a contractor or a manpower agency. Employment by subcontractors is not limited to asylum seekers, but it characterizes employment in sectors with marginalized workers who lack job security. This employment method makes it easier for employers to minimize their responsibility to monitor and ensure the labor rights of workers employed through contractors, further exacerbating the harm caused to workers by the Deposit Law.

The pay slips show that the average gross salary before implementation of the law was NIS 6,150.4 (\$1,724) while the average net salary stood at NIS 5,663 (\$1,588). After the law came into effect the average gross salary was NIS 6,687 (\$1,875) while the net salary stood at NIS 4,923.4 (\$1,380) only, after a deduction of 20% of the workers' salaries and other deductions.

³² See Kav LaOved, *Summary of Activities for the Year 2012, the Refugees and Asylum Seekers Sector*, June 2013, available in Hebrew (PDF): <https://bit.ly/2VO3Cq2>.

The State, in its response on November 28, 2018 in the legal proceedings against the Deposit Law, presented similar, albeit partial, data, showing that the average gross salaries of asylum seekers after implementation of the law was NIS 6,389 (\$1,790) in November 15, 2018, and NIS 4,375.5 (\$1,226) after taxes and the deduction of 20%. However, the State itself cautioned that "it is possible that the reporting does not fully reflect actual earnings, and that full reporting was not provided by the employers of every infiltrator, including his additional employers." The data surveyed the earnings of 15,201 workers, and did not refer to cases in which sums were deducted but not transferred to the Deposit Fund. In addition, the data did not refer to the difference between the salaries of asylum seekers prior to and after the implementation of the law, did not examine the increase in hours of work by asylum seekers attempting to ensure they earn a living wage, and did not discuss the shift to unreported employment.

The average number of monthly working hours among the cases sampled by Kav LaOved show that prior to implementation of the law, the asylum seekers worked a monthly average of 172.9 hours, while after implementation of the law, this number rose to 189.8 hours per month. This means that to receive a net salary that was lower by about NIS 700 (\$196), the asylum seekers had to work an additional 17 hours per month on average.



7. Exclusion of Humanitarian Cases

"I am a trafficking victim and still suffer traumas related to my past... I owe money to relatives to repay a debt for ransom of \$50,000 I was forced to pay my kidnappers in the torture camps in Sinai years ago. Now I'm struggling to pay back those debts. From the affidavit of Y. F., October 25, 2017.

A. Formulation of Regulations for Exclusion of "Humanitarian Cases"

On December 5, 2017, during a hearing held on the petition against the law, the State announced its intention to stipulate regulations that would "address humanitarian cases." The draft of the regulations presented to the Court, which was problematic and brief to begin with, was further eroded in the months following the hearing. The version of the regulation that was eventually ratified sets arbitrary criteria for "humanitarian cases," in a way that leaves many people below the minimum threshold of a dignified existence. Even for those who meet the regulations' criteria, the solution is only partial, and applying it is bureaucratically complicated, if not impossible.

The first draft of the regulation was first discussed by the Knesset Committee on Labor and Welfare on March 12, 2018. The Committee refused to approve that version of the regulation, believing that the criteria stipulated were too narrow and would fail to provide a humane solution to those harmed by the law.³³

Despite the criticism, State representatives took a chance and presented an identically worded proposal to the hearing held on May 15, 2018. During the hearing, some Knesset members stated that the proposed regulation was still narrow and abusive; others refused to support the wording of the regulation because it "encourages childbirth" by excluding parents from the application of the law. Eventually, the regulation was rejected in the Committee's vote.³⁴

On June 27, 2018, a third hearing was held to discuss the regulation. This time, State officials agreed to accept amendments, but only those unfavorable to asylum

³³ See hearing protocol from March 12, 2018. Available in Hebrew: <https://bit.ly/2KPtBJz>.

³⁴ See hearing protocol from May 15, 2018. Available in Hebrew: <https://bit.ly/2FWpIDW>.



seekers, resulting in a version even more narrow than the previous draft. In the original proposed regulation, parents of minors were to be exempted, while the amended version exempted only women or single fathers raising children on their own, and who had sole custody under very specific circumstances. In most families, the father is the main or only provider and therefore the (partial) exclusion of women would barely assist families in which the wife and children depend on his income. Beyond this, there was no attempt to make alterations that would address the problems raised by human rights and labor NGOs. The committee voted and approved the amended regulations the same day they were presented.³⁵

B. Substantive Failings of the Exemption Arrangement

The "solution" approved by the Knesset committee is in effect an additional burden on the weakest of the weak. Only a minority of those who fit the description of "humanitarian cases" can apply for a partial exemption and the list of circumstances eventually defined as "humanitarian cases" in the regulations is incredibly limited and lacks any rational connection to "humanitarianism" or the right to dignity.

The list was copied almost mechanically from those excluded from detention at the Holot facility, and it is even more narrow, since it does not exclude fathers (except those single fathers in very specific circumstances). It excludes women, single fathers, minors, workers over the age of 60, survivors of human trafficking and slavery, and those PIBA deemed to be deserving for medical reasons. Estimates suggest there are no more than 5,000 female workers among asylum seekers in Israel, and the number of people who meet the other criteria does not exceed several hundred³⁶; this in a population of about 30,600 asylum seekers from Eritrea and Sudan who reside in Israel, according to data collected by PIBA.³⁷

The regulation does not exclude those who earn "only" a very low wage and cannot support themselves, those who earn a little over minimum wage, but as a result of

³⁵ See hearing protocol from June 27, 2018. Available in Hebrew: <https://bit.ly/2KPvblV>.

³⁶ Estimates of PIBA as presented in the Knesset hearing on June 27, 2018.

³⁷ PIBA, *Data on Foreigners in Israel*, 2018 report, available in Hebrew (PDF): <https://bit.ly/2WkSoLx>.

the deposit, now live on a salary below minimum wage, those who work overtime and earn significantly more than minimum wage, but have to support children, a pregnant wife, a sick sister or a disabled friend, although none of them are eligible for health insurance, National Insurance stipends or welfare services. This is not a coincidence: the position of PIBA, as presented in hearings on March 12, 2018 and May 15, 2018, is that no exclusions should be made for those earning low wages. In addition, as happens frequently, people who theoretically should benefit from the partial exemption, slip between the cracks, for example: a person who worked full time and the deposit was deducted from his salary, but can no longer work due to a work injury or another reason, is not eligible for even a partial return of his deposit. The reason, according to the regulation, is that the share of salary deducted for the deposit will be decreased starting from the date the worker is eligible for the partial exemption. In this case, this would be the date of injury or illness, when the person stopped working and no longer earned a wage. At the precise moment when the worker urgently needs his funds to sustain himself during his period of disability, he cannot receive the partial return from the deposits he made before becoming unwell. A father who raises his children alone after separating from his partner will not be eligible for the exemption. Only widowers and those whose partner left Israel are eligible for the exemption. Even in those cases, they can only receive an exemption from future deposits, after the wife dies or leaves.

In addition, the regulations do not include exemptions for those involved in proceedings to receive legal status in Israel, including asylum processes that take years, or in cases when the asylum seeker has an Israeli spouse and can obtain legal status as a partner of an Israeli citizen, a process that also takes years. This becomes even more absurd when the couple decides to have children, so that while the Israeli woman is on maternity leave, 20% of the father's salary is deducted. The State decided not to exempt these people from the policy, creating incentives for them to leave Israel.

The regulations do not address a wide array of cases in which the right to dignity is harmed, whether the case is of an impoverished worker, a family whose sole provider is the father, or a non-working woman who depends on a relative to support her. However, even those who fit the criteria are encumbered by the regulation: the exemption is only partial, amounting to 70% of the deduction. This means that a worker who receives a waiver will still have 6% of his wages deducted for an unknown period.

C. Failings in Implementing the Waiver

Issuing the Waiver

The regulation on partial waivers of the deposit came into effect on November 1, 2018. In its wake the regulation on implementation of the Deposit Law was amended to state that it applies to women, minors and those over 60, and that the visa provides confirmation for eligibility for the waiver. In other cases, however, the regulation sets forth a complicated bureaucratic procedure:³⁸

1. In cases of single fathers, article D.2.D of the regulation obligates them to file a request with PIBA and undergo an interview. This process requires the cooperation of the mother, requiring a slew of supporting documents, and in cases when the mother is ill, the expert opinion of a doctor hired by PIBA, based on the review of the documentation alone and without an examination.
2. If asylum seekers suffer from a medical condition that justifies an exemption, article D.2.E of the regulation also obligates them to file a request and provide supporting documents, including up-to-date medical records, which will be sent to the PIBA-appointed doctor for an expert opinion based on the documentation alone. This expert opinion is a recommendation only and the final decision is made by a clerk at PIBA and not a medical professional.
3. Article D.2.F of the regulation states that those recognized by the Israeli Police as victims of human trafficking or modern slavery are exempt under the law. The police certification serves as a confirmation for providing the partial exemption, but in reality, this exemption is not given since the regulation does not stipulate whether the survivors need to apply for a waiver and who is the body authorized to examine the request. Attempts by Kav LaOved to file the police's confirmation on behalf of these workers have been unsuccessful. PIBA officials are unwilling to recognize the written confirmation by the Israeli Police, and they also refuse to identify other officials at PIBA who are authorized to approve the police's confirmation that the worker in question is a human trafficking or slavery survivor. As a result, all human trafficking victims have been unable to receive the partial refund of the funds deducted from their wages or receive a future partial waiver for deposits made out of future salaries.

³⁸ See footnote 31.

Issuing a Partial Refund

The amended regulation stipulates that those who meet the criteria can request a refund amounting to 70% of the funds that have been deducted from their wages thus far and deposited in the Deposit Fund. The payment of the refund is carried out through a transfer to the bank account belonging to the asylum seeker, conditioned on filling out a request form and providing supporting documentation. The cost of the bank transfer is deducted from the refund. This procedure also places obstacles before asylum seekers, since not all of them have a bank account and some cannot fill out a Hebrew-language form without assistance.

Unlike other groups (such as women and the elderly), those suffering from medical conditions are not eligible to receive the partial refund for sums deducted from their wages before the implementation of the new regulations, in November 2018.

The regulations came into effect on November 1, 2018, after three months of preparation. Despite this, PIBA was, in reality, unprepared to refund the deducted sums, and only began to give refunds to those who are eligible, four months later, in March 2019. This applies to refunds given to women and the elderly, for whom the information in their visa (their gender and age) is sufficient to receive the refund and they are not required to present additional documentation. This means that the deducted sums were held by PIBA without legal authority for over four months.

PIBA's Conduct: Abuse and a War of Attrition

Complaints received by Kav LaOved indicate that when some asylum seekers filed a request for a partial exemption or refund, it became apparent during the examination of their request that their employer never deposited the funds deducted from their salary. In such cases, PIBA employees berated the asylum seekers for asking for a refund of the partial exemption, which "is not being deposited anyway." Nor did those PIBA employees transfer the information to the relevant department in charge of enforcement vis-à-vis employers.

The process of receiving a waiver from the deposits and obtaining the partial refund involves significant bureaucratic hurdles: hearings, long lines, PIBA's insistence that it is not responsible for ensuring employers make the deposit, mistakes by employers, routine inspections of eligibility and an invasion of privacy. This war of attrition against asylum seekers requires a great deal of resources and manpower on the part of PIBA, while representatives of PIBA insist, time and time again, that

they lack manpower, when justifying the long lines outside of their offices and the various delays in examining asylum applications.

Past experience of NGOs, particularly in the hearing processes held by PIBA with regards to summons for detention in the Holot Facility and with regards to deportation to "third countries," indicates that it is nearly impossible to make it through the hearings without a lawyer, without initiating legal proceedings and without access to a medical doctor and expert opinions. For most asylum seekers, these are services for which they would have to pay, but probably could not afford, especially given the Deposit Law's effect. This is particularly the case for those deemed eligible for exemption under the regulation as particularly dire "humanitarian cases."

8. Summary and Recommendations

Since the Deposit Law came into effect on May 1, 2017, it has become apparent that this is an unprecedented legal measure whose purpose is not only malicious and disproportionate, but is also ineffective because the law doesn't encourage asylum seekers to leave, as the State would like to present it. The law forces asylum seekers deeper into poverty and endangers their lives and those of their families: working around the clock, resorting to unreported employment, living in increasingly overcrowded apartments and further lowering their living standards. All of this is bound to affect Israeli society and the labor market as a whole.

The State displays a complete lack of interest in the fate of the funds that ought to be deposited by asylum seekers and their employers, and in the derelict management of the funds. According to PIBA, all other actors are the responsible parties – the employers, workers, human rights NGOs – everyone except PIBA itself. It should be made clear that in more than a year since the Deposit Fund was established, it has brought about the theft of more than 100 million shekels from the pockets of marginalized workers whose employers deducted funds from their salaries but did not deposit them. The law's faulty implementation ensured that dozens of asylum seekers left Israel without the money deducted from their salaries. Funds deducted by companies that went bankrupt have also disappeared. Preserving the current law means the continuation of a failed and negligent governmental system to collect and manage funds of workers. This system has proven that the State lacks the ability to manage the funds responsibly and professionally, track in real-time the transfer of funds to the intended account, and provide workers with information about the hundreds of millions of shekels deducted from their hard-earned wages. The narrow and partial exemption mechanism, despite providing for retroactive refunds for those eligible to receive them, does not truly address all humanitarian cases and serves as a fig leaf obscuring the substantial damage wrought by the law to the ability and right of asylum seekers to maintain their dignity. The implementation of the waiver and refund system is so complex that it erects bureaucratic barriers in the face of the humanitarian cases it professes to assist, making it a law on paper only.

Our position is that the Deposit Law is unconstitutional and its purpose illegitimate and unethical. Therefore, it must be abrogated and its abuse of asylum seekers, which has created an ongoing humanitarian crisis, must be stopped. However, as long as the law is implemented, the following measures need to be adopted to prevent any further harm to this weak and vulnerable population:

- A mechanism must be created to allow for the refund of excessively deducted funds, or funds deducted without legal basis.
- The criteria for receiving a waiver need to be expanded to include humanitarian cases requiring such an exemption.
- Those who have filed a request to regularize their status in Israel must be exempted from the law as long as no determination is made on their status.
- In cases of exemption based on medical reasons, the asylum seeker should receive a refund from funds already collected in the account, similar to the refund given to women.
- The deposits of each worker should be managed in separate personal accounts.
- Workers should be given direct access to their accounts, without the mediation of a third party, and assistance should be given in the languages spoken by asylum seekers (Tigrinya and Arabic) so they can ensure that the funds deducted from their wages are indeed being deposited.
- Authorities must ensure that employers transfer funds in accordance with the law, through enforcement and sanctions. Authorities must also solve the common technical problems that prevent employers from transferring funds to the account.
- Employers need to be provided with a clear explanation regarding the components of the salary from which they need to calculate the 20% to be deducted, based on the different regulations adopted with regards to the various sectors of employment.
- Employers need to be provided with information concerning cases in which asylum seekers are not "infiltrators" under Israeli law and therefore do not fall under the purview of the law. If sums have already been deducted from their salary, they should be returned without delay. In addition, PIBA must ensure that all the permits it issues clearly state whether the law applies to the worker or not.

- PIBA should provide clear information on the days and hours of operation of the bank managing the Deposit Fund. The "Voluntary Departure" Unit at the Ministry of Interior should inform those approaching it in cases when flights are scheduled for times when the bank is closed. In addition, a solution must be found quickly for those workers departing Israel when the bank is closed.
- In cases where employers go bankrupt after they deduct the deposit from their workers' salaries but do not deposit it into the account, the State must compensate the workers.