

# BILATERAL AGREEMENTS, PRECARIOUS WORK, AND THE VULNERABILITY OF MIGRANT WORKERS IN ISRAEL

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*We examine the short-term and long-term impact of bilateral agreements on migrant workers' vulnerability during their employment in Israel. To do so, we developed the Vulnerability Index of Migrant Workers based on five dimensions: poor working conditions, poor living conditions, poor safety conditions, low wages, and dependence on migration costs.*

*We focus on migrant workers arriving in Israel from two different countries (China and Thailand), employed in two different sectors of the economy (construction and agriculture, respectively). Data was gathered through a survey conducted among workers arriving from both countries before and after the implementation of the bilateral agreements.*

*The study revealed that after the implementation of bilateral agreements, the working, living and safety conditions of migrant workers remained poor or even worsened. For Thai workers, there was a slight improvement in the working and living conditions in the short term after the bilateral agreement, but they worsened in the long run. The total Index of Vulnerability of both groups showed improvement due to the dramatic decrease in dependence on migration costs, despite the deterioration in some working and living conditions and the reduction in migrant workers' relative wages.*

## INTRODUCTION

Temporary migrant worker programs (TMWPs) are back on the rise since the 1990s in a number of receiving countries throughout the world.<sup>1</sup> Destination countries and employers are looking for labor-exporting countries that can provide temporary and flexible workers, who will not claim settlements and will return to their home countries when the contract ends. Indeed, such programs are a pragmatic solution for developed countries interested in hiring temporary workers for employment in low-paid sectors such as care work, agriculture and construction, without having to provide a path to permanent residence or citizenship.<sup>2</sup>

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1 Stephen Castles, *Guestworkers in Europe: A Resurrection?*, 40 INT'L MIGRATION REV. 741 (2006).

2 FAY FARADAY, METCALF FOUNDATION, *MADE IN CANADA: HOW THE LAW CONSTRUCTS MIGRANT WORKERS' INSECURITY* (2012); ROBYN M. RODRIGUEZ, *MIGRANTS FOR EXPORT: HOW THE PHILIPPINE STATE BROKERS LABOR TO THE WORLD* (2010); Kristin Surak, *Guestworkers: A Taxonomy*, 84 NEW LEFT REV. 84 (2013).

The precarious position of labor migrants in receiving societies is a consequence of structural forms of subordination institutionalized by state regulations and controls.<sup>3</sup> The inherent structure of temporary migrant worker programs institutionalizes uncertainty and therefore puts low-skilled migrants into precarious employment circumstances, increasing their vulnerability in the labor market.<sup>4</sup> Labor migrants are vulnerable to abuse both during their employment in the host society and during the recruitment process. Examples include excessive recruitment fees, low wages, late payment of wages, lack of compliance with labor laws, and unsafe working environments.<sup>5</sup>

Bilateral labor agreements (BLAs) have been recognized as a good practice in the governance of labor migration flows.<sup>6</sup> BLAs can improve the governance of labor migration by promoting dialogue for better governance, promoting the sharing of responsibility between the country of origin and the host country, increasing the transparency of the process of recruitment, controlling the costs of migration and recruitment fees, preventing recruitment malpractice, channeling workers through legal channels, and monitoring employment practices in the host labor market.<sup>7</sup>

One of the main principles of the International Labour Organization (ILO)'s Multilateral Framework on Labour Migration is that "governments should ensure that national laws and practice that promote and protect human rights apply to all migrant workers and that they are respected by all concerned."<sup>8</sup> Governments should "protect migrant workers from conditions of forced labour, including debt bondage and trafficking, particularly migrant workers in an irregular situation or other groups of migrant workers who are particularly vulnerable to such conditions."<sup>9</sup> Some BLAs—such as those between Argentina (receiving country) and Bolivia, Peru and Ukraine (sending countries), Spain with Colombia, and Italy with Moldova—contain instruments for ensuring human rights and sometimes even spell out those rights

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3 Rebeca Raijman & Adriana Kemp, *The Institutionalization of Labor Migration in Israel*, 192 *ARBOR* 289 (2016); Kendra Strauss & Siobhán McGrath, *Temporary Migration, Precarious Employment and Unfree Labour Relations: Exploring the 'Continuum of Exploitation' in Canada's Temporary Foreign Worker Program*, 78 *GEOFORUM* 199 (2017).

4 Hila Shamir, *The Paradox of 'Legality': Temporary Migrant Worker Programs and Vulnerability to Trafficking*, in *REVISITING THE LAW AND GOVERNANCE OF TRAFFICKING, FORCED LABOR AND MODERN SLAVERY* 471 (Prabha Kotiswaran ed., 2017); GUY STANDING, *THE PRECARIAT: THE NEW DANGEROUS CLASS* (2011); Strauss & McGrath, *supra* note 3.

5 Danièle Bélanger, *Labor Migration and Trafficking Among Vietnamese Migrants in Asia*, 653 *ANNALS AM. ACAD. POL. & SOC. SCI.* 87 (2014); Adriana Kemp & Rebeca Raijman, *Bringing in State Regulations, Private Brokers, and Local Employers: A Meso-level Analysis of Labor Trafficking in Israel*, 48 *INT'L MIGRATION REV.* 604 (2014).

6 Adam S. Chilton & Eric A. Posner, *Why Countries Sign Bilateral Labor Agreements*, 47 *J. LEGAL STUD.* 45 (2018).

7 PIYASIRI WICKRAMASEKARA, *INT'L LAB. OFF., BILATERAL AGREEMENTS AND MEMORANDA OF UNDERSTANDING ON MIGRATION OF LOW SKILLED WORKERS: A REVIEW* (2015).

8 *INT'L LAB. OFF., ILO MULTILATERAL FRAMEWORK ON LABOUR MIGRATION: NON-BINDING PRINCIPLES AND GUIDELINES FOR A RIGHTS-BASED APPROACH TO LABOUR MIGRATION* 15 (2006).

9 *Id.* at 16.

in detail.<sup>10</sup> However, more commonly bilateral agreements simply stipulate that the workers' employment be in compliance with the destination country's labor laws.

While there is a vast literature dealing with bilateral and multilateral agreements,<sup>11</sup> not much is known about how these agreements can change existing recruitment practices and potentially improve the vulnerable position of migrants in the labor market of the host countries.<sup>12</sup>

We seek to fill this gap by analyzing the impact of bilateral agreements on migrant workers' vulnerability during the recruitment process and during their employment in Israel. Specifically, we developed the Vulnerability Index of Migrant Workers (VIMW) to investigate the practical consequences of bilateral agreements for the working and living conditions of Thai migrants in the agricultural sector and Chinese migrants in the construction sector in Israel, before and after the implementation of these agreements. By comparing these two sectors, the Article makes a contribution to research in this field, as studies often tend to focus on a singular sector or a singular migrant group.<sup>13</sup> Thus, broadening the analysis across multiple sectors and immigrant groups better illustrates the unique vulnerabilities faced by migrants in each sector of employment. Furthermore, the "before-after" design of the study allows for a better discussion of BLAs' effects and the groups to which they apply.

In Part I, we outline the Israeli setting in which we examine the main characteristics of the labor migration regime. Part II presents the theoretical background, focusing

10 WICKRAMASEKARA, *supra* note 7.

11 See, e.g., Yuval Livnat, *Israel's Bilateral Agreements with Source Countries of Migrant Workers: What is Covered, What is Ignored and Why?* (Feb. 7, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3523087](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3523087); Patricia Pittman, *Alternative Approaches to the Governance of Transnational Labor Recruitment*, 50 INT'L MIGRATION REV. 269 (2016); WICKRAMASEKARA, *supra* note 7.

12 Studies focusing on the impact of bilateral agreements on ensuring labor migrants' rights and employment conditions usually report minor effects. This is the case for Filipino labor migrants in various receiving countries, for migrants from Malaysia in Indonesia, for migrants from Hungary in the European Union, and for migrants from Moldova, Bulgaria and China in Israel. See Graziano Battistella & Binod Khadria, *Labour Migration in Asia and the Role of Bilateral Migration Agreements: Market Access Facilitation by Informal Means*, in GLOBAL FORUM ON MIGRATION AND DEVELOPMENT WORKSHOP ON MARKETS FOR MIGRATION AND DEVELOPMENT: TRADE AND LABOUR MOBILITY LINKAGES—PROSPECTS FOR DEVELOPMENT 13 (2011); Xinying Chi, *Challenging Managed Temporary Labor Migration as a Model for Rights and Development for Labor-sending Countries*, 40 N.Y.U. J. INT'L L. & POL. 497, 527 (2008); Ágnes Hárs, *Channeled East-West Labour Migration in the Frame of Bilateral Agreements* (Inst. Econ., Ctr. Econ. & Reg'l Stud., Working Paper No. 301, 2003); Nonna Kushnirovich et al., *The Impact of Government Regulation on Recruitment Process, Rights, Wages and Working Conditions of Labor Migrants in the Israeli Construction Sector*, 16 EUR. MGMT. REV. 909 (2019).

13 David Bartram, *Labor Migration Policy and the Governance of the Construction Industry in Israel and Japan*, 32 POL. & SOC'Y 131 (2004); Bélanger, *supra* note 5; FARADAY, *supra* note 2; Nonna Kushnirovich, *Migrant Workers: Motives for Migration, Contingency of Choice and Willingness to Remain in the Host Country*, 10 INT'L J. DIVERSITY ORGS., CMTYS. & NATIONS 149 (2010); Kushnirovich et al., *supra* note 12; Froilan T. Malit, Jr. & George S. Naufal, *Asymmetric Information under the Kafala Sponsorship System: Impacts on Foreign Domestic Workers' Income and Employment Status in the GCC Countries*, 54 INT'L MIGRATION 76 (2016); Janet McLaughlin & Jenna L. Hennebray, 9 *Pathways to Precarity: Structural Vulnerabilities and Lived Consequences for Migrant Farmworkers in Canada*, in PRODUCING AND NEGOTIATING NON-CITIZENSHIP: PRECARIOUS LEGAL STATUS IN CANADA 175 (Luin Goldring & Patricia Landolt eds., 2013).

on the literature on bilateral agreements and precarious employment, and on the vulnerability of migrants. The data and variables used in constructing the index are then presented in Part III, followed by the findings (Part IV). We conclude with a discussion of the findings and the study's limitations, and suggest future research directions (Part V).

## I. LABOR MIGRATION IN ISRAEL

Labor migration from other countries is a relatively new phenomenon in Israel. Until the end of the 1980s, daily commuters from the West Bank and Gaza Strip accounted for about 7% of Israel's total labor force.<sup>14</sup> The first *Intifada* (Palestinian uprising) in 1987 resulted in a labor scarcity in low-status occupations, as noncitizen Palestinian workers were unable to enter Israel due to government restrictions or self-imposed strikes. This, together with intense pressure from employers in the construction and agricultural sectors, kicked off a process that has resulted in the sizable recruitment of foreign labor migrants since the early 1990s.<sup>15</sup> Since then, the number of labor migrants entering the Israeli labor market has steadily increased. According to the Population and Immigration Authority (PIBA), 119,476 migrant workers resided in Israel at the end of 2019, comprising about 3% of the Israeli labor force; only around 85% of them had work permits.<sup>16</sup> The majority of migrant workers are employed in three main sectors: caregiving (57%) comprising 19% of home care-giving workers in Israel, agriculture (22%) comprising 34% of agricultural workers in Israel), and construction (13%) comprising 7% of construction workers in Israel.<sup>17</sup>

In Israel, labor migration is based on contractual labor and is only temporary, with no prospects of permanent settlement or citizenship for the migrant.<sup>18</sup> Work permits are given to employers (in agriculture and caregiving) or to manpower corporations (in construction),<sup>19</sup> thereby maximizing the control of the employers and the state over the labor migrants in what is called a "binding system." The state does not allow family reunification or residence without a work permit. It also imposes a strict deportation policy, whereby undocumented migrants may be arrested and deported at any time by a simple administrative decree. These state

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14 MOSHE SEMYONOV & NOAH LEWIN-EPSTEIN, *HEWERS OF WOOD AND DRAWERS OF WATER: NONCITIZEN ARABS IN THE ISRAELI LABOR MARKET* (1987).

15 Rajjman & Kemp, *supra* note 3.

16 In this Article we focus only on workers with a legal permit. Workers without a permit are those who arrived legally but became unauthorized when they left their current employer without formal authorization, or when they did not leave the country after finishing their contracts.

17 POPULATION & IMMIGR. AUTH., MINISTRY OF THE INTERIOR, DATA REGARDING FOREIGN NATIONALS IN ISRAEL (2021) [https://www.gov.il/BlobFolder/generalpage/foreign\\_workers\\_stats/he/ZARIM\\_q4\\_2020.pdf](https://www.gov.il/BlobFolder/generalpage/foreign_workers_stats/he/ZARIM_q4_2020.pdf); GILAD NATHAN, INST. IMMIGR. & SOC. INTEGRATION, RUPPIN ACAD. CTR, THE OECD EXPERT GROUP ON MIGRATION, SOPEMI ANNUAL REPORT: INTERNATIONAL MIGRATION—ISRAEL 2020-2021 (2021).

18 Kushnirovich, *supra* note 13.

19 Kushnirovich et al., *supra* note 12. Licensed agencies recruit workers from abroad and assign them to building contractors. Nevertheless, the agencies continue to be the workers' legal employers and are responsible for their social rights, wages, medical insurance, social security payments, and housing.

regulations expose migrant workers to more labor market control mechanisms than employers have over citizens, resulting in the creation of a precarious workforce of noncitizens.<sup>20</sup>

As a country of socio-democratic origins, Israel has advanced regulations governing workers' rights, such as a minimum pay, working hours, and working conditions. These laws apply to all Israeli inhabitants regardless of their legal status and citizenship.<sup>21</sup>

However, in the regulation and control of labor migration, the Israeli system is similar to that of the Arab Gulf states and Southeast Asian countries, whose labor migration laws and regulations are far harsher than those in Western labor-importing countries.<sup>22</sup> Despite legislation designed to protect labor migrants, contract labor has become a fertile field for the violation of the basic social rights of labor migrants.<sup>23</sup>

From the outset, official migrant worker recruitment in Israel was completely privatized and carried out through recruitment agencies in Israel and in the home countries, which charge exorbitant and illegal fees to arrange for someone to come to work in Israel. In 2006, a maximum fee of about \$1,000 was set for potential migrant workers to pay for recruitment. However, migrants who wanted to work in Israel have paid private companies substantially higher fees.<sup>24</sup>

Over the years, Israeli governments have been reluctant to sign bilateral agreements with other countries to regulate the recruitment and employment conditions of migrant workers, allowing profit-driven private agents to dominate the market. In July 2005, the government announced that, in order to put an end to the corrupt practices of private agencies, the recruitment of migrant workers would be conducted solely under the control of the International Organization for Migration (IOM) or another public organization.<sup>25</sup> A turning point regarding labor migration recruitment

20 Raijman & Kemp, *supra* note 3.

21 Nonna Kushnirovich, *Social Policy and Labor Migration: The Israeli Case*, 1 DEMOGRAPHY & SOC. ECON. 87 (2012). Regardless of their legal status, migrant workers are entitled to the same working conditions as Israeli employees: minimum wage; one day off a week; overtime payment; paid annual vacation; sick pay; etc. However, migrant workers are only partly covered by the system of social security. Unemployment benefits, income support benefits, disability pensions, and other welfare benefits are not available to migrant workers. They are entitled, however, to social insurance of work injury, maternity, insurance in case of the employer's bankruptcy or corporate liquidation, and a one-time payment of retirement savings (when exiting Israel). Migrant workers are not covered by public health insurance, but their employers are required to provide them with private medical insurance. In addition, the employer has to provide migrant workers with proper housing.

22 Kemp & Raijman, *supra* note 5.

23 Nonna Kushnirovich & Rebeca Raijman, *Recruitment Practices of Labour Migrants in Israel: The Case of the Domestic Care Sector*, in WORK AND THE CHALLENGES OF BELONGING: MIGRANTS IN GLOBALIZING ECONOMIES 178 (Mojca Pajnik & Floya Anthias eds., 2014); SARAH L. WHITSON, HUMAN RIGHTS WATCH, A RAW DEAL: ABUSES OF THAI WORKERS IN ISRAEL'S AGRICULTURAL SECTOR (2015); REBECA RAIJMAN & NONNA KUSHNIROVICH, THE EFFECTIVENESS OF THE BILATERAL AGREEMENTS: RECRUITMENT, REALIZATION OF SOCIAL RIGHTS, AND LIVING & EMPLOYMENT CONDITIONS OF MIGRANT WORKERS IN THE AGRICULTURE, CONSTRUCTION AND CAREGIVING SECTORS IN ISRAEL, 2011-2018 (2019).

24 REBECA RAIJMAN & NONNA KUSHNIROVICH, LABOR MIGRANT RECRUITMENT PRACTICES IN ISRAEL (2012). For example, migrant workers in care-work paid on average \$6,500, Thai workers in agriculture \$9,000 on average, and Chinese workers in construction around \$22,000.

25 Israel Government, Permits for the Employment of Migrant Workers, Government Decision No. 4024 (2005).

practices was the implementation in 2012 of the first bilateral agreement signed with the government of Thailand (in 2010) for the recruitment of migrants in the agricultural sector.<sup>26</sup> Bilateral agreements were subsequently signed and implemented with Bulgaria, Moldova, Romania, Ukraine, and China for workers in the construction sector (in December 2011, 2012, 2014, 2016, and 2017, respectively).<sup>27</sup>

These agreements state that recruitment should be carried out by government or public agencies, without the involvement of private, unauthorized agencies located in Israel or in the home country of a migrant.<sup>28</sup> Overall, the main objectives of the agreements are (1) to ensure that the recruitment of labor migrants is fair and transparent;<sup>29</sup> (2) to eliminate the exorbitant and illegal recruitment fees through government oversight, and regulation of the labor migration process in both the source and destination countries;<sup>30</sup> and (3) to bring in workers who are aware of their responsibilities and rights in Israel.<sup>31</sup>

The BLAs signed and implemented in Israel generally focus on the recruitment process. They define the relevant state and non-state actors involved, the specific stages of the selection process, and the maximum amounts to be paid by the migrants. The bilateral agreements do not deal with the protection of migrant workers' rights in the labor market.<sup>32</sup> However, they are intended to enhance workers' understanding of their legal rights. As a result, prior to their arrival in Israel, migrant workers receive more extensive information on employment conditions, where they can file complaints about infringement of their rights, and whom they can turn to for support. Thus, we can expect that migrant workers' employment conditions may be

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26 For a detailed analysis, see Yahel Kurlander & Matan Kaminer, *Permanent Workers in the Backyard: Employing Migrant Farmworkers from Thailand in the Israeli Countryside*, 98 HORIZONS GEOGRAPHY 131 (2020); Livnat, *supra* note 11.

27 In the caregiving sector, private companies still conduct most of the recruitment process, charging unlawfully high fees from migrants interested in coming to work in Israel. Bilateral agreements were signed with the Philippines (2018) and Sri Lanka (2020) according to which recruitment would be conducted only through governmental agencies, thereby eliminating the role of private agencies in the recruitment process. However, due to political instability in Israel and the Covid-19 pandemic, only the agreement with the Philippines has recently been implemented.

28 See Livnat, *supra* note 11. Until 2020, the bilateral agreement with Thailand was implemented under the TIC project (Thailand-Israel Cooperation on the Placement of Workers). It was run by the Thai Ministry of Labor and PIBA with support of the Center for International Migration and Integration (CIMI) in Israel, and the International Organization for Migration (IOM) in Thailand. Private agencies in Thailand were not involved in this procedure. According to this agreement, a small number of Israeli licensed agencies were responsible for the workers after their arrival in Israel, and for this service they were allowed to charge a predetermined fixed fee. According to the BLA signed with China, part of the recruitment activities are carried out by a few authorized Chinese private companies, which are supervised by the government.

29 9.7.0003, PIBA Foreign Workers Procedures, Procedure for Inviting and Employment of Foreign Workers from China in the Construction Sector in Israel (June 13, 2017), at 2.

30 See Livnat, *supra* note 11. Not all candidates who register and meet the requirements are able to come to Israel. They are selected through a lottery system designed to ensure that migrants do not pay illegal fees.

31 *Supra* note 29.

32 Livnat, *supra* note 11. Several (yet not all) BLAs contain a general provision regarding the equal labor rights of foreigners and Israelis, but do not set guidelines for specific rights or any form of control for an effective enforcement mechanism to guarantee that workers de facto receive these rights.

indirectly affected by increased awareness, as workers will be more likely to speak out against unjust conditions and stick up for their rights.<sup>33</sup>

## II. VULNERABILITY OF LABOR MIGRANTS

Migrant vulnerability refers to the “exposure and/or experience of migrants to violence, exploitation or abuse within a migration context, and with limited capability to avoid, resist, cope or recover, as a result of the unique interaction of individual, household/family, community and structural characteristics and conditions.”<sup>34</sup> Most models of vulnerability, such as the multidimensional model of unacceptable forms of work<sup>35</sup> or the indicators of trafficking developed by the European Commission and the ILO (2009),<sup>36</sup> are universal models, designed to define extreme forms of vulnerable employment such as human trafficking, forced labor, child labor, and even slavery. They do not always apply to the case of migrant workers and their particular employment conditions. We regard the vulnerability of labor migrants as a continuum of experiences and situations ranging from the positive extreme of decent work (a desirable situation) to the negative extreme of serious forms of labor exploitation.<sup>37</sup> Using this continuum, we can evaluate the situation of migrant workers against the goals of decent work, protected rights, adequate remuneration, and social protection. Our framework builds on two main components of labor migrants’ vulnerability: precarious employment and dependence on migration costs associated with the recruitment process.

Precarious employment is generally defined as insecure and unstable employment characterized by poor work conditions, low income, low commitments from the employer, and no prospects of a future career.<sup>38</sup> Bourdieu described precarious work as insecure, temporary, part-time or casual positions.<sup>39</sup> Increased common insecurity in capitalist markets all over the world has forced workers to accept precarious employment and exploitation. Bourdieu called it “flexploitation,” meaning when globalization and the possibility of using foreign workers by relocating production to developing countries or importing foreign workers creates competition between the native workers and the migrant workers.<sup>40</sup> Thus, insecurity is a phenomenon

33 RAIJMAN & KUSHNIROVICH, *supra* note 24.

34 Int’l Org. for Migration, *The Determinants of Migrant Vulnerability*, in IOM HANDBOOK ON PROTECTION AND ASSISTANCE TO MIGRANTS VULNERABLE TO VIOLENCE, EXPLOITATION AND ABUSE 3 (2004).

35 Deirdre McCann & Judy Fudge, *A Strategic Approach to Regulating Unacceptable Forms of Work*, 46 J.L. & Soc’y 271 (2019), <https://publications.iom.int/books/iom-handbook-migrants-vulnerable-violence-exploitation-and-abuse>.

36 ILO & Eur. Comm’n, *Operational Indicators of Trafficking in Human Beings: Results from a Delphi Survey Implemented by the ILO and the European Commission* (2009), [https://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_105023.pdf](https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf).

37 KLARA SKRIVANKOVA, *BETWEEN DECENT WORK AND FORCED LABOUR: EXAMINING THE CONTINUUM OF EXPLOITATION* (2010); Strauss & McGrath, *supra* note 3.

38 STANDING, *supra* note 4.

39 PIERRE BOURDIEU, *ACTS OF RESISTANCE: AGAINST THE TYRANNY OF THE MARKET* (Richard Nice trans., 1999).

40 *Id.*

that accompanies globalization,<sup>41</sup> whereas temporary labor migration is usually regarded as an extreme manifestation of the precariousness of work.<sup>42</sup>

According to the ILO's definition,<sup>43</sup> precarious workers are those whose contract of employment is expected to continue for only a short period, seasonal workers, or workers whose contract of employment may be terminated by the employer on short notice and/or at will. Since the employment of temporary labor migrants in the host country is by definition restricted to a specific term (in Israel up to five years), and workers who lose their jobs may be deported if they are unable to find another employer, this certainly falls under the category of precarious employment. Precariousness, in terms of being in an unstable and easily disrupted position, is the salient factor which makes migrant workers vulnerable to different kinds of abuse and exploitation; that is, precarious employment is an important component of vulnerability.

Different attempts have been made to delineate the dimensions of precarious employment. Based on a review of 63 academic papers, Kreshpaj et al.<sup>44</sup> identified five main dimensions: employment insecurity; income inadequacy; lack of rights and protection; a work environment that includes long work hours and hazardous working conditions; and health effects and social consequences. Likewise, Fudge and Owens<sup>45</sup> suggested four dimensions: uncertainty of continuing employment; lack of control over working conditions, wages, and the pace of work; lack of regulatory protection; and low income. In Kumar et al.'s<sup>46</sup> study of workers living on palm plantations located in remote localities, the researchers identified two main characteristics of precarious work: precarious working conditions (in terms of low wages,<sup>47</sup> long working hours,<sup>48</sup> less safety, less security, hazardous job, etc.)

41 Marco Ricceri, *Europe and Social Precarity: Proactive Elements for System Interventions*, in PRECARIETY: MORE THAN A CHALLENGE OF SOCIAL SECURITY, OR: CYNICISM OF EU'S CONCEPT OF ECONOMIC FREEDOM (Peter Hermann & Sibel Kalaycioglu eds., 2011).

42 STANDING, *supra* note 4; Carl-Ulrik Schierup & Martin Bak Jørgensen, *An Introduction to the Special Issue. Politics of Precarity: Migrant Conditions, Struggles and Experiences*, 42 CRITICAL SOCIO. 947 (2016).

43 Patrick Bolle, *Part-Time Work: Solution or Trap?*, 136 INT'L LAB. REV. 557 (1997).

44 Bertina Kreshpaj et al., *What Is Precarious Employment? A Systematic Review of Definitions and Operationalizations from Quantitative and Qualitative Studies*, 46 SCAND. J. WORK, ENV. & HEALTH 235 (2020).

45 PRECARIOUS WORK, WOMEN AND THE NEW ECONOMY: THE CHALLENGE TO LEGAL NORMS (Judy Fudge & Rosemary Owens eds., 2006).

46 Dileep M. Kumar et al., *Instrument: Precarious Working Condition (IPWC) Integrating Mixed Mode of Research in Instrument Construction*, 94 MAN IN INDIA 95 (2014).

47 For studies addressing compensation below the minimum wage, see Anja K. Franck & Joseph T. Anderson, *The Cost of Legality: Navigating Labour Mobility and Exploitation in Malaysia*, 50 INT'L Q. ASIAN STUD. 19 (2019); McCann & Fudge, *supra* note 35; FUDGE & OWENS, *supra* note 45; Kreshpaj et al., *supra* note 44; Kumar et al., *supra* note 46; Shamir, *supra* note 4.

48 For specific studies on long working hours, see FIONA DAVID ET AL., *MIGRANTS AND THEIR VULNERABILITY: TO HUMAN TRAFFICKING, MODERN SLAVERY AND FORCED LABOUR* (2019); Franck & Anderson, *supra* note 47; McCann & Fudge, *supra* note 35; FUDGE & OWENS, *supra* note 45; Kreshpaj et al., *supra* note 44; Kumar et al., *supra* note 46; Shamir, *supra* note 4; STANDING, *supra* note 4; Måns Svensson et al., *Migrantarbetare Inom Jordbruket—Arbetsmiljö och Arbetsvillkor [Migrant workers in Agriculture—Working environment and Working conditions]*, 1 ARBETSLIV I OMVANDLING 1 (2015) (Swed.).

and precarious living conditions (poor hygiene, no electric supply, no clean water, poor housing, frequent illness, less recreations, etc.).<sup>49</sup>

Numerous studies have defined additional indicators such as no additional compensation for overtime,<sup>50</sup> lack of leisure time, not enough weekly rest or vacations,<sup>51</sup> little access to paid sick leave,<sup>52</sup> lack of employers' compliance with the terms of the signed contract and labor laws,<sup>53</sup> and hazardous or dangerous work.<sup>54</sup>

Besides precarious working conditions, studies on migrants' vulnerability usually include additional elements related to recruitment, accessibility of information, and debt burdens, among others. For example, the multidimensional model of unacceptable forms of work<sup>55</sup> includes dimensions related to inadequate regulation by employers and employment agencies, as well as a lack of knowledge on legal rights. The European Commission and ILO<sup>56</sup> have developed indicators of labor trafficking, which include indicators of exploitation, coercion, abuse, and deceptive recruitment. Shamir<sup>57</sup> suggested relying on these indicators to analyze temporary migrant worker programs, and formulated the following dimensions of labor migrants' vulnerability: deceptive recruitment (deceived about wages and working and living conditions), coercive recruitment at origin and destination (debt bondage, confiscation of documents), the abuse of workers' rights during recruitment in the host country and destination, and exploitative conditions of work.

The analysis of the vulnerability of migrant workers is strongly connected with the recruitment process, the high fees paid by migrant workers to private recruitment agencies, the time it takes to repay the debt, and debt burdens.<sup>58</sup> Concerns about defaulting on their debt heighten migrants' fear of losing their job and being deported, making them more willing to compromise on work conditions and not complain in cases of abuse and violations.<sup>59</sup> Thus, the vulnerable position of labor migrants may be further exacerbated when they incur a debt to cover the costs of migration.<sup>60</sup> While studies have acknowledged that debt burdens resulting from high recruitment

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49 For other studies on poor living conditions as a sign of precarious work, see DAVID ET AL., *supra* note 48; Kumar et al., *supra* note 46; McLaughlin & Hennebry, *supra* note 13; Schierup & Jørgensen, *supra* note 42; Shamir, *supra* note 4; Svensson et al., *supra* note 48.

50 DAVID ET AL., *supra* note 48; McCann & Fudge, *supra* note 35.

51 Kumar et al., *supra* note 46; McCann & Fudge, *supra* note 35; Shamir, *supra* note 4.

52 Kumar et al., *supra* note 46; McCann & Fudge, *supra* note 35.

53 Svensson et al., *supra* note 48; Shamir, *supra* note 4.

54 Kreshpaj et al., *supra* note 44; Kumar et al., *supra* note 46; Svensson et al., *supra* note 48.

55 McCann & Fudge, *supra* note 35.

56 ILO & Eur. Comm'n, *supra* note 36.

57 Shamir, *supra* note 4.

58 Franck & Anderson, *supra* note 47; Katharine Jones & Heila Sha, *Mediated Migration: A Literature Review of Migration Intermediaries* (MIDEQ, Working Paper, August 2020); Bélanger, *supra* note 5; Bartram, *supra* note 13; Kumar et al., *supra* note 46; McCann & Fudge, *supra* note 35; Shamir, *supra* note 4; Kushnirovich et al., *supra* note 12.

59 Dina F. Haynes, *Exploitation Nation: The Thin and Grey Legal Lines between Trafficked Persons and Abused Migrant Laborers*, 23 NOTRE DAME J.L., ETHICS & PUB. POL'Y 1 (2009); FARADAY, *supra* note 2; Malit, Jr. & Naufal, *supra* note 13.

60 Maria Platt et al., *Debt, Precarity and Gender: Male and Female Temporary Labour Migrants in Singapore*, 43 J. ETHNIC & MIGRATION STUD. 119 (2017); Kushnirovich et al., *supra* note 12.

fees are an important feature of labor migration, they remain largely overlooked in debates concerning the vulnerable position of labor migrants in receiving societies.<sup>61</sup> Thus, dependence on migration costs associated with the recruitment process is an additional component of labor migrants' vulnerability.

Based on the literature review, we used the five following dimensions of vulnerability (the first four dimensions imply precarious employment, and the fifth dimension relates to the recruitment process) to create our Vulnerability Index of Migrant Workers:

1. Poor working conditions—long working hours, not being paid for overtime, no rest days, not being paid for sick days, contract violations
2. Poor living conditions
3. Poor safety conditions—no safety instructions, no protective gear
4. Low wages
5. Dependence on migration costs—level of indebtedness, the time it takes to repay the debt, total migration costs.

We used this index to assess the extent of vulnerability of migrant workers in the agricultural and construction sectors in Israel, before and after the BLAs. Our goal is to determine how effective the bilateral agreements have been in improving migrant workers' position in the labor market of the host country in both the short term (in the first years after the implementation of the bilateral agreements) and the long term (more than five years after their implementation). As noted above, BLAs were intended to improve the precarious position of migrant workers by lowering (or eliminating) recruitment fees and raising awareness of social and employment rights. Therefore, we would expect the index of vulnerability of migrant workers to be lower after the implementation of the agreements than it was before. This hypothesis was examined in two sectors: agriculture and construction. For workers from China (construction), it was examined as regard the short term, because the BLA with China was enacted only in 2017.<sup>62</sup> For Thai workers (agriculture), both the short-term and long-term impact was examined, as the BLA was implemented in 2012, and we collected data in 2014 and 2016-17.<sup>63</sup>

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61 B elanger, *supra* note 5; Shamir, *supra* note 4; Franck & Anderson, *supra* note 58; Jones & Sha, *supra* note 58.

62 We focus on Chinese workers because China was the country from which workers were also arriving before the BLAs. Therefore, we have data for "before" and "after" the BLA. Other countries with whom BLAs were signed in the construction sector did not send workers to Israel before the implementation of the agreements.

63 We focus on agriculture and construction because these are the sectors in which all the migrants are recruited by bilateral agreements. As said before, in the care-work sector most of the workers still arrive through private recruitment. Recruitment through the BLA in the Philippines has recently started, and data was not collected yet for this group in order to assess the impact of BLAs in the care-work sector.

### III. METHOD

#### A. Data

To evaluate the impact of the bilateral agreements, we needed data collected before and after their implementation. To accomplish this goal, we gathered information through a survey conducted among 180 workers from Thailand (working in agriculture), 55 of whom were interviewed in 2011 prior to the BLA's implementation, and 125 after its implementation (50 workers in 2014, and 75 workers in 2016-2017). In the construction sector, we interviewed 78 workers from China, 32 of them in 2011 prior to the implementation of the BLA, and 46 in 2018 after its implementation. All respondents had entered Israel with work permits, and had legal status at the time of the survey.<sup>64</sup>

The survey included closed and open questions about (1) demographic characteristics and pre-migration experience—being employed/unemployed/not part of the workforce, and previous work experience in other host countries; (2) the reasons for migrating in general and for choosing Israel specifically; (3) the process of migration; (4) recruitment and different migration costs; (5) contracts (whether the contracts were signed, the language of contract and understanding of its content, and contract violations upon arrival); (6) and work and living conditions, and social rights. Picking a representative sample was not possible due to the inherent difficulty of collecting data from migrant workers.<sup>65</sup> Instead, a convenience sample was created, along with quotas based on the participants' geographic area in Israel. All interviews were conducted by interviewers who spoke the workers' native language.

Table 1 provides information on the socioeconomic characteristics of the labor migrants from Thailand and China who participated in the study. Most of the participants from Thailand (91.7%) and all the participants from China were men (the BLA with China stipulates that only men can work in the construction sector). On average, the workers from China were 39.8 years old and had completed 9.2 years of schooling. Almost all of them were married (96.2%). Migrant workers from Thailand were younger (32.9 years old on average), had completed 9.8 years of schooling, and only 60.6% of them were married. Before coming to Israel, the majority of migrant workers were employed in their home country (91.4% of the Chinese workers and 96.7% of the Thai workers). Nearly half of the workers from China (45.1%) and 15.6% of the workers from Thailand stated that they had prior work experience in another host country.

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64 As of the end of 2017, there were 21,551 migrant workers from Thailand covered by bilateral agreements in Israel. After the signing of bilateral agreements with China in 2017, 3,796 migrant workers from China arrived in Israel in 2018. Thus, workers surveyed in this study who came under the bilateral agreements comprised 1.6% of the total number of Chinese workers in Israel covered by bilateral agreements, and 0.6% of all migrant workers from Thailand in Israel covered by these agreements.

65 A sample is considered to be representative if all members of the target population have an equal chance of being selected in the sample. To construct such a sample, a list of all members in the populations is needed. Given that there is no access to such a list of migrant workers in construction and agriculture, we used a convenience sample, a very common strategy when dealing with inaccessible groups.

*Table 1. Sociodemographic characteristics of the respondents in the sample*

	China	Thailand
% Men	100	91.7
Average age (SD)	39.8 (4.8)	32.9 (4.6)
Average years of schooling (SD)	9.2 (2.2)	9.8 (3.7)
Marital status:		
Single (%)	2.6	27.2
Married (%)	96.2	60.6
Divorced (%)	1.2	12.2
Activity in the workforce before arrival in Israel:		
Employed (%)	91.4	96.7
Unemployed (%)	6.4	3.3
Not part of the workforce (%)	2.2	0.0
Previous work experience in other host countries (%)	15.6	45.1
N	78	180

### B. Measures

As noted above, we have identified five dimensions of vulnerability: (1) poor working conditions, (2) poor living conditions, (3) poor safety conditions at work, (4) low wages, and (5) dependence on migrant costs.

*Poor working conditions* include long working hours, not being paid for overtime, no rest days, not being paid for sick days, and contract violations. Long working hours were calculated as net hours of work: the workers reported the beginning and the end of their workday, and the number and duration of breaks throughout the day. The calculation of net work hours was very important because sometimes workers in agriculture had a break of four or more hours because of the weather (excessive heat, storms, rain). Not being paid for overtime<sup>66</sup> and not being paid for sick days<sup>67</sup> were calculated as the percentage of workers who reported not receiving these payments. Contract violations were calculated as the percentage of workers who said there was a mismatch between the contract signed in their home country

66 According to Israeli legislation, a worker who works six days a week is entitled to extra pay for each hour worked beyond eight a day, and a worker who works five days a week is entitled to extra pay for each hour worked beyond nine. Hours of Work and Rest Law (1951), ISR-1951-L-36146, [https://www.ilo.org/dyn/natlex/natlex4.detail?p\\_isn=36146&p\\_lang=en](https://www.ilo.org/dyn/natlex/natlex4.detail?p_isn=36146&p_lang=en).

67 In Israel, the employer is required to pay the worker (local or foreign) for sick leave as follows: for the first day of absence due to illness, there is no payment due; for the second and third day of absence due to illness, the worker is entitled to 50% of their daily wage; and from the fourth day on, the worker is entitled to 100% of their daily wage.

and their actual employment conditions.<sup>68</sup> The variable *no rest days* was measured by the total number of rest days the workers did not take per month.<sup>69</sup>

*Poor living conditions.* In Israel, by law an employer must provide the migrant worker with decent housing and facilities. Migrant workers were asked whether their employer provided them with the following required facilities: (1) personal closet; (2) a bed for each worker; (3) electric heating; (4) air conditioning or fan; (5) kitchen with hot and cold running water; (6) refrigerator; (7) toilet and shower; and (8) washing machine. The answers were categorized as “1” = not provided, “0” = yes, provided. The variable *Poor living conditions* was calculated as the sum of the answers ranging from “0”—very good conditions to “8”—very poor conditions, and indicates how many of the required living conditions were not met.<sup>70</sup>

*Poor safety conditions at work.* Workers were asked about receiving safety instructions and protective gear when working in hazardous conditions or with hazardous materials. The indicators were calculated as the percentage of workers that were not provided safety instructions in their native language or not provided complete protective gear.<sup>71</sup>

*Low wages.* This variable was calculated as a ratio of the official monthly minimum wage in Israel in the relevant period in NIS (new Israeli shekels, each worth about 25 American cents) to the monthly wage received by the worker. Higher values indicate that the worker was receiving a salary closer to the minimum wage.

The index of *dependence on migration costs* includes indicators of indebtedness, the time it takes to repay the debt, and total migration costs. Indebtedness was measured as a percentage of the total migration costs financed by the loans. The time it takes to repay the debt was measured in months. Total migration costs included all costs related to migration: recruitment fees (to private recruitment agencies, private brokers, public employment offices and other public institutions), tickets to Israel, domestic travel expenses, payments for visas, passports, document preparation, translations, medical exams, and training.

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68 Employers in Israel are required to provide each migrant worker with an employment contract in the migrant’s native language, which sets out the employment conditions. Contract violations included less rest and vacation days than indicated in the contract; longer working hours than indicated in the contract; unpaid sick leave; poor living conditions; lower wages; unpaid overtime; withholding of wages; and employment by a different employer than indicated in the contract.

69 According to Israeli law, migrant workers are entitled to a weekly rest period of at least 36 consecutive hours, namely 4.5 days of rest in a month, which have to be provided to a worker irrespective of whether s/he would like to take the rest.

70 We are aware that these questions alone may not capture the whole range of workers’ general living conditions, but these are the ones that were asked before and after the implementation of the BLAs, and are therefore suitable for comparison.

71 We are aware that relying on these indicators might lead to underestimation of the safety conditions at work, especially in the construction sector where other indicators related to the construction site may be relevant.

To convert the variables to the same scale, we used the method recommended by Giannoulis.<sup>72</sup> Doing so involved adjusting the scale of each variable using the formula:

$$Y = \left( \frac{X - X_{min}}{X_{range}} \right) n,$$

where  $Y$  is the target variable,  $X$  is the original variable,  $X_{min}$  is the minimum observed value of the original variable,  $X_{range}$  is the difference between the maximum potential score and the minimum potential score of the original variable, and  $n$  is the upper limit of the rescaled variable. All variables on different scales were modified to a scale of 0-100. Variables in percentages—not being paid for overtime, not being paid for sick days, contract violations, no safety instructions, no protective gear, low wages, and level of indebtedness—were not modified.

We computed the *Index of Vulnerability* and the sub-indices of *poor working conditions*, *poor safety conditions*, and *dependence on migration costs* as the average values of the adjusted variables. Higher values indicate greater vulnerability of the workers.

## IV. FINDINGS

### A. Chinese Workers

In Table 2 we present the values of the Index of Vulnerability for Chinese workers in the construction sector. Since the survey of Chinese workers was conducted in 2018, the analysis refers only to the changes that took place in the short term after the implementation of the bilateral agreement.

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72 Christos Giannoulis, *Rescaling Sets of Variables to be on the Same Scale*, THE ANALYSIS FACTOR (Feb. 2018), <https://www.theanalysisfactor.com/newsletter/February-2018.html>. This formula modified the variables to a scale of 0-100, namely, they were converted to percentages.

*Table 2. Index of Vulnerability by dimension and indicators (means and standard deviations) before and after the bilateral agreement—Chinese workers*

Variables	Before BLA	After BLA	t-test <sup>a</sup>
	2011	2018	
<b>Poor working conditions</b>	<b>63.0</b> <b>(14.5)</b>	<b>71.1</b> <b>(13.2)</b>	<b>0.012</b>
Long working hours	80.8 (8.1)	82.5 (3.0)	1.107
Not being paid for overtime	57.7 (50.4)	86.0 (35.1)	2.524*
No rest days	18.8 (4.9)	20.0 (0.0)	1.438
Not being paid for sick days	90.6 (29.6)	100.0 (0.0)	1.791
Contract violations	65.0 (48.9)	89.1 (31.5)	2.402*
<b>Poor living conditions</b>	<b>43.0</b> <b>(16.8)</b>	<b>41.6</b> <b>(7.0)</b>	<b>-0.443</b>
<b>Poor safety conditions</b>	<b>15.4</b> <b>(37.3)</b>	<b>16.3</b> <b>(26.0)</b>	<b>0.150</b>
No safety instructions	15.0 (36.6)	21.7 (41.7)	0.625
No protective gear	15.8 (37.5)	9.1 (29.1)	-0.768
<b>Low wages</b>	<b>33.4</b> <b>(8.9)</b>	<b>48.1</b> <b>(12.8)</b>	<b>5.629***</b>
<b>Dependence on migration costs</b>	<b>55.9</b> <b>(13.6)</b>	<b>4.1</b> <b>(8.5)</b>	<b>-18.822***</b>
Level of indebtedness	56.6 (25.6)	7.5 (25.6)	-8.255***
Time it takes to repay the debt	35.4 (17.3)	0.0 (0.0)	-14.838***
Total migration costs	70.0 (17.7)	4.8 (0.6)	-20.528***
<b>Total Index of Vulnerability</b>	<b>51.3</b> <b>(10.8)</b>	<b>39.0</b> <b>(8.7)</b>	<b>-5.554***</b>

<sup>a</sup>\*Sig. < 0.050; \*\*Sig. < 0.010; \*\*\*Sig. < 0.001.

The data in Table 2 indicate that regardless of when they arrived, the Chinese migrant workers reported occupying a vulnerable position in the Israeli labor market, especially regarding their working conditions. Indeed, after the implementation of the BLA with China, their working conditions worsened; the index of poor working conditions increased from 63.0 prior to the BLA to 71.1 after the BLA.

According to the BLA, Chinese workers in the construction industry should work 29 hours overtime in a month in addition to their regular 182 hours a month,<sup>73</sup> for a total of about 9.6 hours in a day. Table 2 indicates that their working hours were long both before (80.8 on the index of 1-100 or 11.3 hours) and after (82.5 points or 11.5 hours) the implementation of the bilateral agreement. Thus, our study found that the Chinese work longer hours than the fixed minimum, and this situation has not changed.

The data also reveal a deterioration in the payment for overtime. As noted, monthly overtime for labor migrants in the construction sector should not exceed 29 hours. However, the migrant workers from China worked about 70.4 overtime hours a month. In Israel, workers working overtime are entitled to higher pay at a rate of 125% of their regular wage for the first two hours and 150% for each hour beyond that.<sup>74</sup> After the implementation of the bilateral agreement, there was actually a decline in the payment of overtime. The index increased from 57.7 to 80.6 points ( $t = 2.524$ ,  $\text{Sig.} = 0.016$ ), meaning that the percentage of respondents reporting not receiving increased payment for overtime rose from 57.7% before the agreement to 86% after the implementation of the BLA.<sup>75</sup>

The data also reveal that before and after the implementation of the BLA most workers did not get paid for sick days. Before the BLA's implementation, 90.6% reported not receiving this payment, and after its implementation, none of the workers who were sick reported receiving sick leave payments. Likewise, the values for contract violations increased (65.0 points on the index before and 89.1 points after the bilateral agreement,  $t = 2.402$ ,  $\text{Sig.} = 0.019$ ). Thus, the share of workers who said there was a mismatch between the contract they signed in their home country and their actual employment conditions rose from 65.0% to 89.1%.<sup>76</sup> The only item on which employers complied with the labor laws was related to rest days (18.8 and 20.0 points on the index before and after the bilateral agreement, respectively). Both before and after the agreement, Chinese migrant workers claimed to have taken almost all of their available rest days.

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73 Employers should pay for these extra 29 hours irrespective of whether the workers really worked these hours.

74 *Supra* note 66.

75 RAIJMAN & KUSHNIROVICH, *supra* note 23. The corporations are the employers of the Chinese migrants who work for specific contractors. The contractor pays the corporation 60 NIS per hour worked. The worker receives 30 NIS. Therefore, it is not profitable for the corporations to have the employees work overtime because doing so increases the cost per hour. In many cases, the payment for overtime beyond the 29 hours stipulated by the contract was not paid by the corporation, but by the Chinese foreman ("Raisim") recruited by the contractors to manage the Chinese workers at the construction sites. In these cases, the payment was made in cash, and presented to the workers as a bonus. This is one of the reasons why many Chinese workers do not receive "official" payments of overtime from the corporations.

76 An additional explanation for the rise in the index of vulnerability in the dimension of rights could be as a consequence of migrants' greater awareness of their rights after the implementation of the BLAs (i.e., workers' self-reporting of their conditions might be affected by a genuine increased awareness of their rights and lower dependence on migrations costs).

Overall, *living conditions* did not change significantly and remained relatively poor (43.0 points before and 41.6 points after the BLA,  $t=-0.443$ , Sig. = 0.660). The percentage of workers who received a closet increased from 26% before the BLA to 57% after the BLA. However, the percentage of workers who received electric heating plummeted from 36% before the BLA to 0% after the BLA. Other indicators of living conditions remain unchanged or showed only slight improvement. Moreover, many respondents reported having purchased some of the housing items not provided by the employer on their own and at their own expense.<sup>77</sup>

There were also no changes in the indicators of the *safety conditions* at work. Most but not all workers received safety instructions (only 15.0% did not receive safety instructions before the BLA vs. 21.7% after the agreement). Some workers did not receive complete protective gear when working under hazardous conditions (15.8% before the agreement vs. 9.1% after). Since the majority of the respondents did receive protective gear and safety instructions, the findings suggest an improvement in the construction industry's safety situation. In actuality, though, the situation is far from ideal. Migrants arriving after the BLA systematically complained about the general security situation in the construction sites: 67% of the respondents indicated that they felt endangered at work, especially when working at heights without protective barriers to prevent falling.<sup>78</sup>

*Wages* deteriorated significantly: 33.4 points on the index before and 48.1 points after the BLA,  $t = 5.629$ , Sig. < 0.001). The higher value of this indicator indicates that after the BLA the wages of the Chinese workers were much closer to the minimum wage stipulated by law than in the period before the agreement. Between 2011 and 2018, wages declined in absolute value from 7,888 NIS before the BLA to 7,039 NIS after the agreement, a decrease of 10.8%. During that same period, the minimum wage in the Israeli construction sector climbed by almost 26%, while the average wage in the Israeli construction sector for all workers (locals and migrants) increased by 7%. Thus, the wages of the Chinese workers dropped despite the wage increases in the construction sector, reflecting a deterioration in earnings.

Finally, the indicators measuring *dependence on migration costs* improved significantly after the BLA. The level of indebtedness dropped dramatically from

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77 In the study conducted in 2018, migrants were asked to provide a subjective evaluation of their living conditions. On average, 43% of the Chinese workers evaluated their living conditions as poor or very poor, 48% said that they were neither good nor poor, and only 9% said their living conditions were good. Unfortunately, we do not have such data for the 2011 sample.

78 RAIJMAN & KUSHNIROVICH, *supra* note 23. Migrant workers in general complained about Israel's poor safety conditions in comparison to China. According to the workers, construction sites in China are normally wrapped to prevent workers from falling from heights, but Israeli law does not mandate this, putting the workers in danger. Chinese migrant workers also claimed that those who were injured in work accidents had difficulty getting help. One of the responders, for example, stated that following his accident, neither his employer's representatives nor representatives from Chinese companies in Israel came to the hospital to assist him. Unfortunately, we do not have such a question for the survey conducted before the BLA. It should be noted, however, that safety conditions are not only relevant for migrant workers. Safety problems are an endemic problem in the construction sector in Israel in general (see Worker's Hotline, Construction Workers, <https://www.kavlaoved.org.il/en/areasofactivity/work-accidents-in-the-construction-sector/>).

56.5 points to 7.5 points ( $t = -8.255$ , Sig.  $< 0.001$ ).<sup>79</sup> Correspondingly, the indicator of time it takes to repay the debt also improved significantly (35.4 points on the index before the BLA vs. 0.0 points after the agreement,  $t = -14.838$ , Sig.  $< 0.001$ ).<sup>80</sup> One of the explanations for this change is the substantial decrease in total migration costs (from 70.0 points on the index before the BLA to only 4.8 points after the agreement,  $t = -20.528$ , Sig.  $< 0.001$ ). Before the BLA, the workers were required to pay exorbitant fees to work in Israel, on average \$22,202. After the BLA was implemented, the total cost of migration (in dollars) dropped essentially to \$1,535, of which around \$1,000 were mediation fees permitted by law and the remainder were travel costs. This shift is undoubtedly due to the new recruitment approach.

To sum up, the only dimension on which there has been a positive change after the implementation of the bilateral agreement is dependence on migration costs. All other dimensions of migrants' vulnerability either did not change or have worsened. It seems that employers are cutting costs in the other dimensions to compensate for the loss of fees, which is in line with previous studies in this field.<sup>81</sup>

### B. Thai Workers

In Table 3 we present the values of the Index of Vulnerability for Thai workers in the agricultural sector. The table compares three periods: period 1—2011, before the BLA's implementation; period 2—2014, right after the implementation of the bilateral agreement (short-term changes); and period 3—2016-2017, a few years after the implementation of the agreement (long-term changes).

The data in Table 3 indicate that regardless of when they arrived, Thai migrant workers' position in the Israeli labor market is rather vulnerable. In 2014, right after the implementation of the bilateral agreement, some indicators of their working conditions such as working hours and rest days showed improvement that was evident in the second period (2016-17). However, with regard to other factors, the situation worsened, in some cases even beyond what it was before the BLA. For example, some employers did not pay for sick days and some terms of the contracts were violated.

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79 Before the BLA, Chinese workers borrowed 56.5% of the sum covering the total migration costs. Loans were provided mainly by family and friends, but a small percentage by agents in the black market. After the agreement, they borrowed only 7.5% of the total costs.

80 After the agreement only three people took out loans to finance the trip. Only one of them said that he repaid the debt in five days. Since the workers did not need to borrow money to finance their working in Israel, the time it took them to repay the debt was regarded as "0".

81 Kushnirovich et al., *supra* note 12.

*Table 3. Index of Vulnerability by dimension and indicator (means and standard deviations) before and after the bilateral agreement—Thai workers*

Variables	Before BLA	After BLA (short- term change)	After BLA (long- term change)	F <sup>a</sup>	Differences in means between periods (based on Scheffe tests) <sup>b</sup>
	2011	2014	2016-17		
<b>Poor working conditions</b>	<b>64.1</b> (18.0)	<b>58.2</b> (21.7)	<b>57.4</b> (18.0)	<b>2.157</b>	<b>1=2, 2=3, 1≠3</b>
Long working hours	74.6 (8.2)	68.2 (10.5)	66.7 (8.0)	13.501***	1≠2, 2=3, 1≠3
Not being paid for overtime	41.8 (49.8)	36.0 (48.5)	41.9 (49.7)	0.254	1=2, 2=3, 1=3
No rest days	46.1 (28.3)	25.6 (14.0)	23.7 (15.0)	22.435***	1≠2, 2=3, 1≠3
Not being paid for sick days	83.6 (37.3)	79.6 (40.7)	90.5 (30.1)	0.621	1=2, 2=3, 1=3
Contract violations	73.1 (44.8)	82.0 (38.8)	89.1 (31.3)	2.775	1=2, 2=3, 1=3
<b>Poor living conditions</b>	<b>25.0</b> (19.6)	<b>18.0</b> (18.2)	<b>29.5</b> (17.0)	<b>6.014**</b>	<b>1=2, 2≠3, 1=3</b>
<b>Poor safety conditions</b>	<b>53.0</b> (39.4)	<b>46.1</b> (47.1)	<b>54.3</b> (40.1)	<b>0.435</b>	<b>1=2, 2=3, 1=3</b>
No safety instructions	66.7 (47.9)	54.3 (50.5)	68.9 (46.8)	0.987	1=2, 2=3, 1=3
No protective gear	40.6 (49.9)	39.5 (49.5)	39.3 (49.1)	0.021	1=2, 2=3, 1=3
<b>Low wages</b>	<b>47.3</b> (7.2)	<b>48.5</b> (6.6)	<b>54.9</b> (7.3)	<b>21.235***</b>	<b>1=2, 2≠3, 1≠3</b>
<b>Dependence on migration costs</b>	<b>53.1</b> (12.8)	<b>29.8</b> (18.9)	<b>32.9</b> (18.0)	<b>31.326***</b>	<b>1≠2, 2=3, 1≠3</b>
Level of Indebtedness	88.0 (23.4)	66.8 (43.6)	72.5 (41.5)	4.630*	1≠2, 2=3, 1=3
Time it takes to repay the debt	39.2 (20.1)	10.1 (8.6)	11.2 (5.6)	55.464***	1≠2, 2=3, 1≠3
Total migration costs	28.9 (6.5)	5.9 (1.5)	6.9 (0.8)	704.8***	1≠2, 2=3, 1≠3
<b>Index of Vulnerability</b>	<b>54.8</b> (13.0)	<b>45.9</b> (15.7)	<b>47.8</b> (11.9)	<b>6.809**</b>	<b>1≠2, 2=3, 1≠3</b>

<sup>a</sup>\*Sig. < 0.050; \*\*Sig. < 0.010; \*\*\*Sig. < 0.001.

<sup>b</sup> Comparison of the mean indices in different periods. For example, “1≠2, 2=3, 1≠3” means that the average in the indices in period 1 (before BLA) was significantly different from the indices in periods 2 (short term) and 3 (long term), whereas the indices in period 2 (short term) and 3 (long term) were not significantly different.

The data reveal an improvement in work hours: a decrease from 10.5 hours before the BLA to 9.6 hours just after the agreement (short term) and then 9.3 hours (long term). In addition, the workers were able to take more days off, with the scores improving from 46.1 points before the BLA to 25.6 in the short term and 23.7 in the long term ( $F = 22.435$ ,  $\text{Sig.} < 0.001$ ). Before the BLA, workers from Thailand took 2.7 rest days in a month, just after the BLA (short term)—3.7 rest days, and in the long term they did not work 3.8 days in a month.

The indicators of the payment for sick days and contract violations were high before the BLA and did not change significantly afterwards. The percentage of workers not receiving payment for sick days was 83.6%, 79.6%, and 90.5% (before the BLA and in the short and long term after it, respectively). Likewise, the percentage of workers reporting a lack of correspondence between their contract and the actual employment conditions increased from 73.1% before the BLA to 82.0% in the short term and 89.2% in the long term.<sup>82</sup> About half of the Thai workers did not receive overtime payments, with only a slight (non-significant) improvement just after the BLA ( $F = 0.254$ ,  $\text{Sig.} = 0.776$ ). However, in the long term this variable returned to its previous level (41.8% before the BLA, 36.0% in the short term and 41.9% in the long term). Overall, the data did not reveal any significant improvement in the working conditions of Thai workers after the BLA: the index of poor working conditions was 64.1 before the BLA, 58.2 in 2014 just after the agreement, and 57.4 in 2016-2017 ( $F = 2.157$ ,  $\text{Sig.} = 0.119$ ).

The index of living conditions declined from 25.0 in 2011 to 18.0 in 2014 but rose again to 29.5 in 2016-2017 ( $F = 6.014$ ,  $\text{Sig.} = 0.003$ ). For example, employers gave refrigerators to only 82% of respondents in 2017, as compared to 88-90% in prior years. In addition, in 2017, 54% did not receive a closet, and 44% did not receive electric heating. The majority of those who had not received electric household appliances (despite the law's mandate) acquired them at their own expense. Thus, after an improvement in their living conditions in the short term after the BLA, in the long term those conditions worsened significantly.<sup>83</sup>

Safety conditions in the workplace do not accord with Israel's legal requirements. Furthermore, the situation has changed little over time. When working in dangerous settings, 39% of Thai workers said they were not provided with protective gear. Likewise, between 54% and 69% indicated that they were not given safety instructions when working in dangerous conditions.

Wages for these workers deteriorated from 47.3 points in 2011 to 48.5 in 2014 and 54.9 points in 2016-2017 ( $F = 21.235$ ,  $\text{Sig.} < 0.001$ ). Before the implementation of the BLA, Thai workers earned 4,657 NIS; in the short term after the BLA, in 2017, they earned 4,994 NIS; and in the long term, in 2016-2017, their wages were 5,061 NIS. At first glance, the absolute value of their wages increased. However, while

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82 However, this deterioration was not large enough to be statistically significant.

83 A majority of Thai workers (74%) described their living conditions as mostly poor or very poor, 22% said their living conditions were neither good nor poor, and only 2 workers (4%) rated their living conditions as good or very good.

between 2011 and 2017 the wages of Thai workers rose by 11%, the minimum wage in the agriculture sector rose by 30%. Therefore, the actual wage rise was substantially smaller than the overall minimum wage increase. On average, employers followed the minimum wage rules both before and after the agreement was implemented.

Finally, as it did for the Chinese workers, after the BLA the index of the *dependence on migration costs* significantly improved. In 2014, Thai labor migrants borrowed 88.0% of the sum of the total migration costs, mostly from banks and family and friends. Right after the implementation of the bilateral agreement, the number dropped to 66.8%, with less migrants borrowing from banks and more of them financing the costs of migration through personal savings. In the long term, there was a slight non-significant increase in this index (72.5%). One explanation for the improvement is the sharp and stable decrease in migration costs paid by Thai workers, from \$9,149 in 2011 to \$2,176 in 2016-2017, which are the amounts permitted to be collected according to Israeli law. The time required to repay the debt in the short term dropped from 39.2 (17 months) before BLA to 10.1 (5 months), and slightly increased to 11.2 in the long term (6 months).

## V. DISCUSSION

In this Article, we have analyzed the impact of bilateral agreements on migrant workers' vulnerability during their employment in Israel using data collected "before" and "after" the implementation of the BLAs. Specifically, the analysis focused on migrant workers from two different countries (China and Thailand), employed in two different sectors of the economy (construction and agriculture, respectively). For the Chinese workers we examined only the short-term consequences of the bilateral agreement, because it was enacted only in 2017. For the Thai workers we examined both the short-term (in the first years after the bilateral agreement) and long-term consequences (more than five years after its implementation).

For the analysis we developed the Vulnerability Index of Migrant Workers, which makes assessments based on several factors: poor working conditions, poor living conditions, poor safety conditions, low wages, and dependence on migration costs. This index allows us to evaluate and compare the levels of vulnerability of different groups of migrant workers employed in various sectors over time.

The proposed index is not without limitations. First, future studies could improve the measures of the living conditions and safety at work in order to provide a more comprehensive picture of migrants' vulnerability. Furthermore, future studies may include additional dimensions of vulnerability, such as mobility within the local labor market, the withholding of travel documents by employers, isolation and confinement, access to healthcare, access to the justice system, and ability to join labor unions, among others.<sup>84</sup> Second, the index we developed is based on migrants' reports. Sometimes they may not be aware of payments made by the employers.

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84 Shamir, *supra* note 4, at 491.

We therefore suggest that future research should also rely on data provided by employers or state sources. Notwithstanding these limitations, our study provides the first comprehensive quantitative approach to measuring the vulnerability of migrant workers in the Israeli labor market.

Overall, the Index of Vulnerability of Thai and Chinese workers showed some improvement in their situation. The results indicated a move from 51.3 points before the bilateral agreement to 39.0 points after the bilateral agreement ( $t = -5.554$ , Sig.  $< 0.001$ ) in the case of Chinese workers, and from 54.8 before the bilateral agreement to 45.9 in 2014 and 47.8 in 2016-2017 in the case of Thai workers. This improvement reflects the dramatic decrease in dependence on migration costs, despite the deterioration in some working and living conditions and the reduction in migrant workers' relative wages. The implementation of the bilateral agreements has been effective in reducing the dependence on migration costs because indebtedness, the time needed to repay the debt and migration costs have decreased. The largest drop was in migration costs (about 15 times for Chinese workers and 5 times for Thai workers).

One important effect of the improvement in the dependence on the costs of migration is the decision of migrants to return to their country of origin before time. Because the migrants (especially the Chinese workers) are not enslaved by excessive debt, they are free to return to their home countries before the maximum period of work allowed in Israel. This situation was impossible before the bilateral agreements when migrants were indebted for almost one-fourth of their stay (17 months on average) and would not dare to leave before repaying the loans. According to Israel's employment service regulations, a migrant worker in agriculture returning to his home country permanently, before completing 36 months in Israel, is entitled to a partial refund of the fee paid to the Israeli manpower company.<sup>85</sup> Likewise, according to PIBA, 11% of Chinese workers returned home before time in 2017, and 8% in 2018.<sup>86</sup>

Our study revealed that the improvement in the dependence on migration costs was accompanied by a significant reduction in migrant workers' relative wages. The wages of migrant workers after the bilateral agreements were closer to the minimal level than before the agreements, and the deterioration in their relative wages was maintained in both the short and long term. One could argue that the Thai workers made less because they worked fewer hours. However, for the Chinese workers this explanation is not relevant because their work hours did not change significantly and even increased slightly. One alternative explanation is that workers who were paid less did not insist on higher wages and were more inclined to accept a lower salary. Another is that their lower wages reflected less productivity, though productivity is hard to measure on self-reported surveys. Moreover, in answer to the survey's open-ended questions the migrant workers talked about working hard, and we found no

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85 RAIJMAN & KUSHNIROVICH, *supra* note 23. For example, from January 2013 to December 2015, PIBA received requests for partial fee reimbursement from 498 Thai workers; 464 of these applicants were eligible and received compensation. In 2016, 298 requests were made, and all of them were refunded. In 2017, 348 workers applied for a refund, and almost all of them were approved.

86 PIBA, REASONS FOR EARLY LEAVE OF FOREIGN WORKERS IN ISRAEL (2020), [https://www.gov.il/he/departments/publications/reports/early\\_leave\\_for\\_foreignworkers\\_survey\\_0121](https://www.gov.il/he/departments/publications/reports/early_leave_for_foreignworkers_survey_0121).

evidence of their lack of productivity. Another explanation for this finding is that the removal of the recruitment fee created a situation in which Israeli manpower corporations (the official employers of construction workers) covered the loss of recruitment fees by paying lower wages or restricting migrant workers' access to social rights. Future studies are needed to clarify this issue.

Overall, the working and living conditions of migrant workers remained poor or even worsened after the bilateral agreements, especially among Chinese workers. For Thai workers, for whom we could examine the long-term consequences, we did see a slight improvement in the short term after the bilateral agreement, but a worsening in the long term. As already noted, the bilateral agreements signed with Thailand and China established comprehensive processes for the recruitment process, but did not mandate better employment conditions for the workers. Despite migrants' greater awareness of their rights, which may eventually improve their bargaining power in the labor market, we do not see any impact on the general vulnerability of their employment.

To summarize, BLAs implemented in Israel are powerful tools for controlling the legal and fair recruitment of migrant workers, but very limited tools for protecting and empowering migrant workers' position in the Israeli labor market. In their actual configuration, BLAs merely reflect the interests of Israel and the sending countries to control and neutralize the exploitative migration industry that developed over the years. Indeed, this was the key factor in shaping the content of BLAs in Israel, which were targeted at curtailing the role of the commercial sector in the recruitment process.

How can BLA regulations and procedures be translated into migrants' protection? Our findings suggest that even when migrants are covered by local laws, it is vitally necessary to include specific provisions in the bilateral agreements for the strict enforcement of the labor inspection system and workplace protections, as well as adequate mechanisms for lodging complaints and providing access to justice.<sup>87</sup> Israel does provide two mechanisms for enforcing the labor laws among employers of migrant workers: (1) the ombudsperson for foreign workers' rights under the Ministry of Labor and Welfare Services, and (2) a hotline, operated by CIMI (Center for International Migration and Integration) at PIBA. However, these mechanisms offer extremely inadequate protection to migrant workers.<sup>88</sup> The inclusion of rights protection per se does not always ensure employers' compliance with the law, because the absence of enforcement mechanisms impedes the translation of existing laws and procedures into improvement in migrant workers' working conditions.<sup>89</sup> As long as the state allows employers to control the employment and living conditions of workers without proper supervision and enforcement, it weakens the bargaining power of workers and precludes the possibility of their political organization to advance their rights.

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87 WICKRAMASEKARA, *supra* note 7; Livnat, *supra* note 11.

88 Livnat, *supra* note 11, at 17.

89 Yuval Livnat & Hila Shamir, *Gaining Control? Bilateral Labour Agreements and the Shared Interest of Sending and Receiving Countries to Control Migrant Workers and the Illicit Migration Industry* 23 THEORETICAL INQUIRIES L. 65 (2022).