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Workshop on Migration in North Africa, the Middle East, Turkey and the Gulf

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Conference address on migrant workers in Israel

My name is Oded Feller, and I am an attorney specializing in immigration issues in Israel. I would like to thank the organizers of this esteemed forum for inviting me to participate and share with you some of my experiences and thoughts relating to the rights of migrant workers. I have been working in this field for the past few years at the Israeli human rights organization "The Association for Civil Rights in Israel", and I am also a board member of "The Hotline for Migrant Workers in Israel".

In the relatively short amount of time I have, I'd like to highlight some of the problems inherent in Israel's immigration policies, as well as some of the immigration phenomena we've been experiencing. It's clear that I'll only be able to touch briefly on some of the challenges facing human rights organizations in Israel.

Given the focus of this conference on migrant workers and refugees, I'll limit my remarks to those subjects. I won't be speaking about problems related to the arrest and deportation of foreigners in Israel; nor will I refer to problems related to family unification, though this issue is central to our immigration-related activities, especially given current restrictions on granting residency status to Palestinians from the occupied territories who marry Israeli citizens – restrictions that have recently been expanded to apply also to citizens of Arab countries who marry Israeli citizens.

These issues, too, are part of our agenda, and we devote extensive resources to addressing these issues; but to keep to the time frame I have, as well as to the focus of this conference, I won't be expounding on them here.

To begin, I'd like to give you a brief overview of Israeli policies for granting entry into the country and issuing permits for legal status. I'll then talk specifically about migrant workers in Israel, the problem of human trafficking, and, if time allows, policies regarding refugees and asylum-seekers.

Israeli law grants Jews preferred and almost exclusive status with regard to entry into the country. The Interior Minister has extremely limited authority when it comes to restricting the ability of an individual who complies with the criteria of the law to immigrate to Israel.

On the other hand, the law allows the Interior Minister almost unlimited discretion in granting entry visas to non-Jews, and does not lay down criteria for issuing or refusing to issue these visas. The Interior Minister is not even required to explain his refusal to issue an entry visa and residency permit to an individual who is not Jewish.

Considerations relating to nationality or ethnic origin form the basis of the Interior Ministry's decision. A foreigner who is of Arab origin arouses great discontent on the part of the Ministry, although it must be said that all non-Jews face the tight-fisted policy of the Ministry.

The official policy is not to grant long-term or permanent residency permits, and especially not citizenship status, to non-Jews, apart from "exceptional cases, for humanitarian reasons, in which there are special considerations" or in the event that Israel has a "special interest in the granting of permanent residency status."

This is a general criterion, which is very vague and restrictive. Israel does not make clear what constitutes humanitarian circumstances or special considerations. In practice, most foreign nationals cannot acquire permanent Israeli residency status without the authorization of the Interior Ministry, which only grants residency permits in a very limited number of cases.

The political and social climate in which Israeli human rights organizations attempt to shape immigration policy is one of intolerance and, in many cases, hostility. Both the political and legal system and the public are nearly uniformly opposed to any attempt to widen the circle of individuals eligible for legal status.

I can, however, point to one recent achievement which goes against the usual restrictive policy: the decision by the Israeli government, in reaction to pressure by human rights organizations over the past years, to make arrangements for the status of migrant workers' children – children who have been raised and educated in Israel. It is a decision that benefits several hundred people who have lived in Israel for many years but – as I'll soon explain – is not likely to remain in effect over the long term. The government of Israel is doing everything in its power to prevent any further growth in the number of migrant worker families.

To recap these words of introduction: A stark contrast exists between the automatic manner in which Jews are granted residency status for themselves, their families, and their offspring, and the tight-fisted policy regarding non-Jews who wish to acquire status. The result is an immigration policy that violates human rights in general, and most particularly the right not to be discriminated against on the basis of race. Moreover, the practices derived from this discriminatory policy – based on the Interior Ministry's perceived role of protecting the Jewish character of the State at any cost – also result in blatant human rights violations, among them the right to equality.

And so, given this background, I'd like to move on to the issue of migrant workers in Israel.

Since 1967, a significant portion of the Israeli labor market has been based on workers who are not Israeli citizens. At first, they were Palestinians living in the occupied territories. In the early 1990s, after the start of the first Intifada, these Palestinian workers were replaced by migrant workers from several countries. Most arrived legally, with work and residency permits in hand; others came as tourists or refugees.

Migrant workers entered Israel initially in the 90s to replace Palestinian construction workers and agricultural workers. In addition, men and women were admitted as home care

workers for the elderly at the same time that Israeli health care services were becoming increasingly privatized.

A large number of tourists from West African, South American, and Eastern European countries also arrived in the 1990s, and when their tourist visas expired, many remained and took on cleaning jobs.

Just as the number of migrant workers in Israel reached a peak of 250,000 at the start of the new millennium, their numbers dropped due to massive wave of deportations, an economic recession, and an unstable security situation in the country. There is no official record, and not even an official estimate, of the number of migrant workers in Israel today. The current unofficial estimate is 190,000.

Many of Israel's migrant workers do not hold a permit. Some arrived legally but overstayed their legal status, and some are tourists whose visas have expired. In recent years, hundreds of migrant workers, mainly citizens of West African countries, have entered Israel illegally, via Egypt. Among them are scores of unaccompanied children.

Estimates based on Israeli government data indicate that there are now 87,000 legal migrant workers in the country, meaning that they hold work and residency permits. Of these, 44,000 (most of them women) work in home nursing care. They come mainly from the Philippines, Nepal, Sri Lanka, India, and Eastern European countries such as Rumania and Moldova; 29,000 legal migrant workers, most of them from Thailand and Nepal, work in agriculture; 12,000 – mainly from China, Rumania, Turkey, and Bulgaria – work in construction; and some 2,000 – mainly from India, China, and Nepal – hold industrial and service jobs.

Israeli law limits the employment of migrant workers to a period of five years, after which they must leave the country. If they don't, they will be arrested and deported. Only home nursing care workers are allowed to remain for an unlimited period, on condition that they stay with the same employer. In other words, nursing care workers can live many years in Israel – without permanent resident status, without the right to national health insurance, and without other social rights. If they are dismissed, resign, or the person in their care dies, they must leave Israel or risk arrest and deportation.

In the eyes of the Israeli authorities, the men and women who come to the country as migrant workers are in Israel temporarily and have one single purpose: to work.

This approach is artificial because the State decided to base entire fields of employment – particularly construction, agriculture, and home nursing care – on migrant labor. It is therefore clear that the government's purpose in allowing the entry of migrant workers is not to fill a temporary labor shortage, but rather, to base these fields entirely on the labor of migrant workers.

However, remaining true to its view of migrant workers as temporary residents who desire only to work, and who must be kept from "taking root" in Israel, the State prohibits them from engaging in a broad spectrum of human activities:

- * migrant workers who meet each other in Israel and become a couple are likely to lose their residency permits and risk deportation if the Interior Ministry learns of their relationship;

- * a female migrant worker who becomes pregnant in Israel is also likely to lose her residency permit, and she will be forced to leave the country with her infant;

* The State also prohibits the entry of migrant workers who are immediate family members (parents, children, or partners) of migrant workers already in Israel.

In other words, migrant workers coming to Israel must leave their families behind, sometimes for many years. If it is discovered that two members of the same family are residing in Israel, the Interior Ministry will revoke the permit of one of them and order that he or she be deported.

To understand why it is so devastating for some migrant workers in Israel to have their residency permits revoked and to be deported from the country, it is important to get some sense of the situation they face in their countries of origin.

Migrant workers remain thousands of miles from home, for months and often years, in order to provide financial assistance to their families. To make arrangements for their arrival in Israel and ensure that they receive residency permits, the workers pay enormous fees to brokers or employment agencies.

They take out high-interest loans, mortgage their property, and commit themselves to other obligations so as to raise the necessary funds – which they must pay back through the salaries they earn in Israel. Therefore, deporting these workers before they even have the chance to cover the expenses of their arrival puts them in a state of total financial ruin.

According to information gathered by human rights organizations in Israel, migrant workers seeking permits pay very high fees to brokers: Chinese workers are charged up to \$20,000, Thai workers up to \$10,000, and workers from Nepal, Sri Lanka, and India up to \$9,000.

Israel has given up the fight against the illegal practice by agencies of collecting commissions or fees from workers.

In essence, the Israeli government has a hands-off policy with regard to the recruitment of migrant workers. Its involvement is limited to granting migrant labor permits to employers.

Transportation arrangements and job placement are handled by private concerns: employment agencies, in Israel and abroad, that recruit foreign workers, and companies serving as brokers between migrant workers and their Israeli employers.

For the duration of their employment in Israel, the workers are covered by private health insurance, provided their employers make the necessary arrangements, as they are required to do by law.

The National Employment Service does not find employment for migrant workers who have lost their jobs; the workers must obtain a new position on their own or pay a private agency to do so. If no job is found, the worker must leave Israel or face arrest and deportation.

Moreover, the permit granted to migrant workers by Israel is valid for one specified employer only. Once the worker leaves this particular job, for whatever reason, his permit expires and he becomes an illegal alien.

Under this so-called “binding arrangement,” the migrant worker becomes the property of the employer.

The employer's power advantage takes a variety of forms: labor law violations, the virtual imprisonment of workers to keep them from "escaping" after their work period ends and the time comes to "hand them over," confiscation of workers' passports, physical and sexual abuse, inferior living conditions, and other infringements of basic human rights.

Regulations of the Interior Ministry and the Ministry of Industry, Trade and Labor allow migrant workers to switch from one employer to another, provided both have permits for hiring migrant workers. However, implementation of this procedure is problematic. In practice, Population Registry clerks often contravene the policy and, in effect, prevent workers from changing employers.

The Israeli Supreme Court ruled in March 2006 that the binding arrangement is illegal because it violates the rights of migrant workers. The Court instructed the government to develop another arrangement.

The new arrangement (still incomplete and not yet implemented) for agriculture and home nursing care workers resembles the one that has been used for construction workers. Migrant workers will be hired by private employment agencies and can request to switch agencies every three months. The new arrangement is still problematic. It helps workers attain jobs but still binds them to a specific employer and makes it very difficult for them to leave, even in cases where their employment rights or human rights are being violated.

It is important to note here that Israel fails to effectively enforce labor laws and to protect the rights of both Israeli and migrant workers. It is the migrant workers, however, who are particularly vulnerable, since accessing the legal system is far more difficult for them than for Israeli citizens. They have no recourse, for example, against the Ministry of Industry, Trade and Labor, which almost totally refrains from using its authority to revoke the permits of employers who violate the legal rights of migrant workers.

And migrant workers rarely complain when their rights are violated. Although many earn less-than-minimum wage – currently about \$900 per month in Israel – they are still ahead of what they would be earning in their own countries.

In the case of home nursing care, there is no government restriction on the number of migrant workers, and the job market in this field is flooded. Many job seekers fail to find work, and the salaries of those already employed have dropped. Today, monthly salaries for care workers have dropped to \$500 per month – and this for 24-hour continuous care for seven days a week.

The flooded job market has also produced a lively trade in visas for migrant workers. Every week, a number of so-called "flying visas" enter Israel. These are workers who are paid a fortune for the opportunity to work in the country and have come at the request of a particular employer or employment agency holding a permit. But when they arrive, they discover there is actually no one to employ them.

"Open visas" are workers with paperwork assigning them to a specific employer, but only as a formality. They pay an employer – someone with a permit to hire them – for the act of officially registering them and granting them legal status. But, what actually happens is that they're working for other employers who do not hold permits.

Human trafficking is another prevalent phenomenon in Israel.

The issue first gained public attention in the year 2000, with the publication of an Amnesty International report about trafficking in women in Israel.

According to Israeli police estimates, there were some 3,000 cases of trafficking in women between 2001 and 2002, when the practice was at its peak in the country. No one can verify this number. In 2002, the Immigration Police was established, and many trafficked women were deported.

Also in 2001, the U.S. State Department began to examine Israel's responses to human trafficking within its borders.

The State Department examines all countries for which there are reports of over 100 instances of trafficking per year, and it divides these countries into three tiers.

In very general terms, countries in the first tier respond in a satisfactory manner to trafficking, countries in the second tier respond only partially, and countries in the third tier do not respond at all to human trafficking within their borders.

In 2001, Israel ranked in the third tier. American law stipulates that countries in this tier are not eligible for U.S. foreign aid. Israel began taking some legal action against traffickers in women.

The practice was officially banned, and traffickers became subject to long prison sentences. In addition, in 2001 Israel signed the Protocol for the Prevention, Suppression and Punishment of Human Trafficking, in Particular Women and Children. It also established a shelter for trafficking victims and grants them temporary visas allowing them to work in the country.

Brothels have not been shut down; there are simply fewer of them, and they've moved to discrete private apartments.

Israel was re-categorized in the State Department's second tier in reports published between 2002 and 2005. In 2006, it was ranked within a new tier between the second and third: the Watch List. The reason was not related to trafficking for purposes of prostitution; it was based on Israel's inaction with regard to the slave work or forced work of its migrant population.

In response, Israel once again amended its criminal law code in October 2006. The new law is anachronistic since it refers to human trafficking as the monetary purchase and sale of people. Modern slavery, as recognized in international law, is more complex and includes other circumstances of control.

In Israel, for example, we can find cases in which employees receive no salary whatsoever, or a next-to-nothing salary and untenable living conditions. Some are imprisoned and nearly starved. If they do not comply with their employers demands, they are threatened with deportation.

Apart from the shelter for trafficked women, there is no safe facility for the victims of human trafficking in Israel. If the police learn of the existence of slave conditions (in which migrant workers are imprisoned or starved), they will extricate the workers; but since no shelters are available for them, they will be held in prison.

There are no mechanisms for locating human trafficking victims. That is, a migrant worker arrested because he is working for an employer other than the one to whom he is registered will simply be imprisoned and deported.

To summarize my remarks about migrant workers in Israel, I would like to present several principles developed over the past year by a coalition of Israeli human rights organizations. Their purpose was to revise employment policies for non-Israelis. The complete document contains a longer list of principles. Although it is a position paper focusing only on the situation in Israel, its content can serve as the basis for policy change in other countries as well.

The following are the major principles contained in the paper:

- It must be recognized that work migration is not a temporary phenomenon. Policies regarding migrant workers must offer long-term solutions.
- It must be recognized that migrant workers are human beings in every sense, and they must not be treated as working tools. As such, their basic human rights must **never** – not even temporarily – be denied.

Job-seekers must not be discriminated against because of their family situation. Specifically, work permits may not be withheld if migrant workers get married or have a baby, or if they have close relatives in Israel. Likewise, the State is not entitled to continually ignore the right of a person to live with members of his or her immediate family.

- Israel must become a signatory to international conventions on the rights of migrant workers and must enter bi-lateral agreements with the workers' countries of origin. These agreements will help protect migrant workers at their time of recruitment, during their stay in Israel, and prior to their return to their native countries.
- The recruitment and categorization of migrant workers by country of origin must be conducted by government bodies, international bodies, or representatives from Israel's foreign embassies – and not by private bodies. The method used for charging workers for these services must be totally transparent, and the workers must receive their permits directly from the embassies.
- Work permits must be handed directly to workers rather than to employers. This method allows workers to seek employment on their own, either through private agencies or the National Employment Service.

The government must give greater priority to finding jobs for migrant workers already in Israel than to bringing new workers in from abroad.

- The working conditions and social rights of migrant workers must be on a par with those of Israeli workers. Also, the rights that migrant workers in Israel have accumulated (through a pension fund, for instance) must be preserved, even after they return to their native countries.
- Migrant workers who qualify for long-term residency status and for whom Israel has become "home" must not be barred from requesting permanent residency or citizenship. The contribution of a person to the country's economy grants him the right to become an integral part of its citizenry.

And so, having generally covered the subject of migrant workers in Israel, I'd like to turn my attention briefly to policies regarding refugees and asylum-seekers.

Although Israel was one of the initiators of the Refugee Convention of 1951, it was only in 2002 that the government established an official mechanism for handling the cases of refugees.

The procedure for examining asylum requests begins with a selection process carried out by the local office of the United Nations High Commissioner for Refugees. The involvement of the Commissioner's office is problematic, due to its status as an external international body with its own agenda and constraints.

Thus, the Commissioner refuses to handle asylum requests of Palestinians, as it claims Palestinians are under the mandate of UNRWA and are therefore outside the mandate of UNHCR. As a result, Palestinians are prevented from requesting asylum in Israel.

The reference is to all Palestinians, whether or not they are refugees. Residents of the occupied territories who enter Israel to escape persecution because of their sexual preferences, for example, receive no assistance from the U.N. High Commissioner for Refugees.

Additional problems exist as a result of UNHCR's shortage of manpower. An asylum-seeker who submits a request after having been detained is liable to wait months in detention before his or her case is examined. The same is true of asylum-seekers who submit their requests before they are detained, if the requests have not yet been processed and no interviews have taken place.

The U.N. High Commissioner for Refugees handles about 1,000 requests annually, most of which come from citizens of African countries. Those determined eligible receive the status of asylum-seeker, and their requests are transferred to a special inter-ministerial committee that determines whether or not to grant refugee status.

Recognized asylum-seekers receive work permits but are not entitled to any social benefits (including the right to health services) while they await a decision on their case, which is liable to take up to two years. Among asylum-seekers there are victims of torture and trauma who require psychiatric treatment, aged persons unable to work, and persons suffering from terminal illnesses.

During the waiting period, no status is granted to the spouse of the asylum-seeker, and he or she is in danger of detention and deportation.

Even after individuals have been granted refugee status, their spouses are granted work visas only, and must wait twenty-seven months before receiving temporary resident visas that entitle them to social benefits. This is true even in cases where a couple was married before coming to Israel.

Likewise, despite a decision on the issue in principle, the Interior Ministry continues to make it difficult to register a refugee's children as temporary residents. As a result, their children have no access to public health services.

Requests for refugee status are transferred by the U.N. Commissioner to a Special inter-ministerial committee whose function is to advise the Interior Minister as to who should be recognized as a refugee.

However, flaws of substance and procedure in the Israeli system create serious potential for the violation of the rights of asylum seekers and refugees to due process and protection.

The procedure for examining asylum requests is based on an internal, unpublished directive within the Interior Ministry. The procedure before the inter-ministerial committee is not

transparent, the asylum-seeker is not granted the right to be heard or to receive legal representation before the committee, and there is no real right of appeal.

Very few asylum-seekers receive refugee status. In 2006, **only nine – less than one percent of all requests – were granted.**

A refugee status is not a permanent status in Israel. It is a temporary status with the right to social benefits, which can be renewed every year.

I should note, at the same time, that citizens of distressed countries (the Congo, Ivory Coast, Sierra Leone, and Liberia) have received temporary protection in recent years. They have been granted status – work permits without the right to social benefits – solely on the basis of a recommendation by the U.N. Commissioner for Refugees.

Once the Commissioner declared that these citizens can safely return to their countries, their permits were cancelled, and those refusing to leave Israel – out of fear for their lives or safety, or for any other reason – were arrested.

Citizens of enemy states do not receive protection in Israel: according to State regulations, they must be relocated to another country.

The processing of their cases takes a long time and they are held in detention for months on end. Even after they are released before being transferred to a different country, they are not granted any rights and are not eligible for legal status.

One group in particular that has suffered the effects of this policy is Sudanese refugees. There are now about 300 of them in Israel. All of them crossed the border from Egypt, and many of them were arrested by the Israeli security forces. Many have been under detention at security facilities for several months.

These refugees are not recognized as such, since Israel views Sudan as an enemy state (much as some European countries viewed German-Jewish asylum-seekers at the time of the Holocaust).

These detained refugees are released only if human rights organizations succeed in finding an alternative arrangement – work and accommodation in agricultural communities, where working conditions are quite difficult. Sudanese refugees are not eligible to receive residency status in Israel.

My recommendations on this matter are self-evident: the State of Israel must adopt a policy that addresses the needs of refugees and asylum-seekers – a policy that is made public and transparent, that is speedy and efficient, and that protects those who are eligible for protection – as is common in many Western countries.

It seems that Israel is reluctant to deal with the issue of refugees, and it is amazing to discover that so few of the country's legal experts are well versed in refugee law.

One can't help but think that the reluctance to develop refugee law in Israel stems, in large part, from the immediate – perhaps intentional – connection made with Palestinian refugees. And on that subject, I would like to end my remarks with an anecdote:

Over the past year, the Tel Aviv District Court has been attempting to establish legal procedures for instructing the Interior Ministry to set policies regarding non-citizens who are not refugees.

There is currently no definitive government policy in this matter. The Court was acting on a petition filed in the name of three citizens of former Soviet states who came to Israel under different circumstances following the collapse of the Soviet Union. Two came from Tadjikistan and the other from Georgia.

Since they were not in their native countries when citizenship laws were enacted there, they did not hold citizenship status, and they became non-citizens. Nor did they acquire any form of status after arriving in Israel, for various reasons.

They were arrested as illegal aliens and released from detention only months later, when it became clear that there were no grounds for deporting them. Nevertheless, the Interior Ministry refused to grant them legal status.

At the court hearings, a Ministry of Justice representative speaking on behalf of the Interior Ministry claimed, among other things, that according to international law, Israel is not obliged to grant legal status to the three immigrants.

Her claim was that international law dictates that the succeeding countries must grant status to the citizens of the countries they succeed – but host countries are not obligated to grant status to those same people.

I couldn't believe what I'd heard.

A representative of the State of Israel was claiming in court that, according to international law, the succeeding state is obliged to grant legal status to all citizens of a country that it accepts into its borders, even if these same people were not actually living in these countries when citizenship laws were enacted there!

That is a very dubious legal position, but anyhow: Was the person who drafted it aware of its implications in Israel?

I can imagine that there would be several million people in the Middle East who would be very pleased to hear that this is the legal position adopted by Israel.

Unfortunately for those millions of people, the court accepted our petition and gave the Interior Ministry several months to draft a policy regarding the status of non-citizens.

Regarding the claim made by the government, the court decided that the matter was overly complex and that there was no need to make a judgment on it.