



Fédération Internationale des Ligues des Droits de l'Homme

ORGANISATION INTERNATIONALE NON GOUVERNEMENTALE AYANT STATUT CONSULTATIF AUPRES DES NATIONS UNIES, DE L'UNESCO,
ET DU CONSEIL DE L'EUROPE ET D'OBSERVATEUR AUPRES DE LA COMMISSION AFRICAINE DES DROITS DE L'HOMME ET DES PEUPLES

INTERNATIONAL FEDERATION
OF HUMAN RIGHTS

FEDERACION INTERNACIONAL
DE LOS DERECHOS HUMANOS

الفدرالية الدولية لحقوق الانسان

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**M. DIACONU,
Chairperson
Committee on the Elimination of Racial
Discrimination**

Geneva, August 5, 2003

Re : Request for Urgent Procedure on New Israeli Law Banning Family Unification

Mr. Chairperson,

The International Federation for Human Rights and its affiliate and partner organizations in Israel, ACRI – The Association for Civil Rights in Israel, Adalah – The Legal Center for Arab Minority Rights in Israel, B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories, HaMoked, the Mosawa Center - the Advocacy Center for Arab Palestinian Citizens of Israel, wish to request that CERD consider a new Israeli law adopted on July 31, 2003 and entitled, “*Nationality and Entry into Israel Law (Temporary Order) – 2003*” for an urgent procedure.

The purpose of the new law is to prohibit Palestinians from the Occupied Territories from obtaining citizenship, permanent residency, and/or temporary residency status in Israel by marriage to an Israeli citizen (“family unification”). The new law solely targets “residents of the region,” defined by the law as a person who lives in “Judea and Samaria and the Gaza Strip,” but “is not registered in the region’s Population Registry, excluding a resident of an Israeli community in the region.” It will primarily impact the rights of Palestinian citizens of Israel, the citizens of the state who are married to Palestinians from the Occupied Territories. Thousands of families will be affected, comprised of tens of thousands of individuals, forcing them to separate or to leave the country. The three main groups affected by the law are:

- (1) Newly married couples - The law prevents the Palestinian spouse from being granted residency or citizenship status in Israel. No new applications for naturalization will be accepted.
- (2) Pending applicants - Applications submitted before 12 May 2002 will be considered, however, no temporary or permanent residency or citizenship will be given. Only permits for a temporary stay in Israel may be given.
- (3) Individuals with temporary residency status – The law prohibits the upgrading of temporary residency status, granted prior to 12 May 2002, to permanent residency or citizenship, even if the requests were authorized and the applicants met the necessary criteria.

The new law enshrines into statute the government's administrative decision denying family unification in effect since 12 May 2002. Prior to that decision, between 1997 and April 2002, "foreign spouses" of Israeli citizens attained residency and naturalization through a "graduated procedure." This multi-year process involved frequent security and criminal checks, including the provision of hundreds of documents. In 2001, the Ministry of Interior started changing its policy in order to prevent Palestinians from staying in Israel. On 12 May 2002, the government decided to temporarily freeze the processing of all family unification requests of non-resident Palestinians. One of the reasons was "the implication of processes in which foreigners of Palestinian descent immigrate and strike root, including through the family unification."

The new law is valid for one year and renewable indefinitely. The new law is illegal for the following reasons:

- 1) The law severely violates the fundamental rights of individuals to equality, liberty, privacy, and family life. These rights are protected by the International Convention on the Elimination of Racial Discrimination (ICERD), to which Israel is a party. Specifically, the law violates Article 5.d.(iv) of ICERD, which provides that "*States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to marriage and choice of spouse.*"
- 2) The law flagrantly discriminates against Palestinian citizens of Israel and Palestinians from the Occupied Territories. In practice, the law will affect Palestinian citizens of Israel, the citizens of the state who have non-citizen Palestinian spouses. Further, the total ban on family unification exclusively and solely targets Palestinians from the Occupied Territories; the general policy for residency and citizenship status in Israel for all other "foreign spouses" remains unchanged. These measures constitute discrimination on the basis of nationality and ethnic origin. Moreover, international human rights law, which forbids discrimination based on nationality and ethnic origin, particularly prohibits such discrimination in matters relating to the right to citizenship. In particular, article 1.3 of ICERD states that State parties may not discriminate against any nationality, and article 3 forbids racial segregation.
- 3) The new law is disproportionate to the alleged security reasons cited by the government to justify its enactment. The government claims that the bill is essential because Palestinians from Occupied Territories who have obtained citizenship/residency status in Israel via family unification have been increasingly involved in terror activity. The government claimed that 20 such persons were involved in the "rolling" of terror activity, but presented only the names of a few of those alleged with this involvement. Further, the state has many other tools and mechanisms, which it has utilized and continues to utilize in order to address security concerns. The "graduated procedure" for naturalization grants the government wide authority to conduct criminal and security background checks on all persons seeking to gain citizenship/residency status in Israel. These measures have been and continue to be utilized by the government. By setting forth such a sweeping ban, the new law amounts to collective punishment that cannot be justified by security concerns.
- 4) During the Knesset debate, some Members of Knesset who supported the proposed legislation stated clearly that the actual aim of the bill is to limit the number of Palestinian citizens/residents of Israel, the so-called "demographic threat" to

maintaining a Jewish majority in the state, and not the security concerns as presented by the government to justify these measures.

ACRI and Adalah submitted petitions to the Supreme Court of Israel opposing the Government's previous decision to freeze the processing of all requests for family unifications. The cases remain open pending the decision of the court. ACRI is in the process of preparing another petition for an injunction against the new law.

On August 3 2003, Adalah submitted a petition and a motion for an injunction against the new law on behalf of families, the High Follow-up Committee for the Arabs Citizens in Israel, and all of the Arab members of Knesset to the Supreme Court of Israel. No hearing date has yet been set on the case.

Information concerning this issue was brought before the 78th session of the United Nations Human Rights Committee (UN HRC), which reviewed Israel's second periodic report on July 24-25, 2003. In its Concluding Observations on Israel, para. 21, issued on August 6, 2003, the Committee called upon Israel to revoke the law and reconsider its family unification policy, even though the law was passed after the dialogue with Israel:

"The Committee is concerned about Israel's temporary suspension order of May 2002, enacted into law as the Nationality and Entry into Israel Law (Temporary Order) on 31 July 2003, which suspends for a renewable one-year period, the possibility of family reunification, subject to limited and subjective exceptions especially in the cases of marriages between an Israeli citizen and a person residing in the West Bank and in Gaza. The Committee notes with concern that the suspension order of May 2002 has already adversely affected thousands of families and marriages".

"The State party should revoke the Nationality and Entry into Israel Law (Temporary Order) of 31 July 2003, which raises serious issues under articles 17, 23 and 26 of the Covenant. The State party should reconsider its policy with a view to facilitating family reunification of all citizens and permanent residents. It should provide detailed statistics on this issue, covering the period since the examination of the initial report". [emphasis in the original]

In the organizations' view, the new law constitutes one of the most extreme measures in a series of governmental actions aimed at undermining the rights of Palestinian citizens of Israel as well as Palestinians from the Occupied Territories. Therefore, we request that the members of the Committee undertake an urgent action procedure, with the view of declaring the new law in grave violation of the ICERD. We also call upon the Committee to urge Israel to revoke the new law and to reconsider its family unification policy.

Attached :

- Note on the Urgent Procedure
- English version of the Nationality and Entry into Israel Law

On the Urgent procedure

At its 42nd session (1993), the CERD noted the conclusion of the fourth meeting of persons chairing the human rights treaty bodies :

"... the treaty bodies have an important role in seeking to prevent as well as to respond to human rights violations. It is thus appropriate for each treaty body to undertake an urgent examination of all possible measures that it might take, within its competence, both to prevent human rights violations from occurring and to monitor more closely emergency situations of all kinds arising within the jurisdiction of States parties. Where procedural innovations are required for this purpose, they should be considered as soon as possible." (A/47/628, para. 44)

Following this conclusion, the Committee decided, in its Working Document of March 17 1993¹, to set up a mechanism of "Urgent procedures", "to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention". (para 8.ii.).

The criteria for the use of the urgent procedure are

- the presence of a serious, massive or persistent pattern of racial discrimination
- or that the situation is serious and there is a risk of further racial discrimination be invoqued.

¹ A/48/18, Annex III

Nationality and Entry into Israel Law (Temporary Order) – 2003

[Passed by the Knesset (Israeli Parliament) on 31 July 2003]

Definitions

1. In this Law –

“region” – each of these: Judea and Samaria and the Gaza Strip;

“Nationality Law” – Nationality Law, 5712 – 1952;²

“Entry into Israel Law” – Entry into Israel Law, 5712- 1952;³

“regional commander” – the commander of forces of the Israel Defense Force in the region;

“resident of the region” – including a person who lives in the region but is not registered in the region’s Population Registry, excluding a resident of an Israeli community in the region.

Restriction on nationality and residence in Israel

2. During the period in which this Law shall be in effect, notwithstanding the provisions of any law, including section 7 of the Nationality Law, the Minister of Interior shall not grant a resident of the region nationality pursuant to the Nationality Law and shall not give a resident of the region a permit to reside in Israel pursuant to the Entry into Israel Law. The regional commander shall not give such resident a permit to stay in Israel pursuant to the defense legislation in the region.

Reservations

3. Notwithstanding the provisions of section 2 –

(1) The Interior Minister or the regional commander, as the case may be, may give a resident of the region a permit to reside in Israel or a permit to stay in Israel, for purposes of work or medical treatment, for a fixed period of time, and also for other temporary purposes – for a cumulative period that shall not exceed six months. A residency permit or a permit to stay in Israel [may also be given] in order to prevent separation of a child under the age of 12 from his parent who is legally staying in Israel.

² Book of Laws 5712 [1952], p. 146.

³ Book of Laws 5712 [1952], p. 354.

(2) The Interior Minister may grant nationality or give a permit to reside in Israel to a resident of the region if he is convinced that the said resident identifies with the State of Israel and its goals, and that the resident or his family members performed a meaningful act to advance the security, economy, or another matter important to the state, or that granting nationality or giving the permit to reside in Israel are of special interest to the state. In this paragraph, "family members" means spouse, parent, child.

Transition provisions

4. Notwithstanding the provisions of this Law –

(1) The Interior Minister or the regional commander, as the case may be, may extend the validity of a permit to reside in Israel or a permit to stay in Israel that was held by a resident of the region prior to the commencement of this Law.

(2) The regional commander may give a permit allowing temporary stay in Israel to a resident of the region who submitted an application to become a national pursuant to the Nationality Law, or an application for a permit to reside in Israel pursuant to the Entry into Israel Law, prior to 12 May 2002 and who, on the day of the commencement of this Law, has not yet been given a decision in his matter, provided that the said resident shall not be given, pursuant to the provisions of this paragraph, nationality pursuant to the Nationality Law or a permit for temporary or permanent residency pursuant to the Entry into Israel Law.

Validity

5. This Law shall remain in effect until the expiration of one year from the day of its publication. However, the government may, in an order, with the approval of the Knesset, extend the validity of the Law, from time to time, for a period that will not exceed one year each time.