



UN Human Rights Committee - Information Sheet # 3

Family Unification and Citizenship

22 July 2003

ICCPR, Article 2, para. 1 and Article 26 (Principle of Non-Discrimination); Article 27 (Non-Discrimination Against Minorities)

This Information Sheet will address Questions 15 and 18 from the List of Issues to Israel.

List of Issues, Question 15:

According to the report (para. 17), the rights of an *oleh* (new immigrant), are also extended to the spouse of a Jew, to the child and grandchild of a Jew and to their spouses (section 4A of the Law of Return). For many years, the Ministry of the Interior interpreted the Law of Return as extending also to the non-Jewish spouses of Jews who were already Israeli nationals (but not new immigrants), thus granting them a status similar to that of Jews and of an *oleh* under the Law of Citizenship. In 1995, the Ministry of Interior changed its policy but considering that the Law of Return was no longer applicable to the non-Jewish spouse of a person who already is an Israeli national; this means that he or she will no longer receive the benefits to which a Jewish new immigrant is entitled, including the right automatically to acquire Israeli citizenship. Please explain the reasons for this change in policy and how it is consistent with the Covenant.

This section will discuss the following issues:

- The Ministry of Interior Policy Before and After the Supreme Court Cases of *Stamka* and *Issa*
- New Developments: Banning Family Unification of Palestinians Married to Israeli citizens – Government Decision #1813 and Proposed Bill, Nationality and Entry into Israel (Temporary Order) Law, 5763-2003
- Supreme Court Litigation Challenging the Legality of Government Decision No. 1813
- Adalah's Main Arguments against Government Decision No. 1813 and the Proposed Bill
- Possible Future Measures: Denying Israeli Citizenship to Children if One Parent is Palestinian

Ministry of Interior Policy Before Supreme Court Cases of *Stamka* and *Issa*

Prior to *Stamka*, a foreign non-Jewish spouse of a Jewish citizen automatically obtained citizenship pursuant to Article 4A of the Law of Return - 1950. In this regard, as the Law of Return applies only to Jewish citizens, a foreign non-Jewish spouse of an Arab citizen of Israel had almost no chance of obtaining citizenship. Thus, this policy constituted discrimination against Arab citizens of Israel.

	Israeli Citizen is Jewish	Israeli Citizen is an Arab
Spouse is a Jew	Spouse can obtain citizenship through Article 1 of the Law of Return. ²	Spouse can obtain citizenship through Article 1 of the Law of Return.
Spouse is a non-Jew	Spouse can obtain citizenship through Article 4A of the Law of Return. ³	Practically, there is almost no chance to acquire citizenship, as the Interior Minister has almost absolute discretion. Obtaining permanent residency is also extremely difficult. Although §7 of the Nationality Law states that the conditions of § 5a can be waived at the discretion of the Ministry of the Interior, in practice, this discretion is not exercised. ⁴

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Ministry of Interior Policy After Stamka and Issa

Since 1999, foreign non-Jewish spouses of Jewish and Arab citizens of Israel alike must go through a “gradual process of naturalization” in order to obtain citizenship. On its face, the procedure looks the same for foreign non-Jewish spouses of both Arab and Jewish citizens of Israel. However, the narrowing of the interpretation of Article 4A of the Law of Return, on the grounds of maintaining equality, took away rights from Jewish citizens rather than provided equal rights to Palestinian citizens of Israel.

	Israeli Citizen is Jewish	Israeli Citizen is an Arab
Spouse is a Jew	Spouse can obtain citizenship through Article 1 of the Law of Return.	Spouse can obtain citizenship through Article 1 of the Law of Return.
Spouse is a non-Jew	The Ministry should give a decision within 6 months of application but usually fail to do so if the spouse is Palestinian or Arab. Once approved, the spouse is granted a one-year temporary residency permit, which is then renewed three times. If, at the end of the four years, there are no criminal or security prohibitions, and if the couple remains married and is living together in Israel, the spouse is technically entitled to citizenship.	The Ministry should give a decision within 6 months of application but usually fail to do so if the spouse is Palestinian or Arab. Once approved, the spouse is granted a one-year temporary residency permit, which is then renewed three times. If, at the end of the four years, there are no criminal or security prohibitions, and if the couple remains married and is living together in Israel, the spouse is technically entitled to citizenship.

New Developments: Banning Family Unification of Palestinians Married to Israeli Citizens

In its 1998 Concluding Observation #26, the UN HRC expressed its concern that Israel has placed obstacles on family reunion and that these measures “are applied even more rigorously in the case of Arab citizens, particularly those who marry persons resident in the occupied territories.” In this regard, we wish to call the Committee’s attention to Israel’s Government Decision No. 1813 and the government’s new proposed bill, Nationality and Entry into Israel (Temporary Order) Law, 5763-2003.

Government Decision No. 1813, 12 May 2002

On 12 May 2002, the Israeli government unanimously passed Decision 1813, “The Treatment of Those Staying Illegally in Israel and the Family Unification Policy Concerning Residents of the Palestinian Authority and Foreigners of Palestinian Descent.” The decision effectuated an interim policy whereby the gradual process of the naturalization of spouses of Israeli citizens, the Ministry of Interior’s policy after *Stamka* and *Issa*, would not apply to spouses who are residents of the Palestinian Authority and/or are of Palestinian descent. The general policy for residency and citizenship status for all other non-citizen spouses of Israeli citizens remained unchanged. The decision states:

B. Family Unification Policy

In light of the security situation and because of the implications of the processes of immigration and settlement in Israel of foreigners of Palestinian descent, including through family unifications, a new policy will be formulated to handle applications for family unification by the Ministry of Interior together with the other relevant ministries. Until this policy, which will be expressed in new procedures and legislation, is formulated, as necessary, the following rules will apply:

1. Handling of New Applications, including Applications in Which a Decision has not been Issued
 - a. Residents of the Palestinian Authority - no applications to obtain the status of resident or other status will be accepted from residents of the Palestinian Authority; an application that has been submitted will not be approved, and the foreign spouse will be required to stay outside of Israel until another decision is made.
 - b. Others - the application will be reviewed taking into consideration the descent of the person invited.
2. Applications in the Gradual Process

During the interim period, the validity of a permit that has been issued will be extended, provided there are no other impediments. There will be no upgrading to a higher status.

Proposed Bill – Nationality and Entry into Israel (Temporary Order) Law, 5763-2003, 4 June 2003

On 4 June 2003, the Israeli government introduced new legislation in the Knesset that would enshrine Government Decision No. 1813 into statute. The purpose of the bill 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. It will affect thousands of couples and their children, who were living lawfully in Israel waiting for family unification, as well as future unions between Palestinians from the Occupied Territories and Israeli citizens, forcing families to separate or to leave the country.

Comparison between Government Decision No. 1813 & the Government’s Proposed Bill

	Government Decision No. 1813	Proposed Bill
No new applications	No new applications accepted; froze the application process.	No new applications accepted.
Pending Applications	Denied any pending requests and required Palestinian spouses deported until a new decision was given.	Applications submitted before the government’s 12 May 2002 decision will be considered. No citizenship or residency status will be given. Only permits for temporary stay in Israel may be given in response to these applications.
Upgrade in Status	Prohibited upgrading visa or temporary residency status if such status was granted prior to 12 May 2002 until a new policy is established. Palestinian resident can extend the validity of the residence permit or stay permit that was valid prior to 12 May 2002.	Prohibited upgrading visa or temporary residency status if such status was granted prior to 12 May 2002. Palestinian resident can extend the validity of the residence permit or stay permit that was valid prior to 12 May 2002.
Relation to “Gradual Process of Naturalization”	The gradual process of naturalization does not apply to spouses who are Palestinian, residents of the Palestinian Authority and/or are of Palestinian origin.	The gradual process of naturalization does not apply to spouses who are Palestinian residents of the West Bank and the Gaza Strip.
Time Frame	Unlimited interim period from 12 May 2002 until Ministry of Interior formulates a new procedure for family unification with more restrictive criteria for citizenship for Palestinian spouses of Israeli citizens.	The provisions are stated as a temporary order for one year. The provisions can be extended annually for one year each time.

Supreme Court Litigation: Challenging the Legality of Government Decision No. 1813

Adalah and the Association for Civil Rights in Israel each filed petitions to the Supreme Court of Israel challenging the legality of Government Decision No. 1813.⁵ On 30 May 2002, Adalah submitted a petition on behalf of 57 individuals from 14 families, whose applications for residency or citizenship status for the non-citizen Palestinian spouses had been cancelled, against the Prime Minister, the Minister of Interior, and the Director of the Population Bureau. Adalah asked the Court to cancel the decision on the grounds that it violated the constitutional rights of the petitioners and requested the issuance of temporary injunctions preventing the deportation of the Palestinian spouses. The Court granted 13 out of 14 spouses a temporary injunction; the Court also issued an *order nisi* (an order to show cause).

At a hearing on 17 July 2003, the Court stated that the petitions raise a principle question that is disconnected from the legislative process that began following the submission of the petition, and has yet to be completed. The Court instructed the state to provide an update as to the legislative progress of the government's new proposed bill. The state committed to extend the residency permits of some of the petitioners. The *order nisi* still stands. The case is pending.

Adalah's Main Arguments against Government Decision No. 1813 and the Proposed Bill

The introduction of this racist and discriminatory ban on family unification shows the increasing deterioration in the political situation in Israel. It is 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. The ban on family unification of Palestinians from the Occupied Territories married to Israeli citizens:

1. Severely violates the fundamental rights of individuals to family life, dignity, privacy, and equality. The ICCPR, the ICESCR, and the Convention on the Rights of the Child prohibit the arbitrary interference with these fundamental rights. In particular, the ban on family unification contravenes Articles 17 and 23(1) of the ICCPR, which protect the family.
2. Flagrantly discriminates against Palestinian citizens of Israel and Palestinians from the Occupied Territories. In practice, the ban would primarily affect Palestinian citizens of Israel, who are most likely to have non-citizen Palestinian spouses. The total ban on family unification exclusively and solely targets Palestinians from the Occupied Territories; the gradual process of naturalization for residency and citizenship status in Israel for all other "foreign spouses" remains unchanged. These measures constitute discrimination on the basis of nationality in violation of Articles 26 and 27 of the ICCPR. Article 1 of the International Convention of All Forms of Racial Discrimination prohibits such discrimination in matters relating to the right to citizenship.
3. Is disproportionate as the alleged security reasons cited by the state for the necessity of the measures lack any basis. The state claims that the ban 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. Contradictory data presented by the government at a 18 July 2003 Knesset hearing shows that this argument is flawed.

Senior officials from the Ministry of Interior and the Ministry of Justice who testified before the Knesset Committee stated that since 1993, 100,000-140,000 Palestinians have been granted official status in Israel following family unification. In response to inquiries by Knesset Committee members, these officials later revised these figures, admitting that only 22,414 requests for status were submitted by Palestinians, out of which 16,007 were approved and 6,400 were rejected. However, these officials failed to answer whether the number of applications submitted equaled the number of individuals who actually sought status or

whether these figures merely represented multiple applications submitted by each individual. They also failed to provide numbers as to how many individuals actually received status after approval of their applications. The officials then contended that 20 Palestinians from the Occupied Territories who received status in Israel via family unification have been involved in some type of terror activity. No detailed, specific examples were provided at the hearing to support these claims.

Given the fundamental rights at stake, imposing a total ban on family unification for Palestinians from the Occupied Territories is completely disproportionate. The state has many other tools and mechanisms, which it has utilized and continues to utilize in order to address security concerns. The gradual process of naturalization grants the government wide authority to conduct criminal and security background checks on all persons seeking to gain citizenship/residency status in Israel. Throughout the four-years long process - from the initial application for status, to the renewal of status, to the upgrading of status, to the granting of citizenship - security checks are conducted. By setting forth such a sweeping measure, the proposed ban collectively punishes all Palestinian residents of the Occupied Territories as well as Palestinian citizens of Israel. Security concerns cannot justify such extreme measures, as set forth by the ban.

4. Actually aims 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 as the justification for these measures. Numerous facts support this argument. This ban is being presented in the wake of and to bypass the Supreme Court's 1999 decision in *Stamka*. In that case, the Supreme Court ruled that anyone who marries an Israeli citizen is entitled to equal treatment in the processing of his/her application for citizenship in Israel, provided that there is no criminal or security risk proven against the individual. Based on this 1999 decision, in 2003, the Minister of Interior was supposed to start granting citizenship to individuals who passed a four-year application process. Seemingly, to avoid the granting of citizenship to Palestinians from the Occupied Territories who have completed this process, the government now comes forward with security excuses to justify the measures set forth in this ban. In addition, Government Decision No. 1813 clearly states that there is a need for such a policy due to "... the implications of the processes of immigration and settlement in Israel of foreigners of Palestinian descent." Further, former Minister of Interior Eli Yishai told *Ha'aretz* on 9 January 2002 that he "believes there is a pressing need to find ways to limit the number of non-Jews who receive Israeli citizenship, among them Arabs, whose numbers have increased dramatically in recent years and 'threaten the Jewish character of the State of Israel.'"

Possible Future Measures: Denying Israeli Citizenship to Children if One Parent is Palestinian

On 20 May 2003, on its website, *Yediot Ahronot* published a letter from the Attorney General to the Prime Minister that was leaked to the media. One of the issues raised in the letter was the Prime Minister's request to the Justice Ministry to prepare a bill that would deny the right of citizenship to children, regardless of their place of birth, if one of the parents is of Palestinian origin. An excerpt from the letter follows:

..... The question is whether the state of Israel is willing to grant status (at times greater status – citizenship) to anyone who has illegally resided here for a long period of time, following an illegal residency period...this rule, were it to be applied to children of foreign workers, would be applicable for the same exact reasons to children of illegal residents in Israel from the Occupied Territories, Jordan and other countries. The distinction between the two groups would constitute discrimination, and could not be legally based.

There is no need to mention that this policy contradicts the instructions you recently provided to amend the law in a way that would deny automatic status to a child of an Israeli whose second parent is a resident of the Occupied Territories. It will be difficult to make a distinction between the two cases. Furthermore, the argument regarding the security risk posed by the child of a resident of the Occupied Territories would not necessarily stand criticism, especially when the person in question is a minor.

Denying children a nationality contravenes Article 24 (3) of the ICCPR, according to which “every child has the right to acquire a nationality.”

List of Issues, Question 18:

Please provide information concerning the revocation of Israeli citizenship, in particular with regard to individuals belonging to the Arab minority, and the remedies available in such cases.

International law prohibits making persons stateless. In particular, Article 15 of the Universal Declaration of Human Rights (1951), the Convention Relating to the Status of Stateless Persons (1960), and the Convention on the Reduction of Statelessness (1961) mandate that state parties protect the nationality of all its citizens.

Revocation of Citizenship – Palestinian Citizens of Israel

In September 2002, then-Minister of Interior Eli Yishai (Shas), signed a decree revoking the citizenship of two Palestinian citizens of Israel. These unprecedented decisions make at least one of the individual’s stateless. One of the two individuals is currently incarcerated for breaching state security; he does not hold any other citizenship. We wish to call the Committee’s attention to Israel’s Initial Periodic Report (p. 35, para. 53), in which Israel states that “as a practical matter,” revocation of citizenship for “breach of allegiance” has never been invoked.

In fact, the former Minister of Interior and the Supreme Court, in *Hilla Alrai*, refused the request by a third party to strip the citizenship of Yigal Amir, an Israeli Jewish citizen who assassinated Prime Minister Yitzak Rabin in 1995, on the grounds that such a decision would be an extreme and drastic measure. In *Hilla Alrai*, the Supreme Court held that, "Although in Israel citizenship was not granted an honorary place as a Basic Law, there is no doubt that it is a basic right. Among other things because it is the foundation of the right to vote for the Knesset, from which democracy flows. It is well known that every administrative body is obligated to refrain itself from violating a basic right including citizenship, except for a proper cause and in proportionate means. This is especially true in citizenship revocation cases unlike other violations and even more so in a citizenship revocation case which leaves a native-born citizen stateless."⁶

Article 11(b) of the Nationality Law -1952 grants authority to the Minister to revoke the citizenship of an Israeli citizen for “breach of allegiance to the State of Israel.” The full text of Article 11 of the Nationality Law – 1952, which governs the revocation of citizenship, is set forth below.

Article 11 of the Nationality Law - 1952

- (a) An Israeli citizen who unlawfully exited Israel to one of the countries listed in Article 2A of the Prevention of Infiltration Law, 1954, (Lebanon, Syria, Egypt, Trans-Jordan, Saudi Arabia, Iraq, Yemen or any part of "Eretz Yisrael" outside of Israel) or who acquired citizenship of any of these states, will be perceived as having relinquished their Israeli citizenship and it will be revoked as of the day of their exit; The revocation of the Israeli citizenship of a person in accordance with this article, revokes the Israeli citizenship of their minor child who is not a resident of Israel as well.
- (b) The Minister of Interior is authorized to revoke the Israeli citizenship of a person who has committed an act, which constitutes of breach of trust of the State of Israel.
- (c) The Minister of Interior is authorized to revoke the Israeli citizenship of a person if it has been proved to his satisfaction that the citizenship was granted based on false facts; the Minister of Interior is authorized to determine that the revocation of citizenship will apply to the minor child of that person.
- (d) Revoking Israeli citizenship in accordance with sub section (b) and (c) will be executed by a prior notice from the Minister of Interior as of the date determined by the Minister of Interior in the citizenship revocation notification.

Legal Remedies

The procedure to revoke citizenship in accordance with subsection (b) and (c) of Article 11 of the Nationality

Law is described in subsection (d). According to Article 11(d), citizenship is revoked upon announcement by the Minister of Interior.

Unlike subsection (b) and (c), more process is required for revocation of citizenship under subsection (a). The Nationality Law Regulations (The Procedure of Applications to Revoke Citizenship – 1971) describes that the Minister of Interior must submit a motion to court that includes the facts constituting the motion for citizenship revocation. The regulation provides 30 days for the citizen to submit a reply before his hearing.

Although no regulations govern the procedure of revocation under Article 11(b), general due process principles apply for the affected citizen. The affected citizen may appeal the Minister of Interior's announcement and challenge it before the Supreme Court. The Supreme Court has the power to overturn the Ministry of Interior's decision. Israeli citizens subject to citizenship revocation have no international legal remedy as Israel has not signed the ICCPR's Optional Protocol I.

Proposed Questions for Israel

(1) Over the last 10 years, how many Palestinian individuals requested status/citizenship in Israel through the family unification process? How many individuals were approved and actually received status, and how many individuals were rejected?

(2) How many Palestinian individuals currently have applications for status via family unification pending with the Ministry of Interior?

(3) How many individual Palestinians, who received status/citizenship in Israel through family unification, have allegedly been involved in terror activities? How many indictments are pending and/or how many individuals have been convicted/sentenced for security offenses? Please provide details.

(4) Considering that the Ministry of Interior's gradual process of naturalization policy provides for many security checks over long period time, why is it an inadequate means of dealing with security concerns?

(5) Please explain the state's recent decisions to revoke the citizenship of Palestinian citizens of Israel. What criteria does the state apply in deciding upon such matters? What is the state's plan for individuals who will become stateless?

Notes:

¹ (High Court) H.C. 3648/97, *Stamka, et. al. v. Minister of the Interior, et. al.* Petitioners challenged the Ministry of Interior's refusal to register a marriage between an Israeli Jewish citizen and a foreign non-Jewish spouse upon the expiration of the foreign spouse's visa. The Ministry of Interior announced a new policy that a non-citizen, non-Jewish spouse will not be granted citizenship automatically but after a period of time, due to the need to examine the seriousness of the marriage. H.C. 338/99, *Sabri Issa, et. al. v. Minister of the Interior, et. al.* challenged the five-years and three months timeframe necessary to obtain a permanent residency permit, and Ministry of Interior stated that the end result should be citizenship rather than permanent residency. Previously, the general policy for granting permanent residency status to a non-citizen was not to issue permanent [residency] permits to foreigners, except in very exceptional situations, under extraordinary discretion.

² The Law of Return -1950, Article 1: "Every Jew has the right to immigrate to Israel."

³ The Law of Return -1950, Article 4A: "The right of a Jew under this law...shall apply to the child and grandchild of a Jew, to the spouse of a Jew, the spouse of the child and grandchild of a Jew, except for a person who has been a Jew and converted his religion voluntarily."

⁴ The Nationality Law -1952, Section 7: "The spouse of a person who is an Israel national or has applied for Israel nationality and meets or is exempt from the requirements of section 5(a) may obtain Israel nationality by naturalization even if he or she does not meet the requirements of section 5(a).

The Nationality Law - 1952, Section 5(a): The candidate: must be in Israel; must have been in Israel for three of the five years prior to his/her application; must be entitled to settle in Israel as a permanent resident; must have settled in Israel or intends to do so; must have some knowledge of the Hebrew language; and must have renounced his/her foreign citizenship. Section 5(b): "If...he has fulfilled the above conditions, the Minister of the Interior will grant him [citizenship], if the Minister deems it appropriate."

⁵ H.C. 4608/02, *Abu As'ad, et. al. v. The Prime Minister of Israel, et. al.* and H.C. 4022/02, *ACRI, et. al. v. Minister of Interior, et. al.*

⁶ H.C 2757/96, *Alrai v. Minister of Interior et. al.*, PD 50 (2)18, para. 4.