



4 January 2007

To:

MK Ghaleb Majadleh
Chair, Knesset Interior Committee
Fax: 02-6753198

Minister Tzipi Livni
Minister of Justice
Fax: 02-6285438

Mr. Meni Mazuz
Attorney General
Fax: 02-6467001

Re: Adalah's position on the proposed amendment to the Nationality and Entry to Israel Law (Interim Order) (Amendment No. 2) – 2006

We are writing to you regarding the proposed amendment to the Nationality and Entry to Israel Law (Temporary Order) (Amendment No. 2) – 2006 (hereinafter: "the proposed legislation") as follows:

1. The proposed legislation is, in fact, a two-year extension of the Nationality and Entry to Israel Law (Temporary Order) – 2006 (hereinafter: "the Temporary Order"). It even includes additional, more stringent restrictions on exercising the constitutional right to family life. According to the proposed legislation, this right is to be denied when the Arab spouse of an Israeli citizen is a resident of the Occupied Palestinian Territories (OPTs) and/or is a resident or citizen of an Arab state defined by the law as an "enemy state" and/or is an individual defined by the Israeli security forces as residing in an area where activity is occurring that is liable to endanger the security of the State of Israel. Moreover, the proposed legislation expands the prohibition on granting a spouse citizenship to include not only an individual who constitutes a "security threat" to the State of Israel, but also a spouse whose place or area of residence is the site of activity liable to endanger the security of the state. The imposition of this prohibition would be based on an assessment by the security forces; that is, a constitutional right would be denied via a directive from the executive branch. In addition, the proposed legislation expands the definition of "family member" – with regard to the prohibition on granting citizenship – to include not only "a spouse, parent, child, brother and sister and their spouses," but also "the children of each of these."

Thus, the essence of the proposed legislation is the denial of the right to family life on a national/ethnic basis.

2. It should be noted that on 14 May 2006, the Supreme Court of Israel, in an 11-justice panel, ruled on the constitutionality of the Temporary Order (H.C. 7052/03, *Adalah, et al. v. Minister of Interior and the Attorney General*). In this ruling, the five minority justices stated that the Temporary Order is illegal because it infringes the constitutional rights to family life and equality in a disproportionate manner. In addition, Justice Levy, one of the majority justices, also stated that the Temporary Order is disproportionate and should be revoked. Nonetheless, he determined that it would be appropriate to let the legislative branch rectify the flaw in the Temporary Order.
3. Therefore, the proposed legislation stands in complete contradiction to the rulings of the majority of justices in the aforementioned Supreme Court petition. It also stands in complete contradiction to the principles of international law cited in the rulings of the Supreme Court justices.
4. Indeed, the law harms and discriminates against the Arab citizens of the State of Israel on the basis of their ethnic and national affiliation; that is, though the language of the proposed

P.O. Box 510 Shafa'amr 20200 Israel Tel: (972)-4-950-1610 Fax: (972)-4-950-3140

شفااعمرو ٢٠٢٠٠ ص.ب ٥١٠ هاتف: ٩٥٠١٦١٠-٤ فاكس: ٩٥٠٣١٤٠-٤
שפאעאם 20200 ת.ד. 510 טלפון: 04-9501610 פקס: 04-9503140

Email: adalah@adalah.org

<http://www.adalah.org>

legislation does not state this, the result is that those who are prevented from uniting with their family members are Arab citizens of the State of Israel. This conclusion found strong support among many justices in Adalah's aforementioned Supreme Court petition.

5. It should be emphasized that the proposed legislation does not define or pertain to the issue of the immigration of foreigners to the territory of the State of Israel. Rather, it deals with the exercise of the right to equality and family life by Arab citizens of the State of Israel.
6. Moreover, the language of the proposed legislation indicates that it would result in cutting off Arab citizens from their brethren and from the Arab nation to which they belong, even when the link with members of their nation is on a humanitarian basis, through maintaining family life. Restricting the exercise and fulfillment of family life between Arab citizens and members of their people and nation is contrary to the principles of international law. Article 2(5) of the United Nations' Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992, which is based on the International Covenant on Civil and Political Rights, to which Israel is a signatory and has ratified, states as follows:

"Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other states to whom they are related by national or ethnic, religious or linguistic ties."

7. In the past, regimes and states were denounced for placing restrictions on the maintenance of humanitarian connections, including family ties, between domestic ethnic and national minorities and their brethren in other states.
8. **Indeed, there is no democratic or non-democratic state in the world today whose laws restrict its citizens' right to family life on the basis of ethnic affiliation.**
9. It should be noted that the Supreme Court recently overturned the Civil Wrongs (Liability of the State) Law (Amendment No. 7) – 2005, which denied the rights of residents of the OPTs to submit claims against the Israeli security forces for damages. Nine Supreme Court justices unanimously adopted former Supreme Court President Aharon Barak's ruling that the law is illegal, inter alia, because it is arbitrary and sweeping, denying all residents of the OPTs the right to compensation without basing this on an individual examination of the incidents in which damages were incurred. If legislation relating to tort laws was revoked due to its sweeping nature, one can infer that this argument is yet more applicable in the case of legislation that denies the right to family life on a sweeping, ethnic basis, without examining the requests for family unification on an individual and practical basis.

In light of the above, we request that this racist legislative proposal be withdrawn and not be forwarded to the Knesset plenum for approval.

Respectfully,

Sawsan Zaher, Attorney

cc:
Members of the Knesset Interior Committee