



4 August 2004

Mr. Emanuele GIAUFRET, Counsellor
Delegation of the European Commission to the State of Israel
P.O.Box 3513
Ramat Gan 52136

Dear Mr. Giaufret,

Adalah – The Legal Center for Arab Minority Rights in Israel raises its grave concern at the extension of the Nationality and Entry into Israel Law (Temporary Order) – 2003 (the law), originally adopted on 31 July 2003. In Adalah's view, the 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 Palestinian Territories (OPTs). Following the Delegation of the European Commission to the State of Israel (the delegation) statement on the issue, published as a press release on 3 August 2003, Adalah wishes to request that the delegation publicly urge Israel to cancel the extension of the law; reconsider its family unification policy; uphold its obligations in accordance with the United Nations Charter, the Universal Declaration of Human Rights, and to respect human rights in accordance with the Barcelona Declaration, as well as all other obligations under international law.

1. On 21 July 2004, the Knesset approved the Israeli cabinet's decision of 18 July 2004, to extend the law for an additional six months. It is noted that the content and language of the law remain unchanged. The law bars Palestinians from the OPTs from obtaining any residency status or citizenship in Israel through marriage to an Israeli citizen, thereby preventing them from living in Israel with their spouses. The law has already affected thousands of married couples and their children living in Israel, as well as newly married couples, and has forced families to separate or emigrate. The extension of the law will further exacerbate an existing infringement on basic constitutional rights, owing to the fact that the longer the infringement goes on, the harsher the damage inflicted, since forced separation between a parent and child, man and wife, becomes more destructive the longer it continues. While various media publications have quoted Israeli officials stating that the Israeli government is considering initiating certain steps that would alleviate some of the limitations and restrictions on family unification (for example for spouses or people over the age of 35) Adalah stresses that these steps have not been guaranteed, that they constitute gender and age-based discrimination, and were they implemented the remaining policy would still constitute severe violations of basic human rights.
2. The three main groups affected by the law are:
 - a. Newly married couples in addition to couples who didn't apply prior to 12 May 2002- The law prevents the Palestinian spouse from being granted residency or citizenship status in Israel. No applications for naturalization have been accepted since 12 May 2002.

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- b. 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.
 - c. 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.
3. The law severely violates human rights under domestic and international law, since:
 - a. The law severely violates the fundamental human 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 the 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 discrimination as to race, color, or national or ethnic origin, to equality before the law, notably the enjoyment of the right to marriage and choice of spouse.*"
 - b. The law flagrantly discriminates against Palestinian citizens of Israel and Palestinians from the OPTs. 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 OPTs; 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 in matters relating to nationality and ethnic origin, particularly prohibits such discrimination in matters relating to the right to citizenship. In particular, Article 1.3 of the ICERD states that State parties may not discriminate against any nationality, and Article 3 forbids racial segregation.
 - c. The law is disproportionate to the alleged security reasons cited by the government to justify its enactment. The government claims that the law is essential because Palestinians from the OPTs 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 six 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 citizenship/residency status in Israel. By setting forth such a sweeping ban, the law amounts to collective punishment, which cannot be justified by security concerns.
4. It should be noted that during the legislation process in 2003 senior officials from the Ministry of Interior and the Ministry of Justice who testified before the Knesset Internal Affairs and Environment 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 OPTs 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.

5. The petition which was filed by Adalah on 3 August 2003 is currently pending before the Supreme Court. Six more petitions were later submitted against the law, and are also currently pending before the Court. The Court has joined these petitions for hearings and decision. In its petition, Adalah requested that the Supreme Court cancel the law, arguing that the law is extremely unconstitutional, as it contravenes the Basic Law: Human Dignity & Liberty – 1992, and severely violates the constitutional basic rights of citizens/residents and their families, and is therefore legally void. Together with the petition, Adalah also filed a motion for injunction asking the Supreme Court to freeze the implementation of the law, pending a final decision on the case. The Supreme Court rejected the petitioners' request. At a hearing on 9 November 2003, the Supreme Court of Israel issued an *order nisi* compelling the state to explain why the law should not be declared null and void. On 18 January 2004 an enlarged panel of 13 justices of the Supreme Court of Israel held a second hearing on the petitions.
6. On 21 July 2004, the same day as the Knesset approved the six-month extension of the law, Adalah submitted a motion to the Supreme Court requesting an injunction order to prevent the implementation of the law. Adalah argued that the government and the Knesset did not present any information to justify the extension. Moreover, the extension of the law contradicts what the Attorney General has previously stated before the Supreme Court in response to the petition filed on 3 August 2003. In his response, the Attorney General argued that the law is constitutional and proportionate, because it would remain in effect for only one year, emphasizing its temporary nature. On 25 July 2004, the Supreme Court ordered the respondents to respond to the motion within fourteen days. On the same day, 25 July 2004, Adalah submitted a further motion to the Supreme Court, requesting a judgment as early as possible on the petition, which has now been pending before the Court for almost one year, and for an absolute order declaring the law null and void.
7. During the Knesset debate over the Israeli cabinet's decision to extend the law, some Members of Knesset who supported the legislation stated clearly that the actual aim of the law was 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 presented by the government to justify these measures. Prior to the Knesset approval to the cabinet's request to extend the law, no data was provided to demonstrate that any persons requesting to be granted status in Israel through family unification posed a security threat.
8. United Nations (UN) committees, The European Union, Israeli and international human rights organizations and legal academics have all called on Israel to revoke the ban on family unification. For example:
 - a. In September 2003 the European Parliament Resolution on Human Rights in the World in 2002 and European Union's Human Rights Policy stated that "The European Parliament... calls on the Israeli government not to ratify or apply this discriminatory and racist law."
 - b. In August 2003 the UN Human Rights Committee in its final Concluding Observations on Israel, para. 21, issued on 6 August 2003, similarly urged Israel to, "... revoke the Nationality and Entry to 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 unification of all citizens and permanent residents. It should provide detailed statistics on this issue, covering the period since the examination of the initial report."
 - c. In a press release dated 20 July 2004, the International Federation for Human Rights (FIDH) and its member and partner organizations called upon the Israeli government to, "revoke the Citizenship and Entry to Israel Law and to respect in all circumstances the right to non-

discrimination, as provided for in international human rights Instruments to which Israel is a party."

- d. Amnesty International's most recent report on Israel and the Occupied Territories, published on 13 July 2004 under the title 'Torn Apart: Families Split by Discriminatory Policies,' states that, "the law formally institutionalized a form of racial discrimination based on ethnicity or nationality."
- e. In a press release issued on 22 July 2004, Amnesty International condemned the Knesset's extension of the law, stated that "Israel invokes spurious 'security' justifications for a law which institutionalizes racial discrimination and violates international law," and called upon the Israeli authorities to, "...repeal this law once and for all, and [...] put an end to discrimination based on ethnicity or nationality."
- f. In a letter to all Members of Knesset sent on 20 July 2004, Human Rights Watch expressed its "extreme concern" at the proposed extension of the law, drew attention to its discriminatory nature, and set out the contraventions of international law involved in its implementation.

We therefore request that the delegation consider issuing a public statement with a view to declaring the law in violation of international law with respect to human rights, and urge the State of Israel to cancel the extension of the law as well as reconsider its discriminatory family unification policy.

Sincerely,

Orna Kohn, Attorney
Adalah: The Legal Center for Arab Minority Rights in Israel