

UN COMMISSION ON HUMAN RIGHTS
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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD**

Written intervention* submitted by
Adalah – The Legal Center for Arab Minority Rights in Israel on

Adalah wishes to raise its grave concern at the *Nationality and Entry into Israel Law (Temporary Order)*, (hereafter: the law) originally adopted on 31 July 2003, and subsequently extended four times.¹ The law bars Palestinians from the Occupied Palestinian Territories (OPTs) from obtaining any residency status or citizenship in Israel even through marriage to an Israeli citizen, thereby prohibiting them from living in Israel with their spouses. The law has affected thousands of married couples and their children living in Israel as well as newly-married couples, and has forced families to separate, emigrate or live together illegally in Israel or the OPTs.

The law adopted the principles of an Israeli Cabinet decision from May 2002, and therefore Israel's discriminatory policy on the family unification of Palestinians has been in force for almost four years. The extension of the law further exacerbates the existing infringement on basic human rights, owing to the fact that the longer the infringement goes on, the harsher the damage inflicted, since the forced separation of families becomes harder to bear the longer it continues.

The law severely violates human rights and fundamental freedoms under domestic and international law, including the rights to equality, liberty, privacy, and family life, as protected by, *inter alia*, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the Universal Declaration of Human Rights (UDHR), the International Convention on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Discrimination Against Women (CEDAW).

The law is a blatant violation of the internationally-recognised right to equality and freedom from discrimination through its targeting of Palestinians in Israel and the OPTs. The law discriminates against Palestinian citizens of Israel, the vast majority of Israeli citizens who marry Palestinian from the OPTs. Further, the ban on family unification exclusively targets Palestinians from the OPTs: the general policy for status in Israel for all other "foreign spouses" remains unchanged. It is discriminatory against Palestinians from the OPTs since it does not apply to Jewish settlers in the OPTs or the spouses of Israeli citizens who are residents of any other place. Moreover, international human rights law particularly prohibits discrimination relating to nationality and ethnic origin with regard to the right to citizenship, and in particular Articles 1.3 and 3 of the ICERD.

¹ On 3 August 2003, Adalah filed a petition challenging the constitutionality of the law, which currently remains pending before an expanded panel of 11 Supreme Court Justices. See, H.C. 7052/03, *Adalah, et. al. v. Minister of Interior, et. al.*

The law violates provisions of the UDHR, ICESCR, ICCPR, CRC and CEDAW affording special protection to the family as the fundamental unit of society. These instruments and the Declaration of the Human Rights of Individuals Who are Not Nationals of the Country in Which They Live prohibit arbitrary interference with and oblige states to protect the right to family life. Moreover, as noted by the UNHRC in its General Comment No.19 on Article 23 of the ICCPR:

The right to found a family implies, in principle, the possibility to procreate and live together ... the possibility to live together implies the adoption of appropriate measures, both at the internal level and as the case may be, in cooperation with other States, to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.

The law is disproportionate to the alleged security reasons cited by Israel to justify its enactment. Israel claims that the law is essential because Palestinians from the OPTs who have obtained residency status in Israel via family unification have been increasingly involved in terror activity. However, the state could in fact point to only 25 individuals, from a group of thousands of status-receivers, whom it interrogated for alleged involvement in terror, without providing full details. Moreover, even if this data is reliable the numbers constitute a minute number of people, and thus the law is completely disproportionate. Further, the state possesses many other tools and mechanisms which it continues to employ in order to address security concerns, including the "graduated procedure" for naturalisation, which grants the government wide authority to conduct individual criminal and security background checks on all status seekers. By imposing such a sweeping ban, the law amounts to collective punishment, unjustifiable by security concerns.

The law has a disproportionate affect on Palestinian women, since the position of women *vis-à-vis* men and the prevailing social norms within Palestinian society make it particularly problematic for a woman to live as a single parent or divorcée, earn her own living, or relocate away from her family in search of work, especially if the couple has children. Women citizens of Israel are likely to encounter greater pressure to move to the OPTs and thus lose their social rights and benefits in Israel and face the extremely difficult living conditions in these areas, which are the setting for widespread human rights violations by Israel. The threat of separation often exerts emotional, economic, and social pressures on the affected couples living in Israel and their families, which can lead to the break-down of the family unit and sometimes domestic violence, to which women are particularly vulnerable.

In July 2005, some amendments to the Law were passed allegedly to allow family unification between residents of the OPTs and Israeli citizens. However, the new amendments allow family unification only in very limited circumstances and in fact inflict further violations of constitutional rights and rights protected by international law. The amendments include age and gender-related stipulations which impose a sweeping ban on applications from all Palestinian men under 35 and all Palestinian women under 25 years of age, and which were arbitrarily decided upon and unsupported by any factual evidence. Further, while individuals who do meet these criteria can now apply for a permit to stay in Israel, they are only eligible for a temporary permit at most, and cannot qualify for work permits, social benefits, etc. A further amendment provides that no status will be granted to Palestinians who are related to individuals whom security officials *suggest might* constitute a security threat to the state of Israel. Thus, under the

amended law, the most basic of human rights could be revoked purely on the basis of family relations, over which individuals have no control. Furthermore, the presumptuous conclusion involved in this amendment cannot be challenged and would hold even where no information exists linking an applicant to any alleged security threat posed by a relative, and even where an applicant has no personal contact with such a relative.

UN committees and the European Union have all called on Israel to revoke the ban on family unification. In July 2005, the UN Committee on the Elimination of Discrimination Against Women in its Concluding Comments on Israel noted “with concern” that the Law “has already adversely affected the marriages and family life of Israeli Arab women citizens and Palestinian women from the Occupied Territories,” and called upon Israel to bring the law “into line with articles 9 and 16 of the Convention.” In August 2003, the UNHRC in its Concluding Observations on Israel urged Israel to “... revoke the Nationality and Entry to Israel Law ... 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.” In August 2003, the UN Committee on the Elimination of Racial Discrimination (UNCERD), in an urgent action procedure, stated that the law “raises serious issues under ICERD” and called on Israel to “revoke this law and re-consider its policy with a view to facilitating family unification on a non-discriminatory basis.” In August 2004 the UN CERD issued a second decision on the law, reiterating its August 2003 position. 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.”

Palestinian, Israeli and international human rights and legal organisations, including Al-Haq, Adalah and the Palestinian Centre for Human Rights – Gaza, the International Federation for Human Rights (FIDH), Amnesty International, The International Court of Justice and Human Rights Watch have also all expressed their concern at the law, and called on Israel to revoke it.

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 and Palestinians from the OPTs. Given the inherently discriminatory character of the legislation, Adalah urges the Commission on Human Rights to lead the international call for the condemnation and revocation of the law.