

Written intervention* submitted by the International Federation of Human Rights Leagues (FIDH), and Adalah: The Legal Center for Arab Minority Rights in Israel on

RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

The FIDH, and its member organisation in Israel Adalah raise their concern about the *Nationality and Entry into Israel Law* (Temporary Order) – enacted in 2003, which bars Palestinians from the 1967 Occupied Palestinian Territories (OPTs) from obtaining any residency status or citizenship in Israel through marriage to an Israeli citizen, or from upgrading any previously granted temporary status. The practical effect of the law is that thousands of families must separate, emigrate, or live illegally within Israel under constant risk of arrest and deportation. Article 2 of the law states that:

[...] the Minister of the Interior shall not grant a resident of the region [the West Bank and Gaza Strip] nationality pursuant to the Entry into Israel Law. The regional commander shall not give such resident a permit to stay in Israel pursuant to the defence legislation in the region.

The law severely violates the rights to equality, family life, and privacy, protected by the UDHR, as well as international human rights conventions ratified by Israel, in particular the ICCPR, ICESCR, CRC, and CEDAW. The above instruments prohibit arbitrary interference with these rights, and oblige states to protect them. Further, the law amounts to discrimination on the basis of race, national and ethnic origin, and therefore violates the ICERD.

The FIDH and Adalah emphasise that security concerns, used by Israel to justify the need for the law, cannot defend such sweeping measures. While Israel claims increasing involvement in terror activity by residents of the OPTs granted status in Israel through family unification, it referred to only 23 people out of a group of thousands of status-receivers whom the state alleged were indirectly involved in terror, without providing full details.

Significantly, some Members of Knesset who supported the legislation stated clearly that its actual aim was to limit the number of Palestinian citizens/residents of Israel, the so-called "demographic threat" to maintaining a Jewish majority in the state. Furthermore, even if the data supplied by the state is reliable, the figures presented constitute a minute number of people, and thus the law is completely disproportionate. Also noteworthy in this context is the CERD's recommendation in its General Comment No.30 para. 10 from 2004 that State Parties, "Ensure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping."

The law has now been extended twice, in July 2004 and January 2005, and will remain in effect until at least 31 May 2005. The extension of the law further exacerbates an existing infringement on the prohibition of racial discrimination and a violation of human rights. The law adopted the principles of a May 2002 Israeli Cabinet decision and therefore, in practice, by May 2005 the government's discriminatory policy will have been in force for over three years.

The Right to Equality and Freedom from Discrimination

The FIDH and Adalah believe that the *Nationality and Entry into Israel Law* is a blatant violation of the internationally recognised right to equality through its discrimination against Palestinians on both sides of the Green Line. The law is discriminatory against Palestinian citizens of Israel, as they comprise the vast majority of Israeli citizens who marry Palestinian residents of the OPTs. Further, the total ban on family unification exclusively targets Palestinians from the OPTs; the general policy for residency and citizenship status in Israel for all other "foreign

* An oral intervention on the same subject was delivered before the UNCHR by Adalah Attorney Orna Kohn on behalf of Al-Haq and Adalah on 21 March 2005.

spouses" remains unchanged under the law. 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. In short, the law forces individuals to choose between their communities and their spouses and/or children.

International human rights law especially prohibits racial discrimination in matters relating to nationality and the right to citizenship. In particular Article 5.d.(iv) provides that, "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms [...] notably the enjoyment of the right to marriage and choice of spouse." Further, the CERD in its General Comment No.30 para. 13 and 14 recommended that State Parties:

Ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization, and to pay due attention to possible barriers to naturalization that may exist for long-term or permanent residents; and

Recognize that deprivation of citizenship on the basis of race, colour, descent, or national or ethnic origin is a breach of State Parties' obligations to ensure non-discriminatory enjoyment of the right to nationality.

Protection of the Family Unit in International Law

The *Nationality and Entry into Israel Law* violates provisions of the UDHR, and the ICESCR, ICCPR, and CRC, 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, all further prohibit arbitrary interference with the right to family life, and obliges states to protect it.

Moreover, as noted by the UNHRC in its General Comment No.19 from 1990 on Article 23 of the ICCPR,

... 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 FIDH and Adalah deeply regret that Israel has abandoned its fundamental obligation to protect the family, to the detriment of the family unit.

The Right to Privacy

The *Nationality and Entry into Israel Law* violates the right to privacy, as enshrined in numerous international human rights conventions, including the ICESCR and ICCPR. This right arises from the state's duty not to interfere with the autonomy of the individual in matters regarding the family unit, a duty which the Israeli authorities are clearly failing to fulfil.

The Need for International Intervention

Both the cabinet decision and the law were challenged by Adalah (H.C. 4608/02, *Awad, et. al., v. The Prime Minister of Israel, et. al.* and H.C. 7052/03, *Adalah, et. al., v. Minister of Interior and the Attorney General*) and other human rights organisations before the Israeli Supreme Court. The petitions are still pending. The Attorney General argued before the Court that the law is constitutional and proportionate, and that it would remain in effect for only one year. An extraordinary panel of thirteen Supreme Court Justices deferred judgment on the petitions in a decision from December 2004, based on subsequent representations made by the Attorney General that the state was preparing amendments to the law. The Court ruled that it would wait to see the new amendments before deciding on the petitions. The deferral of the decision denied the petitioners' constitutional right of access to the Court. Moreover, contrary to the AG's representations, the law was re-extended in its existing form on 31 January 2005, without amendment.

Importantly, since the adoption of the May 2002 Israeli Cabinet decision, Israel has continued its effort to legalise discriminatory policies in the fundamental area of family life. For example,

the Israeli Prime Minister has issued an order, officially acknowledged only in August 2004, to stop the granting of status permits to citizens of Arab countries married to Israeli citizens. The order severely undermines the basic right to family life and is discriminatory against Palestinian citizens of Israel and their spouses on the basis of race, national or ethnic origin. A petition submitted by the Association for Civil Rights in Israel challenging this order remains pending before the Supreme Court (H.C. 9292/04, *Kanam et. al., v. The Minister of Interior et. al.*). The *Nationality and Entry into Israel Law* and its repeated extension lends legitimacy to such discriminatory decisions.

Given the extreme difficulty in achieving a domestic remedy to the violation of human rights inflicted by the law, international intervention is crucial. The Commission on Human Rights should lead the international call for the condemnation and revocation of the law, made by UN human rights committees (CERD decisions 2(63) of August 2003 and 2(65) of August 2004 and the UNHRC's Concluding Observations on Israel, para. 21, of August 2003), the European Union (the European Parliament Resolution on Human Rights in the World in 2002 and European Union's Human Rights Policy of September 2003), Israeli and international human rights organizations (including the FIDH, Amnesty International and Human Rights Watch), as well as legal academics.

The FIDH and Adalah call on the Human Rights Commission to:

Issue a resolution condemning the discriminatory family unification policies of the State of Israel, and urging the State of Israel to revoke the *Nationality and Entry into Israel Law*, passed in violation of international human rights law.