

ITEM 6: RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written Intervention Jointly Submitted by Al-Haq, the Palestinian Centre for Human Rights, and Adalah
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Al-Haq, the Palestinian Centre for Human Rights (PCHR), and Adalah: The Legal Center for Arab Minority Rights in Israel wish to raise their grave concern about the recent passage of the *Nationality and Entry into Israel Law*, which is intended to stop family unification where one spouse is a resident of the Occupied Palestinian Territories (OPT). The law blocks not only the unification of such families, but also any consideration of their application. Article 2 of this law, which was passed by the Israeli Knesset (parliament) on 31 July 2003, states:

During the period in which this Law shall be in effect, notwithstanding the provisions of any law, including Article 7 of the Nationality Law, 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.

Although the law is currently in effect for a one-year period, it may be renewed by the Knesset indefinitely. Such renewals require only one reading and no quorum. The law's passage was preceded by the May 2002 administrative decision by the Israeli Cabinet to the same effect. Both the decision and the law itself were challenged by Adalah before the Israeli High Court of Justice, and are still pending with no interim remedy preventing their implementation. The practical effect of the *Nationality and Entry into Israel Law* is that thousands of affected families - including many men, women and children who have been in the process of obtaining family unification for years - must either separate, live outside of Israel, or live illegally within Israel under constant risk of arrest and deportation.

The Principle of Non-Discrimination

The *Nationality and Entry into Israel Law* discriminates against Palestinians on both sides of the Green Line. It is discriminatory against the Arab minority of Israel as they compromise the vast majority of Israeli citizens who marry Palestinian residents of the OPT. It is discriminatory against their Palestinian spouses from the OPT since it does not apply to settlers in the OPT or the spouses of Israeli citizens who are residents of any other place. It should also be noted that the law has a particularly discriminatory effect on Palestinian residents of East Jerusalem, as their permanent residency status is granted under condition that they live in East Jerusalem. In short, the law forces them to choose between their homes and their families.

The *Nationality and Entry into Israel Law* represents a grave violation of the fundamental prohibition on discrimination, as upheld in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the UN Charter; the Universal Declaration of Human Rights (UDHR); the International Covenant on Civil and Political Rights (ICCPR); and the International Covenant on Economic, Social and Cultural Rights (ICESCR). As a State Party to most of these treaties, Israel is in breach of its fundamental international legal obligation not to discriminate, an

obligation which is *jus cogens* in nature. Further, because of its discriminatory impact for both the citizen and non-citizen spouse, it violates the international legal principle of equality before the law, as upheld in Article 26 of the ICCPR. Article 26 not only entitles all persons to equality before the law and equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground. While states may derogate from certain obligations in time of public emergency, the ICCPR clearly states that such derogations may not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin and that any measures so applied are not inconsistent with their other obligations under international law. Al-Haq, PCHR, and Adalah strongly condemn the Knesset's passage of this racist law that violates Israel's fundamental obligations under international law. This law is also in violation of Israel's domestic law, in particular the Basic Law: Human Dignity and Liberty.

Protection of the Family Unit in International Law

In addition to being a violation of the principle of non-discrimination, the *Nationality and Entry into Israel Law* violates the provisions of international law involving the protection of the family. As the natural and fundamental group unit of society, the family is provided with special protection under international law, particularly for its establishment and while it is responsible for the care and education of dependent children. As noted by the UN Human Rights Committee in its General Comment 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.

Further, as a State Party to the UN Convention on the Rights of the Child (CRC), Israel is in breach of its obligations under Article 10(1) to deal with matters of family unification in a positive, humane and expeditious manner. The CRC specifically states that,

States Parties shall further ensure that the submission of such a request [to enter or leave a State Party for the purpose of family unification] shall entail no adverse consequences for the applicants and for the members of their family.

It is clear that the international community has recognised the fundamental right of a family to be together. The importance of the protection of the family is such that it has been recognised in both international human rights and humanitarian legal standards. We deeply regret that Israel has abandoned this fundamental obligation to the detriment of the family unit based on racist grounds.

The Right to Privacy

The *Nationality and Entry into Israel Law* violates the right to privacy, as enshrined in numerous international human rights conventions to which Israel is a State Party, 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 Israeli authorities have clearly abandoned.

The *Nationality and Entry into Israel Law*: A Racist Law

Al-Haq, PCHR and Adalah believe that the new law is a blatant violation of the principle of non-discrimination. In the preceding May 2002 administrative decision, Israeli authorities clearly acknowledged this discriminatory intent, noting that it was "... because of the implications of the processes of immigration and settlement in Israel of foreigners of Palestinian descent, including through family reunifications...." The new law reiterates this policy in that it applies only to

Palestinians; family unifications and naturalisation remain available to all other “foreign” spouses of Israeli citizens.

Since the adoption of the May 2002 administrative decision, Israel has continued its effort to legalise racism in the fundamental area of family life. Israel’s political and demographic intent was illustrated in the 2002 statement of former Israeli Minister of the Interior Eli Yishai regarding the “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 that of Prime Minister Ariel Sharon, who asked the Ministry of Justice in 2003 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.

Al-Haq, PCHR, and Adalah strongly endorse the finding of the Committee on the Elimination of Racial Discrimination in its consideration of the matter under the urgent procedure process, in which it noted that this law raises serious issues under ICERD, and that Israel should revoke it and ensure that it is facilitating family unification on a non-discriminatory basis (CERD/C/63/Misc.11/Rev.1). It should be noted that this position was also adopted by the UN Human Rights Committee in August 2003, when it stated that Israel should revoke the law and “reconsider its policy with a view to facilitating family reunification of all citizens and permanent residents.” We believe that the fundamental rights of the Palestinian people must be respected.