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Israel/Occupied Territories: Joint letter to Israeli Knesset Members - Discriminatory family reunification law must not be extended

May 22, 2005

Members of the Knesset,

We are writing to urge you to reject the proposed amendment to the Citizenship and Entry into Israel Law (Temporary Order) 2003 ("the law") approved by the Cabinet on May 15, 2005 and to call for the law not to be extended when it expires on May 25. The law is discriminatory in its explicit denial of family rights on the basis of national origin. While most Israeli citizens enjoy the right to family reunification with their non-Israeli spouses, Israeli citizens married to Palestinians from the Occupied Palestinian Territories (OPT) are deprived of this right. Israel's Palestinian citizens, who make up 20% of the population, are the main victims of this discriminatory law, since in the overwhelming majority of cases they are the ones who marry Palestinians from the OPT.

The law, originally enacted in July 2003, followed a government freeze on applications for family reunification between Israeli citizens and Palestinians from the OPT in May 2002. It prohibits the granting of any residency or citizenship status to Palestinians from the OPT who are married to Israeli citizens or permanent residents (i.e. Palestinian residents of East Jerusalem). The latest proposed amendment and extension of the law, rather than bringing it into line with international human rights standards and Israel's Basic Laws, includes exceptions to the law based on age and gender. The proposed amendment permits Palestinian women over the age of 25 and Palestinian men over the age of 35 to apply for family reunification with their Israeli spouses. These criteria are arbitrary in nature and apply to only a small percentage of the couples seeking family reunification, as most marry at an earlier age.

Furthermore, Israel may deny the applications of persons within the age and gender exception if anyone from their extended family or in-laws is considered to pose a security risk. Israeli authorities are not required to inform applicants about the basis of the allegations against their relatives or to give them the opportunity to challenge those allegations.

The government of Israel must ensure that measures addressing its security concerns remain in conformity with international human rights standards – including the principle of non-discrimination - and are applied on an individual basis, and not to persons who themselves are not considered to be a genuine security threat.

Over the past three years the law on family reunification between Israeli citizens and Palestinians from the

OPT has harmed the rights of tens of thousands of individuals. Not only has Israel failed to accept any new applications for family reunification in these cases, it has frozen the status of applications submitted prior to the enactment of the law, jeopardizing the ability of couples already living together in Israel to continue to do so and forcing others to live apart.

Even before the May 2002 freeze, the practice of granting permanent residency and citizenship to Palestinians from the OPT married to Israelis was an arduous and drawn-out process. According to Israeli human rights organizations, the Israeli Ministry of Interior took an average of five years from the submission of an application to grant or deny the application. The applicant then spent another five years in various statuses before receiving permanent residency or citizenship.

The law has created an intolerable situation whereby Israeli citizens and permanent residents are forced to choose between living in their country without their spouses and leaving their country to be with their spouses. Furthermore, even those choosing to leave Israel to join their spouses in the OPT face a host of additional, negative legal consequences. Palestinian residents of East Jerusalem face a real threat of losing their own permanent residency if they move to the OPT to join their spouses there. Israeli citizens are prohibited from entering Areas A (major Palestinian population centers as defined under the Oslo Accords) of the OPT, and thus have to break Israeli law in order to live with their spouses in the OPT. If spouses from the OPT stay illegally in Israel with their Israeli spouse and children, they often can't leave the house for fear of arrest and deportation.

While Israeli government officials have traditionally justified the law as necessary for security reasons, the real intent of the law appears to be demographic in nature. As reported by *Ha'aretz*, during a special meeting to discuss the law on April 4, 2005, Prime Minister Ariel Sharon stated: "There is no need to hide behind security arguments. There is a need for the existence of a Jewish state." At the same meeting, Finance Minister Benjamin Netanyahu said, "Instead of making it easier for Palestinians who want to get citizenship, we should make the process much more difficult, in order to guarantee Israel's security and a Jewish majority in Israel." ¹

Israel's obligations under international human rights law include the obligation to respect the absolute prohibition on discrimination set out in Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR), Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Article 2 of the Convention on the Rights of the Child (CRC), and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Israel has ratified all of these treaties and is bound to respect their provisions. Under the ICCPR, which Israel ratified in 1991, even "in time of public emergency which threatens the life of the nation," Israel is prohibited from taking measures that would "involve discrimination solely on the ground of race, colour, sex, language, religion or social origin."

In addition, Israel is also bound by its obligation to protect the family as a fundamental unit of society, including the establishment of families. These obligations are set out in Article 10 of the ICESCR, Article 23 of the ICCPR, and Articles 7 through 10 of the Convention of the Rights of the Child. According to the authoritative commentary of the UN Human Rights Committee, which monitors state compliance with the ICCPR, international human rights law "recognizes that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Furthermore, "the right to found a family implies... the possibility to... live together... Similarly, the possibility to live together implies the adoption of appropriate measures... to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons" (General Comment 19).

When the proposed amendment comes before you, we urge you to reject it and call for this discriminatory law not to be extended in its current or proposed form. Instead we call upon you to consider all measures that can expedite the reunification of thousands of families who have been separated over the last few years.

Sincerely yours,

Sarah Leah Whitson
Executive Director, Middle East and North Africa Division
Human Rights Watch

Malcolm Smart
Deputy Director, Middle East and North Africa Program
Amnesty International

Federico Andreu-Guzman
Deputy Secretary General
International Commission of Jurists

cc: Mr. Menachem Mazuz, Attorney General
Mr. Ophir Pines-Paz, Minister of the Interior
Ms. Tzipi Livni, Minister of Justice

1- Also see the statement concerning the proposed amendments to this law issued by the Prime Minister Office on 15 May 2005: "...Prime Minister Sharon said that the Jewish nature of Israel must be preserved and that the issue at hand is the existence of Israel..."

<http://www.pmo.gov.il/PMOEng/Government/Government+Secretary/Press/govmes150505.htm>.