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Israel and the Occupied Territories

Torn Apart: Families split by discriminatory policies

INTRODUCTION

A new law passed by the Israeli parliament on 31 July 2003 bars family unification for Israelis who are married to Palestinians from the Occupied Territories. The Citizenship and Entry into Israel Law¹ explicitly discriminates against Palestinians from the West Bank and Gaza Strip. It also implicitly discriminates against Palestinian citizens of Israel, who constitute some 20% of the Israeli population, and against Palestinian residents of Jerusalem², for it is they who usually marry Palestinians from the Occupied Territories. As such, the law formally institutionalizes a form of racial discrimination based on ethnicity or nationality.

Article 1 of the law defines “resident of the region” as residents of the West Bank and Gaza Strip, specifically excluding residents of Jewish settlements in these areas. According to Article 2 of the law: “...*the Minister of the Interior shall not grant citizenship to a resident of the region pursuant to the Citizenship Law and shall not give a resident of the region a permit to reside in Israeli pursuant to the Entry into Israel Law, and the regional commander shall not give such residents a permit to stay in Israel pursuant to the defense legislation in the region*”.

The law, which was passed for a period of one year and is expected to be renewed upon expiry at the end of July 2004, constitutes a further step in Israel’s long-standing policy aimed at restricting the number of Palestinians who are allowed to live in Israel and in East Jerusalem.

The UN Committee on the Elimination of all Forms of Racial Discrimination has expressed concern about this new law and has called on Israel to revoke it and reconsider its policy with a view to facilitating family unification on a non-discriminatory basis.³ The UN Human Rights Committee has likewise called on Israel to revoke the law and to reconsider its policy with a view to facilitating family unification of all citizens and permanent residents.⁴

¹ Citizenship and Entry into Israel Law (Temporary Order) 5763 – 2003.

² Palestinians who remained in Israel after the establishment of the state in 1948 became Israeli citizens. Immediately after Israel occupied the West Bank and Gaza Strip in 1967, it annexed East Jerusalem and the Palestinians who continued to live there became permanent residents. Today there are about 230,000 Palestinians residents of Jerusalem. They are liable to lose their permanent resident status, and with it the right to live in Jerusalem, if they do not reside in the city or cannot prove that they have lived there for a period of seven years.

³ Decision of the UN Committee on the Elimination of all Forms of Racial Discrimination of 22 August 2003 (CERD/C/63/Misc. 11/Rev. 1).

⁴ Concluding Observations of the Human Rights Committee (paragraph 21), Seventy-eighth session, 21 August 2003 (CCPR/CO/78/ISR).

Not being able to obtain family unification for their Palestinian spouses leaves thousands of Palestinian citizens of Israel and Jerusalem residents with two options: having their spouse live with them illegally or moving to the West Bank and Gaza Strip, where they would be living under Israeli military occupation, in a situation of conflict and facing daily incursions by the Israeli army, bombardments, house demolition, curfews and hundreds of checkpoints, which make it extremely difficult to move, work or carry out ordinary daily activities. In addition, it is illegal for Israelis and Jerusalemites to enter the Occupied Territories and those married to residents of the Occupied Territories may only do so in special circumstances and subject to permits and stringent restrictions.

Salwa Abu Jaber, a 29-year-old kindergarten assistant from Umm al-Ghanam in Northern Israel, has been married since 1993 to Mahmoud al-Hadour, from the Jenin area in the West Bank. She told Amnesty International: “We have been married for 11 years, since 12 March 1993 and we have three daughters aged 10, seven and 18 months and a three-year-old boy. My children were all born in Israel and we have always lived here, but until now my husband has not been allowed family unification. My husband has never had any security problems, he was never arrested by the army in the past or anything; he is just a normal person. In 1995, for a year my husband was able to get permits to be in Israel during the day as a worker, which proves that he has no security problem. What is the logic to allow him to be in Israel during the day but not to sleep with his family? So, he has been living here illegally. After we got married I immediately applied for family unification in the Ministry of Interior office in Afula. We got no response until 1997, after the intervention of a human rights organization, but the application was refused; they gave us no explanation for the refusal. At the Interior Ministry they told me to either get divorced or to go live in the West Bank. But I love my husband and he loves me and we don’t want to divorce and I don’t want to take my children to live in the West Bank in the middle of a war and insecurity; it is just not possible. And anyway, when the police used to expel my husband to the West Bank and I tried to visit him the army did not even let me through the checkpoint because as an Israeli citizen it is illegal for me to go to the West Bank. So my husband is like a prisoner here; he cannot go anywhere for fear of being arrested and expelled again, and now if he were expelled he would never manage to get back into Israel again. And so he cannot work, cannot have anything like a normal life; his father died three years ago and he was not even able to go to his funeral. What kind of life is this? We cannot live like this forever. Recently I have decided to seek asylum for our family in any country; I have asked the Canadian and the Dutch embassies but I have not yet received any response. What else can we do? We just want to have a normal life, like any other family.

For the 230,000 Palestinian residents of Jerusalem, moving out of the city would entail losing their residency permits and with it their right to ever return to Jerusalem again. Thousands of Palestinian Jerusalemites have had their residency permits rescinded by the

Israeli authorities because they had temporarily moved out of the city or because they could not prove that they had maintained their residency there.⁵

For these reasons, thousands of Palestinians from the West Bank and Gaza Strip have been living with their spouses in Israel and in East Jerusalem illegally for years or even decades, with no health insurance or other social rights and every day fearing arrest, expulsion and separation from their spouses and children.

Terry Bullata, a 38-year-old school principal from Jerusalem, is married to Salah Ayyad, a businessman from Abu Dis, a neighbourhood on the outskirts of Jerusalem part of which was annexed to Israel after the occupation of East Jerusalem in 1967 and part of which remains in the occupied West Bank. The couple have been married since November 1990 but in spite of repeated attempts Salah has never even been admitted to the family unification procedure, according to which he would have been granted a temporary permit to reside with his wife and children in Jerusalem, pending final determination of the case.

Their two daughters, 12-year-old Zina and seven-year-old Yasmin, were both born in Jerusalem but it took years and a court battle for Terry to be able to register them on her Jerusalem ID. When Zina was born in 1992, Israel still did not allow Palestinian Jerusalemite women to register their children on their ID; only Jerusalemites men could register their children as Jerusalem residents. The practice changed in 1994, but for many Palestinian Jerusalemite women it took years to register their children on their IDs.

By 1997, when her second daughter was born, Terry had still not been able to register her first daughter, born five years earlier, on her ID and by 1998 she herself faced the risk of losing her Jerusalem residency. The Israeli authorities attempted to confiscate her Jerusalem ID and strip her of her residency right, claiming that she had not been living in Jerusalem, even though she was born and has lived in Jerusalem all her life, except for a five-year period. In the early 1990s Terry and her family had lived in a different part of Abu Dis (which falls within the West Bank) for about four years, then spent one year in the United States and since 1995 the family has been living in the part of Abu Dis which falls within the Jerusalem municipality. Thus, the total period during which Terry resided outside the Jerusalem municipality was no more than five years, that is two years less than the seven-year period of absence after which Palestinian Jerusalemites can lose their residency according to Israeli regulations. Nonetheless, it was necessary for Terry to fight a prolonged and costly court battle to keep her right to residence and to obtain the same right for her daughters.

⁵ For more details on the revocation of resident permits of Palestinian Jerusalemites see the following reports published jointly by B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories) and HaMoked (Center for the Defence of the Individual):

- *The Quiet Deportation: Revocation of residency of East Jerusalem Palestinians*, April 1997.
- *The Quiet Deportation Continues: Revocation of residency and denial of social rights of East Jerusalem Palestinians*, September 1998.

However, since her request for family unification for her husband was repeatedly rejected, in order for Terry not to lose her Jerusalem residency and in order not to forgo that right for her daughters the family was confronted with two choices: for Salah to be separated from his wife and daughters or for him to live with them in Jerusalem without a permit – illegally.

Terry told Amnesty International: “We have been forced to live “illegally” as a family; this is the only way for us to be together; as Jerusalemites, me and my daughters are not allowed to go to the West Bank and as a West Banker Salah cannot be with me and the girls in Jerusalem. Our situation has become increasingly difficult as the number of army and police checkpoints around Jerusalem has multiplied in recent years, constantly exposing anyone entering, leaving or being in Jerusalem without a permit to the risk of arrest and expulsion. Since Salah never managed to obtain a permit to reside in Jerusalem, he had to keep his business in the part of Abu Dis which is part of the West Bank, only a few streets away from home, but every day on his way home he has had to face the prospect of being arrested and not being allowed to come home”.

Since the Israeli army began building a fence/wall through the West Bank and around Jerusalem the situation has worsened dramatically. An eight-meter high concrete wall now runs past the family’s home and it is no longer possible to move between the Jerusalem and West Bank areas of Abu Dis without a permit.

Terry: “Since the construction of the wall began in the area more than a year ago, the increased presence of the Israeli army and police by our house has often made it impossible for Salah to leave the house; he has literally been imprisoned in the house for days at a time because if he goes out he may be arrested for being here illegally, for being at home illegally. In recent months Salah was finally able to obtain a temporary permit to enter Jerusalem as a trader. However, the permit only allows him to be in Jerusalem between 7am and 7pm and such permits are automatically cancelled whenever the Israeli army imposes a closure, which is frequently. The fact that the Israeli authorities are willing to give Salah a permit to enter and be in Jerusalem during day time for his business clearly indicates that they do not consider him to pose any security risk – the most commonly cited reason by Israel for refusing residency or entry permits to Palestinians from the Occupied Territories.

“So, after 14 years of marriage, my husband and the father of my children has no right to sleep in our home, he has no right to kiss his daughters goodnight, no right to be there if they get sick at night; now, since he got this temporary permit in theory he can visit us during the day, but our children have no right to have their father home at night, we have no right to any family life; what logic is there for forcing families to go through such hell every day, year after year? Thousands of families are prohibited from having a normal family life, for no reason at all; just harassment; it is absolutely insane”.

BACKGROUND

Successive Israeli governments over the years have pursued policies which have made it difficult at best and often impossible for Palestinian citizens and residents of Israel to obtain family unification and live in their own country with their spouses and children. At the same time Israel has pursued a similar policy vis-à-vis Palestinians from the Occupied Territories who marry Palestinian residents of other countries.

Over the years such restrictions have been increasingly tightened and in recent years have reached an unprecedented level. At the end of March 2002 the handling of all applications for family unification submitted by Israelis and Palestinian Jerusalemites married to residents of the West Bank and Gaza Strip was suspended by the then Interior Minister, Eli Yishai. Shortly after, on 12 May 2002, the Israeli Government formally approved the suspension.⁶

According to this government decision the freeze was imposed: *“In light of the security situation and because of the implications of the process of immigration and settling in Israel of aliens of Palestinian descent, including through family unification...”*. The decision provided that no new applications could be submitted, previous applications would not be processed, and pending applications which had already been approved but which had not yet reached the final stage (the granting of citizenship or permanent residency) would not be upgraded and the applicant’s status would remain frozen at the stage of short-term temporary residency permits.

A year later, in June 2003, this government decision was presented as a draft law to the Israeli Knesset (Parliament) and was eventually passed on 31 July 2003. The law is retroactive and affects not only newly married couples but also thousands of others whose applications had not yet been approved prior to May 2002 or who had not yet submitted applications before that date.

Family Unification Policies prior to 2002

Up to 1994 only male Palestinian residents of Jerusalem could apply for residency for their spouses. The Israeli authorities claimed that in Palestinian society women follow their husbands and therefore female Palestinian Jerusalemites who married Palestinians from the West Bank and Gaza Strip could not seek resident permits for their husbands. This policy was changed following a petition to Israeli High Court of Justice.⁷

Until 1996, once the request for family unification was approved by the Ministry of Interior, permanent resident status was granted to the Palestinian spouse (female spouse only until 1994 and female or male spouse after that).

⁶ Government Decision 1813.

⁷ The state agreed to change the policy and the High Court of Justice did not therefore need to rule on the issue.

In 1997 a new procedure, known as graduated process, was introduced whereby permanent residency was only granted to the Palestinian spouse of Palestinian Jerusalem residents after a period of five years and three months from the date when the family unification application was approved by the Interior Ministry. For Palestinian spouses of Israeli citizens the interim period prior to receiving Israeli citizenship was four years after approval. During the interim period the Palestinian spouse received short-term renewable temporary permits and the authorities checked that the marriage was and continued to be a valid marriage and the family lived and maintained their centre of life in Jerusalem.

According to Israeli human rights organizations which have worked extensively on family unification issues and which have filed numerous petitions to the Israeli High Court of Justice on family unification cases, it took an average of 10 years for Palestinian spouses whose applications were approved to obtain permanent residency.⁸ Many applications were rejected and in many cases applicants were unable to obtain an answer for years. The time and effort required for submitting an application for family unification and checking for progress on the file and to ensure not missing a deadline made the procedure difficult or impossible for many. Even just getting access to the Israeli Ministry of Interior office in East Jerusalem which deals with residency permits, child registration and other matters for Palestinian residents of Jerusalem can be very difficult. Over the years Amnesty International delegates observed on many occasions Palestinian residents of Jerusalem queuing overnight in the hope of being among those allowed in the following day.

Between 1967, when Israel occupied the West Bank and Gaza Strip, and 1991 Palestinians could move freely between the Occupied Territories and Israel but since early 1991 Israel imposed a new requirement that Palestinians from the Occupied Territories obtain a permit to enter Israel. For about two years permits to enter Israel were not very difficult to obtain and it remained relatively easy for Palestinians who did not have permits to move between Israel and the West Bank (whereas it was no longer possible between Israel and the Gaza Strip, which was sealed in 1991). However, since early 1993 the imposition by the Israeli army of closures and checkpoints made passage between Israel and the Occupied Territories, including East Jerusalem, increasingly difficult. The fact that passage between Israel and the Occupied Territories was not a problem for Palestinians until the early 1990s, explains why many “mixed” couples who had married in earlier years had not felt it necessary to apply for family unification up to that time. It is also an indication that for Palestinians from the West Bank and Gaza Strip the main concern was not obtaining Israeli citizenship or Jerusalem residency, but rather just having a normal family life with their spouse and children.

⁸ See notably, the following reports jointly published by B’Tselem and HaMoked:

- *Forbidden Families: Family Unification and Child Registration in East Jerusalem*, January 2004
- *Families Torn Apart: Separation of Palestinian Families in the Occupied Territories*, July 1999.

Increased restrictions on the freedom of movement of Palestinians in recent years

The restrictions imposed on the freedom of movement of Palestinians in the past decades have dramatically increased over the past three years and have reached an unprecedented level.⁹ The ongoing construction by Israel of a 650-kilometer fence/wall through the West Bank, including around East Jerusalem¹⁰ has further magnified the problem for families where a spouse, and in many cases the children, are living in Israel or in East Jerusalem without a permit because if they are caught and expelled to the West Bank it is now virtually impossible for them to return to be with their families.

Fatima Matar, a primary school teacher, and Sami As'ad, a paediatric surgeon, have been married since November 1978 and have five children aged between 24 and 12. She is a Jerusalemite and he is a West Banker and after 26 years of marriage he has still not obtained a residency permit allowing him to live in Jerusalem with his wife and children. Fatima told Amnesty International: "At the beginning we did not apply for family unification because in those days it was easy to move between the West Bank and Jerusalem. We applied in 1992, when the army checkpoints began to make movement without a permit difficult. However, my husband was refused admission to the family unification procedure three times; the authorities gave no reason, they just refused. In the end we took the case to the High Court and in 1999 we got a favourable decision; however, until now my husband has not yet obtained a residency permit. He applied to the army at Beit El for a permit to enter Israel, in order to go to the Ministry of Interior in East Jerusalem to discuss his file but the army refused him a permit. My five children were born in Jerusalem and I was able to register my first child on my Jerusalem ID, but I was not able to register the other four for several years; in the end I had to go to court and eventually was able to register them on my ID".

The family live within the Jerusalem municipality, in an area on the northern outskirts of the city which is separated from the city by two Israeli army checkpoints. Several checkpoints also separate the family home from Dr As'ad's clinic in Bethlehem, to the south of Jerusalem. Since he has no permit to enter Jerusalem, he cannot pass through the checkpoints into Jerusalem and every day he is forced to take a long detour around the city on his way from home to work and back; at the best of times it takes him hours, and at times he cannot reach his work at all. Their home is within the Jerusalem municipality but beyond the Qalandiya checkpoint, where the Israeli army has recently built a concrete wall which cuts off a large area, inhabited mostly by Palestinians Jerusalemites, from Jerusalem. During closures, frequently imposed by the Israeli army, it is often impossible to get into the city, even for

⁹ For example, see Amnesty International's report *Israel and the Occupied Territories: Surviving Under Siege: The impact of movement restrictions on the right to work* (September 2003, AI Index: MDE 15/001/2003).

¹⁰ See Amnesty International's report *Israel and the Occupied Territories: The place of the fence/wall in international law* (March 2004, AI Index: MDE 15/016/2004).

Palestinian residents of Jerusalem or others who hold valid permits. There are fears that when the wall is completed in the area, the movements of the residents of these areas will be restricted even further.

THE GOVERNMENT’S JUSTIFICATION FOR THE LAW: “SECURITY” OR “DEMOGRAPHIC” CONSIDERATIONS

The Israeli government has justified the new law barring family unification for Palestinian spouses of Israeli citizens and Jerusalemites on “security” grounds, contending that the law is aimed at reducing the potential threat of attacks in Israel by Palestinians. In its response of 16 December 2003 to several petitions to the Israeli High Court of Justice filed by a number of Israeli human rights organizations,¹¹ the Israeli government contended that in the previous three years 23 Palestinians from the Occupied Territories who had received residency permits to live in Israel through family unification “...were involved in providing meaningful assistance in hostile activity against state security...”. The government only provided some details of six out of the 23 cases, without indicating how or when the people concerned had acquired residency or citizenship, notably whether they had done so prior to the introduction of the 1997 procedure which involved thorough security verification over a period of several years before granting citizenship or permanent residency.

However, the alleged involvement of 23 people in attacks or other hostile activities in Israel does not justify punishing more than one million Israeli citizens and Jerusalem residents through a blanket decision not to allow them *a priori* the right to live in their own country with their spouse if they marry a Palestinian. Palestinian citizens of Israel and residents of Jerusalem number more than one million and constitute close to 20% of the total Israeli population. They include some 100,000 Palestinians who according to the Israeli Ministry of Interior moved from the Occupied Territories to Israel between 1993 and 2002 under the family unification process.¹²

The fact that those Palestinians whose family unification applications had been approved before May 2002 can remain in Israel on temporary renewable permits but will not be able to obtain citizenship or permanent residency suggests that security considerations are not the primary objectives of this law. The “security” argument put forward by the Israeli authorities to justify this law is also inconsistent with other practices, including the granting of entry or temporary residency permits to Palestinians residents of the Occupied Territories for work, medical care or other purposes and the granting of citizenship or residency to Palestinians, and their families, who collaborate with Israeli intelligence services (known as

¹¹ See the Israeli government response cited in the report published jointly by B’Tselem and HaMoked in January 2004: *Forbidden Families: Family Unification and Child Registration in East Jerusalem*, pages 12 to 15.

¹² B’Tselem and HaMoked report *Forbidden Families: Family Unification and Child Registration in East Jerusalem*, 2004, page 15.

“collaborators”).¹³ Similarly, the refusal to grant citizenship or permanent residence to Palestinian spouses whose applications were approved prior to May 2002 does not appear to be based on security considerations, given that these people continue to be eligible for renewable temporary permits allowing them to reside in Israel. At the same time, there appears to be no security reason to deny residency to a child when s/he reaches the age of 12 only because s/he was born in the Occupied Territories, while his/her parents and siblings all live in Jerusalem.

In fact, explanations by government officials on the need to change policy on family unification initially emphasized the demographic “threat”, suggesting that these considerations played a major part in the decision to pursue this discriminatory law.

In recent years Israeli officials, including serving ministers in the current government, have increasingly expressed concern at the number of Palestinian citizens of Israel, using expressions such as “demographic problem” in reference to them and in some cases even calling for their expulsion.¹⁴ In August 2003 the UN Human Rights Committee expressed concern at: “... *public pronouncements made by several prominent Israeli personalities in relation to Arabs, which may constitute advocacy of racial and religious hatred that constitutes incitement to discrimination, hostility and violence*”.¹⁵

In the period leading up to the suspension of family unification for Palestinian spouses and the passing of the law, Israeli officials and parliamentarians frequently expressed concern that the current and forecast percentage of Palestinian citizens of Israel constitutes a “demographic threat” and a threat to the Jewish character of the state of Israel.

In a debate in the Israeli parliament after the government decision in May 2002 to freeze family unification for Palestinian spouses of Israeli citizens and Jerusalem residents, Minister Dani Naveh stated that family unification of Palestinians was: “...*an attempt to realize the so-called right of return through the back door*” and that the state of Israel “...*clearly has the elemental right to protect itself and preserve its character as a Jewish state, as the state of the Jewish people...*”.¹⁶

In March 2003 the current Minister of the Interior, Avraham Poraz, stated that the government decision to freeze family unification was taken because: “... *it was felt that it*

¹³ According to Article 3 of the law.

¹⁴ For example see the statement of the Association for Civil Rights in Israel (ACRI) of 17 December 2003, protesting at Finance Minister Binyamin Netanyahu, at his speech at the Herzliya conference in which he referred to the Israeli Arab population as a “demographic problem”.

¹⁵ Concluding Observations of the Human Rights Committee (paragraph 20), Seventy-eighth session, 21 August 2003 (CCPR/CO/78/ISR).

¹⁶ Proposal to Agenda: *The new policy of the Ministry of the Interior on naturalization*, 22 May 2002 (as cited in the joint B’Tselem-HaMoked report of January 2004, page 18).

[family unification] would be exploited to achieve a creeping right of return... That is tens of thousands of Palestinian Arabs are coming into the State of Israel".¹⁷

The Population Administration presentation to the Israeli Cabinet ahead of the government vote on the decision to freeze family unification for Palestinian spouses in May 2002 referred to: "*the immigration of non Jews from around the world and primarily from neighbouring Arab countries and areas of the Palestinian Authority*" as "*an economic burden on the State of Israel and primarily a demographic burden*" and concluded that: "*The growing number of alien Palestinians obtaining legal status in Israel requires review and statutory change*".¹⁸

Throughout the past years and decades Palestinian spouses who have not been able to obtain family unification have often been allowed into Israel by means of temporary permits, although it has become progressively more difficult in recent years to obtain these. According to Article 3 of the 2003 Citizenship and Entry into Israel Law: "*The Minister of the Interior or the regional commander, as the case may be, may grant a resident of the region a permit to reside in Israel or to stay in Israel, for purposes of work or medical treatment or other temporary purposes, for a fixed period of time, and for a cumulative period that shall not exceed six month..."*

Occasionally Palestinians from the Occupied Territories who have been denied family unification or entry permits into Israel on security grounds and who took or threatened legal action eventually succeeded in obtaining such permits, though few have the financial resources, time and energy required to engage in such procedures. This is another indication that security considerations are not the determining factor for refusal of family unification applications and are often used as a pretext for discriminatory measures specifically targeted against Palestinians for demographic reasons.

The new law must be seen in the context of other existing laws and practices which discriminate against Palestinian citizens of Israel and against Palestinians in the Occupied Territories. Such laws include the Entry into Israel Law and the Law of Return, which confer the automatic right to Jews (from descent or religion) from anywhere in the world to acquire Israeli citizenship and to live in Israel and in the Occupied Territories, while at the same time denying the right to return to their homes to Palestinians who were expelled, forced to flee or who were absent from their homes at the time of the establishment of the state of Israel in 1948 and during subsequent conflicts between Israel and neighbouring Arab countries. Discriminatory provisions are also contained in laws, regulations and practices concerning the ownership and use of the overwhelming majority of the land in Israel and the Occupied

¹⁷ Proposal to agenda: *The Family unification policy and handling by the Ministry of the Interior of matters regarding residents of East Jerusalem*, 26 March 2003 (as cited in the joint B'Tselem-HaMoked report of January 2004, page 18).

¹⁸ Jerusalem Population Administration, Ministry of the Interior, *Immigration and Settlement of Foreign Nationals in Israel*, May 2002 (as cited in the joint B'Tselem-HaMoked report of January 2004, page 18).

Territories.¹⁹ UN bodies which oversee the implementation of states' obligations under international law have repeatedly expressed concern at discriminatory laws and practices which discriminate against Palestinian citizens of Israel and against Palestinians in the Occupied Territories.²⁰

H., a 33-year-old Palestinian resident of Jerusalem, married 31-year-old M., from Ramallah (West Bank) in July 1996.²¹ He told Amnesty International: "I applied for family unification for my wife in October 1996 and one and a half year later I learned from the Interior Ministry that the request was rejected because there was not enough proof that Jerusalem is the centre of our lives. Yet I have never lived anywhere else than Jerusalem; I was born here and have lived here all my life; I live in Shu'afat refugee camp in Jerusalem and my wife has lived with me since we got married. I work in a restaurant in West Jerusalem, I pay the Arnona tax (Jerusalem municipal tax) and I provided proof of this, as well as all the bills for electricity, water, telephone. We have four children; the first was born in 1997 and the little one in 2003; they were all born in a Jerusalem hospital and they are all registered on my Jerusalem ID; I managed to register our first child immediately but it took quite some time to register the other three; it has become more and more difficult because my wife does not have a residency permit and because she is here illegally she has no health insurance and it was very expensive every time to pay for the childbirth but we knew that if the children were not born in Jerusalem it would be impossible to register them on my Jerusalem ID. Since we got married my wife has been living here illegally and this is very difficult for us and for the children. She cannot work, or even go out anywhere, especially as the situation worsened in the last three years. There are checkpoints, even near here, and that means a danger that she would be arrested and expelled. Only a few months ago with a lawyer we finally managed to get a paper from the court, an injunction preventing her expulsion valid until the end of July 2004. I hope that our situation can be resolved by then and that we can live a normal family life; it has been very difficult. My wife has not seen her mother and her family for a long time because they cannot come and she cannot leave Jerusalem to go to visit them. She is like a prisoner and this is not fair, not for her and not for our family; she does not even feel free to take the children to school or to the doctor, or to go shopping or to do anything".

¹⁹ See for example Amnesty International's reports: *Israel and the Occupied Territories: Under the Rubble: House demolition and destruction of land and property* (May 2004, AI Index: MDE 15/033/2004) and *Israel and the Occupied Territories: Demolition and dispossession: the destruction of Palestinian homes* (December 1999, AI Index: MDE 15/059/1999).

²⁰ See for example, the Concluding Observations of the UN Human Rights Committee of 21 August 2003 (CCPR/CO/78/ISR, para 21) and of 18 August 1998 (CCPR/C/79/Add.93, paras 23 and 26) and of the UN Committee on Economic, Social and Cultural Rights of 23 May 2003 (E/C.12/1/Add.90, paras 18 and 34) and of 4 December 1998 (E/C.12/1/Add.27, paras 20 and 40).

²¹ Their names and details are not made public because they are afraid that this could worsen their situation.

INCREASED RESTRICTIONS ON CHILD REGISTRATION

Over the years increasingly restrictive procedures have also been adopted by the Israeli authorities for the registration of children of couples where one or both spouses are Palestinian residents of Jerusalem. Whereas it has generally been possible for male Palestinian Jerusalemites to register their children born in Jerusalem as Jerusalem residents on their ID cards, it has been more difficult for female Palestinian Jerusalemites to register their children. This is because children of parents who have different residency status are automatically given the status of the father, unless the mother objects, in which case it is up to the Interior Ministry to decide.

Since 2002 children born in the Occupied Territories whose parents are both Palestinian residents of Jerusalem can no longer be registered on the parents' ID cards as Jerusalem residents and their parents must submit an application for a resident permit for these children. According to Article 3 of the 2003 Citizenship and Entry into Israel Law a permit to reside or stay in Israel may be granted: "... *in order to prevent a child under 12 years of age from being separated from his parent who is lawfully staying in Israel*".

This creates a situation whereby a child whose Jerusalemite mother happened to go into labour and give birth while visiting her family in the Occupied Territories can no longer be registered as a Jerusalem resident and live in Jerusalem. In addition, Palestinian women from the Occupied Territories who married Palestinian Jerusalemites but who have not been able to obtain family unification and who live in Jerusalem without a permit, are not covered by the Israeli medical insurance. Consequently, many have had to go and give birth to their children in the Occupied Territories, where hospital costs are much lower, or have been forced to give birth there because they had gone to visit their families and had been unable to return to Jerusalem in time to give birth due to closures and movement restrictions imposed by the Israeli army. Children born under these circumstances can be prevented from living with their Jerusalemite parents and siblings. Even in the case where such children are allowed to reside in Jerusalem with their parents until the age of 12, they will then have to leave and go back to the Occupied Territories, simply because they were born there, even though their parents do not live there.

N., a Jerusalemite woman, got married in 1994 to a Palestinian from the West Bank and the couple have a 10-year-old child. She told Amnesty International: "My husband was never able to get a resident permit to live with me in Jerusalem and we were forced to live between Jerusalem and Ramallah, so as to be relieved of the stress of him having to stay in Jerusalem all the time illegally, always afraid that he would be arrested whenever he moved. Ramallah is very near and in those days it was not too difficult to go back and forth. I was working mostly in Jerusalem and my husband was working between Jerusalem and Ramallah and we could manage. At the time it was also during the peace process and we thought that things would improve and eventually be sorted out. My son was born in Ramallah, because it happened that I was there and my husband and I just wanted to be together like any other couple without the

stress of his illegal presence in Jerusalem while we were having a baby. Afterwards, I was not able to register my son on my Jerusalem ID as I was too afraid that if I tried the Interior Ministry would confiscate my Jerusalem ID, claiming that I could not prove that my centre of life was in Jerusalem. Then the *intifada* broke out and the situation deteriorated very quickly and I was even more afraid of losing my Jerusalem ID. Now the new law has destroyed any hope I had to be able to register my son as a Jerusalem resident and I am increasingly worried that I will lose my Jerusalem ID and the right to live in Jerusalem. I was born here and have lived here all my life and my entire family lives here; why should my right to continue to live here be taken away from me and my son, just because the authorities refused to give my husband a permit to live with me in Jerusalem?”

NEW RESTRICTIONS FOR ISRAELIS VISITING THEIR SPOUSES IN THE GAZA STRIP

Since March 2004 the Israeli authorities have imposed new restrictions on Israeli citizens and Palestinian residents of Jerusalem visiting their spouses/families in the Gaza Strip. According to the new procedure Israeli citizens and Palestinian Jerusalemites entering the Gaza Strip have to remain there for three months consecutively before returning to their home in Israel. If they leave before the end of the three-month period they will not be able to receive another permit from the Israeli army to enter the Gaza Strip.

The new restriction was imposed following the assassination by the Israeli army of the leader of the Palestinian armed group *Hamas* on 22 March 2004. Immediately after the assassination the Israeli army suspended issuing permits for Israeli visitors with family in the Gaza Strip and since it resumed issuing permits, it has been on condition that the Israeli visitors remain in the Gaza Strip for a full three-month period. This new procedure makes an already difficult situation much worse for those married to Palestinians from the Gaza Strip whose spouses do not have a permit to live in Israel.

Dr Ibrahim Ashur, an anaesthetist, is a Palestinian citizen of Israel and is married to a Palestinian woman from the Gaza Strip. They have five children, who are all registered on his Israeli ID. However, his wife has not yet obtained family unification and is not allowed to live in Israel with him. Hence, she and the children live in the Gaza Strip while he lives in Be'er Sheva, where he works at the hospital. The only family life they can have together is when he visits them in the Gaza Strip, subject to obtaining a special permit from the Israeli army, and subject to the Erez checkpoint between Israel and the Gaza Strip being open. When the checkpoint is closed, even those who hold a valid permit cannot pass and closures are frequent, including during Israeli holidays and when the Israeli army carries out assassinations of Palestinians and military operations in the Gaza Strip. Since visits have been made conditional to a three-month stay in the Gaza Strip, Dr Ashur has not been able to see his wife and children as his hospital job does not allow him to be absent for such lengthy

periods. He told Amnesty International: “Before the *intifada* (prior to October 2000) I could leave work in Be’er Sheva and be in Gaza with my family in half an hour but in the last three and a half years it has become so difficult, applying for a permit each time and waiting for a permit all the time; and if once I received the permit the Erez crossing was closed, I could not go in. I went once every week or two, for two or three days, depending on my work at the hospital. Now I have not seen my wife and children since February because I cannot stay there for three months; I have a job and responsibilities; so what can I do? I can only speak to them on the telephone. It is not fair that I can’t see my family. What should I do, get them all to travel to Egypt and travel to Egypt myself to meet them there, just to see them for a few days? It is an impossible situation and very unjust”.

Zulfa Safadi al-Husseini, a 33-year-old Palestinian citizen of Israel from Haifa, told Amnesty International: “I have been married since July 1995 but my husband has never received the family unification permit allowing him to live with me in Israel. We have four children, a boy aged seven, a girl aged four and the twins who have just turned three. My husband was refused family unification in 1996 but was sometimes given a permit to visit me in Israel; the last time was when our daughter Mina was born in 2000. But since then he has not managed to get any permit and the only way we have to be together is for me and the children to go visit him in Gaza. The last time I went I was told that there is a new rule and was given a form to sign stating that I undertake to stay in Gaza for three months and if I leave and return to Israel earlier I will not get another permit to enter Gaza and that if there is an emergency reason why I have to leave Gaza before the end of the three months I must apply in writing to the army and provide all the necessary documentation about the emergency and I may get a permit to leave before the end the three months”.

RESTRICTIONS ON FAMILY UNIFICATION IN THE OCCUPIED TERRITORIES

In addition to the suspension of family unification procedures in 2002 and the enactment of the 2003 Citizenship and Entry into Israel Law, which affect Palestinian citizens of Israel and Palestinian residents of Jerusalem and their spouses from the Occupied Territories, family unification procedures for Palestinian residents of the West Bank and Gaza Strip married to citizens or residents of other countries were also suspended shortly after the outbreak of the ongoing Palestinian uprising (*intifada*) at the end of 2000. The suspension affects both those who have married since the end of 2000 as well as thousands of others who had married in previous years and who had not yet received residency permits for their spouses, or who had not yet applied, when the family unification procedures were suspended.

The West Bank and Gaza Strip are under Israeli military occupation and the Palestinian population is subject to Israeli military law. Entry, exit and residence permits for the Occupied Territories are issued by the Israeli army. Therefore, the suspension of family

unification in the Occupied Territories is a separate matter from the above-mentioned 2003 Citizenship and Entry into Israel Law. Unlike the situation in Israel and Jerusalem, to the best of Amnesty International's knowledge no specific law or military order has been issued suspending family unification in the Occupied Territories – the procedure has simply been suspended by the Israeli army.

Most of the Palestinian residents of the Occupied Territories affected by the suspension had got married in previous years to Palestinian residents of other countries, many of them Palestinian refugees in Jordan, and some to non-Palestinian citizens of other countries. In many cases their spouses had entered the Occupied Territories on visitors' permits or tourist visas, which have since expired. They are therefore living in the Occupied Territories without a permit and cannot leave because doing so would mean that they would not be allowed to return to join their husband and children.

S., a Palestinian man from Ramallah, met his Bulgarian wife M. when he was pursuing his university studies in Bulgaria. The couple were married in Bulgaria in 1992 and their first child was born there. In 1998 they went to live in Ramallah, where their second child was born. She entered Israel and the Occupied Territories on a visitor permit and the family immediately applied for family unification. M's visitor permit expired after six months and the couple waited for the result of their family unification application. In early September 2000, they were informed that the application had been approved in principle and that she would receive her papers by the end of the year. In the meantime at the end of September 2000 the *intifada* broke out and application procedures for family unification were suspended. She told Amnesty International: "I am constantly afraid of being arrested and deported and separated from my husband and children and so I am totally unable to move. In 2002 in one of the incursions by the Israeli army the soldiers came into our home and when they saw that I have no valid permit they took me outside and told me that I would be deported; they kept me outside for two hours; it was the worst experience of my life; the idea that I would be separated from my husband and children and not be allowed to return to live with them terrified me. Every year my husband takes our children to visit my mother and my family in Bulgaria but I cannot go because I would not be allowed back to Ramallah. I have not seen my mother since I left Bulgaria. ... What can we do? The only option would be for me, my husband and the children to leave and go to Bulgaria. But we have worked hard here to make our life, my husband is working and we want to live here. We should not be forced to leave and for my husband and our children to lose the right of coming back to live in their home country."

Foreign spouses of Palestinians who come from European or other countries which do not require a visa to enter Israel can manage by leaving the Occupied Territories (and Israel) every three months (the standard visitor period granted on entry and requiring no special visa); however, every time they leave they cannot be certain that they will be allowed back into the country when they return. In the past two years thousands of foreigners, mostly Europeans,

have been refused entry upon arrival in Israel, especially if the authorities suspected them of intending to go to the Occupied Territories to carry out voluntary work or solidarity activities with the Palestinians.

No such restrictions are in place for spouses of Israeli Jewish citizens living in Israeli settlements in the Occupied Territories in violation of international law.²²

Background to family unification in the Occupied Territories

Over the years, Israel has changed its policy on family unification in the Occupied Territories. After 1967, Israel allowed family unification of Palestinian refugees in limited numbers. In 1973, Israel began to deny most requests for family unification and in 1983 a new policy was adopted to “reduce, as much as possible, the approval of requests for family unification”, which are “a means of immigration into the area”.²³ Applications for family unification could take years to be processed and while the applications were pending applicants could not obtain visitor permits to enter the Occupied Territories. At the same time residents of the Occupied Territories could not spend long periods with their spouses outside the Occupied Territories as this could result in their family unification application being refused on the grounds that they had moved their centre of life to a location outside the Occupied Territories. Hence couples had to endure prolonged separations for up to several years. To avoid this many did not apply for family unification so that the spouses from outside could hope to obtain permits to visit their husbands/wives in the Occupied Territories every few months or once a year, but even such permits were never guaranteed. The only options for couples to live together all the time were either for the resident of the Occupied Territories to leave and join his/her spouse outside, and risk losing the right to come back to the Occupied Territories, or for the spouse who entered the Occupied Territories on a visitor permit to remain there after expiry of his/her permit, illegally, and risk being deported at any time and not being allowed to return even for short visits.

In 1993, Israel introduced a yearly quota of 2,000 requests for family unification, each request including spouse and children under 16.²⁴ In 1995, after the establishment of the Palestinian Authority (PA), Israel maintained the quota system and the authority for approving family unification requests throughout the Occupied Territories, including in the areas under the jurisdiction of the PA, where the overwhelming majority of the Palestinian

²² Some 380,000 to 400,000 Israelis live in Jewish settlements in the West Bank and Gaza Strip. These settlements were established in violation of international law. For more details see Amnesty International’s report: *Israel and the Occupied Territories: The issue of settlements must be addressed according to international law* (September 2003, AI Index: MDE 15/085/2003).

²³ As cited by B’Tselem in its position paper *Implementation of Family Unification Policy* (www.btselem.org). According to B’Tselem after 1984 only several hundred requests were approved per year.

²⁴ Under Israeli military law Palestinians living in the Occupied Territories are considered minors only up to the age of 16, whereas under Israeli civil law Israeli citizens living in Israel and in settlements in the Occupied Territories are considered minors up to the age of 18.

population lives (Area A according to the Oslo Agreements). In 1998 and 1999 the quota stood at 2,000 requests a year, for a population of some three million Palestinians, and in 2000 it was increased to 4,000.²⁵ As a result of these restrictions thousands of applications were rejected or simply never approved and since the end of 2000 the procedure has been suspended altogether.

ISRAEL'S OBLIGATIONS UNDER INTERNATIONAL LAW

Human rights law

Prohibition of discrimination

The right to enjoy human rights without discrimination of any kind, such as race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status, is one of the most fundamental principles underlying international human rights law. This principle is enshrined in the majority of human rights instruments as well as in the United Nations Charter. Israel has specifically recognized its obligation to uphold this right of freedom from discrimination by ratifying several international treaties.

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), and Article 2 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Israel is a party, all guarantee the right to be free from discrimination of any kind including race and national or social origin.

Yet, the Citizenship and Entry into Israel Law is discriminatory and violates these provisions. It targets a category of individuals purely on the basis of nationality or ethnicity, and denies Israeli citizens and residents of East Jerusalem who marry residents of the Occupied Territories an entitlement enjoyed by all other Israeli citizens – to live with their spouses and children in the place of their choice.

In August 2003 the UN Committee on the Elimination of all Forms of Racial Discrimination called on Israel to “*revoke this law, and reconsider its policy with a view to facilitating family unification on a non-discriminatory basis*”.²⁶

Freedom of movement

While a state has discretion to decide which foreign nationals it admits into its borders and who it permits to reside in the country, any restriction is subject to its obligations under international law. Article 12 of the ICCPR guarantees the right of freedom of movement and

²⁵ See footnote 23.

²⁶ See footnote 3.

choice of residence for everyone lawfully within the territory of a state. While this right can be restricted, such restrictions must be in accordance with law, in order to protect national security, public order, public health or morals or the rights and freedoms of others and must be necessary and consistent with other rights recognized by the ICCPR. Therefore while states can restrict freedom of movement in the interests of, for example, national security, this must not be discriminatory. Amnesty International is concerned that the Citizenship and Entry into Israel Law places disproportionate restrictions on the freedom of movement of specific categories of persons in a discriminatory way.

Right to a family life

In addition to its obligation not to discriminate on the basis of nationality or ethnic origin, Israel also has a positive obligation under international human rights law to protect the family, 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 UN Convention of the Rights of the Child (CRC).

Article 10 of the ICESCR states that: *“The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children...”*. (1) and that: *“Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions...”*. (3)

Article 23 of the ICCPR states that: *“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State”* (1) and *“The right of men and women of marriageable age to marry and to found a family shall be recognized”*. (2)

According to the Convention on the Nationality of Married Women, to which Israel is a state party: *“Each Contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization procedures...”* (Article 3(1)).

Furthermore, the CRC, to which Israel is a party, explicitly encourages State parties to enable family unification of their citizens and residents, through allowing entry of family members.

The CRC stipulates in its Article 9(1) that: *“States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child...”*, and in Article 10(1) that: *“In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family”*.

However, the Citizenship and Entry into Israel Law fails to protect the family unit and in fact prevents specific families from being together in violation of these international treaties. Any restrictive measures must conform to the principle of proportionality; they must be necessary to achieve their protective function. In this instance, Amnesty International considers the limitations placed on Israelis who are married to Palestinians from the Occupied Territories to be disproportionate and discriminatory; they have an adverse effect on these families by placing obstacles in their way to ensure, in accordance with international law, that they can remain together.

International humanitarian law

In addition to being bound by international human rights law, Israel, as the Occupying Power in the West Bank and Gaza Strip, is also bound by applicable international humanitarian law, including the Fourth Geneva Convention Relating to the Protection of Civilians in Time of War, the 1907 Hague Regulations and international customary law. The local Palestinian population, including residents of East Jerusalem, which remains occupied territory under international law, regardless of Israel's annexation, are Protected Persons under the Fourth Geneva Convention.

The core idea of the international rule of belligerent occupation is that occupation is transitional, for a limited period, and one of its key aims is to enable the inhabitants of an occupied territory to live as "normal" a life as possible. International humanitarian law requires states to respect the rights of the family in occupied territory. According to Article 27 of the Fourth Geneva Convention, protected persons, including residents of occupied territory, "*are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs.*"

Article 46 of the 1907 Hague Regulations delineating the obligations of the occupying power, stipulates that "*family honor and rights ... must be respected*"²⁷.

By placing barriers upon residents of East Jerusalem to marry and form families with Palestinians from other parts of the Occupied Territories, Israel is also acting in contravention of Article 47 of the Fourth Geneva Convention, which prohibits depriving protected persons in occupied territories "*of the benefits of the present Convention by any change introduced as the result of the occupation.*" In other words, the annexation of East Jerusalem and the application of the new law have the effect of depriving Jerusalemites married to other occupied territory residents of the right to live with their families in East Jerusalem. Israel is therefore breaching its obligation, under Article 27 of the Fourth Geneva Convention and Article 46 of the 1907 Hague Regulations, to respect family life.

²⁷ These regulations, including articles 42-56 which apply to the military government in occupied territory, are considered part of customary international law, and are binding, therefore, on the Israeli military authorities in the Occupied Territories in all their activities vis-à-vis the local Palestinian population.

Israel's suspension of consideration of all family unification applications by Palestinian residents of the Occupied Territories married to non-residents violates its duty as an occupying power to respect the right to family life of protected persons. Such a blanket denial cannot be justified on grounds of security. It is also apparently unlawful, in that it does not seem to have been enacted in law or even a military order. In fact, it may be argued that by leaving no choice for Palestinians in the Occupied Territories who want to live with their non-resident spouses other than emigration, Israel is contravening Article 49 of the Fourth Geneva Convention, which states that "*Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory ... are prohibited, regardless of their motive.*"

RECOMMENDATIONS

Amnesty International calls on the Israeli authorities:

- To repeal the Citizenship and Entry into Israel Law, and ensure that it is not renewed upon expiry at the end of July 2004.
- Resume the processing of family unification applications for spouses and children of Israeli citizens and Palestinian residents of Jerusalem and of the Occupied Territories according to the principle of non-discrimination, examining each case on an individual basis and on its merit.
- Put in place a mechanism to promptly process the thousands of backlog applications and to re-examine, according to the principle of non-discrimination, applications which were refused prior to the suspension of the processing of applications.
- Remove the quota system for family unification requests in the Occupied Territories.
- Provide details in writing to any applicant whose family unification application is rejected of the specific grounds, on an individual basis, for the rejection of their application, so that those concerned may mount a defence and challenge the grounds for rejection.