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Israel/Occupied Territories: High Court decision institutionalizes racial discrimination

The decision by the Israeli High Court of Justice on 14 May to uphold a law which explicitly denies family rights on the basis of ethnicity or national origins is a step further in the institutionalization of racial discrimination in Israel.

The “Citizenship and Entry into Israel Law” bars family reunification for Israelis married to Palestinians from the Occupied Territories. It specifically targets Israeli Arabs (Palestinian citizens of Israel), who make up a fifth of Israel’s population, and Palestinian Jerusalemites,⁽¹⁾ for it is they who marry Palestinians from the West Bank and Gaza Strip.

Thousands of couples are affected by this discriminatory law, which forces Israeli Arabs married to Palestinians to leave their country or to be separated from their spouses and children. Israeli military law forbids Israelis from entering the main population centres in the Occupied Territories and Israeli citizens cannot join their Palestinian spouses there, and at the same time Palestinian spouses staying in Israel without a permit are constantly at risk of being deported and separated from their families. Thus, Israeli-Palestinian couples would ultimately be forced to move to another country in order to live together – an option which is neither feasible nor desirable for those concerned. In addition, Palestinian Jerusalemites would lose their residency and their right to ever live in Jerusalem again if they move out of the city.

Five of the 11 High Court of Justice’s judges who ruled on this law on 14 May, including the Court’s President, voted against upholding the law, recognizing that it infringes human rights. The Court’s President, Aharon Barak, stated that the law violates the right of Israeli Arabs to equality.

Indeed, the law violates the absolute prohibition on discrimination contained in international human rights law, notably several treaties which Israel has ratified and is obliged to uphold, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Convention on the Rights of the Child (CRC).

The provision in the law which allows for the discretionary granting of temporary residence permits for Palestinian male spouses over 35 and female spouses over 25 is arbitrary in nature and does not alter the discriminatory character of the law. It will also not benefit the majority of Israeli-Palestinian couples, who marry at a younger age. Moreover, the permit applications of spouses who meet the age criteria can be rejected on the grounds that a member of his/her extended family is considered a “security risk” by Israeli security services. Thousands of Palestinians seeking family reunification prior to the passing of this law were rejected on unspecified “security” grounds in circumstances where the failure to provide detailed reasons for each rejection made it impossible for those rejected to mount an effective legal challenge to the decision.

The Israeli authorities have sought to justify the law on security grounds but have brought no convincing evidence to substantiate such claims. Even claims that some 25 people, some of whom were born to Israeli parents and were not in Israel as a result of family reunification, have been involved in attacks in security-related offences, cannot justify denying family reunification to every Palestinian. Doing so is discriminatory and disproportionate and would constitute a form of collective punishment, prohibited under international law. Moreover, statements by Israeli officials and legislators who support the new law indicate that it is primarily motivated by demographic, rather than security, considerations - that is, a determination to reduce the percentage of Israeli Arabs among the country’s population.

The ban on family unification for Israeli-Palestinian couples, initially introduced by an administrative decision of the Interior Minister in 2002 and subsequently passed into law by the Israeli Knesset in July 2003, is due to be reviewed by the Israeli Knesset next July. Amnesty International reiterates its call on the Israeli government and on Members of the Knesset to repeal this law and to ensure that any steps taken to address security concerns, including any amendments to the citizenship law, comply with international human rights law – notably the principle of non-discrimination.

(1) Palestinians who remained in Israel after the establishment of the state in 1948 became Israeli citizens, whereas the Palestinian inhabitants of Jerusalem received a special status as permanent residents after Israel's occupation of East Jerusalem in 1967 and its subsequent annexation. Today, there are about 230,000 Palestinian permanent residents of Jerusalem.