האגודה לזכויות האזרח בישראל
جمعية حقوق المواطن في اسرائيل
The Association for Civil Rights in Israel

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Presentation by ACRI Attorney Sharon Abraham-Weiss to the ICJ Eminent Jurists Panel on Terrorism, Counter-Terrorism, and Human Rights

The Law of Citizenship and Entry into Israel (Temporary Order), 2003

1 .Naturalization Process

The multi-staged naturalization process in Israel takes a total of four and a half years, during which time the couple has to prove the authenticity of their marriage. In the process, couples are granted a permit allowing them to stay for a limited time in the country, and at a later date they receive a renewable annual permit from the Minister of the Interior. As each permit expires the authorities check to see that the family unit is still intact and that there is no security or criminal basis to rescind the temporary residency status.

2. Palestinians & the Naturalization Process

During March 2002, ACRI's public hotline received numerous phone calls from Palestinians claiming that the Ministry of Interior was refusing to renew their permits or to receive their citizenship applications. On May 12th 2002, ACRI submitted a petition to the Supreme Court against this policy (which had not yet been published).

That same day, the government published its decision to freeze all new and pending citizenship applications where the foreign national spouse is of Palestinian origin. During the hearing in the court, the judges criticized the decision and stated that it violated human rights.

In July 2003 this policy was enshrined in law -- The Law of Citizenship and Entry into Israel (Temporary Order), 2003. **The law states that no request for a temporary residency permit will be granted to Palestinian residents of the Occupied Territories who are married to Israeli citizens.** Advocates of the law attempted to substantiate it by explaining as follows:

"Since the outbreak of the armed conflict between the Palestinians and the Israelis which has led to, among other things, dozens of suicide bombings, there is a growing phenomenon of involvement of Palestinians who reside in the area and possess Israeli identity cards by virtue of the family reunification process. These individuals exploit their Israeli status which allows them freedom of passage between the territory of the Palestinian Authority and Israeli territory."

The stated purpose of the temporary order was thus predicated on security needs: **Palestinians pose a security risk by virtue of their being Palestinians, and their Palestinian origin constitutes the basis for denying them status in Israel.**

During the legislative process, there were voices in the Knesset that claimed that the law was justified on the basis of demographic concerns; however, in all its legal proceedings, the state officially denied that demographic reasons played any role in determining the law, and continued to justify the law solely on the basis of security needs.

In order to oppose this racist law, which tears apart many families, ACRI, and other human rights organizations, submitted a petition to the Supreme Court. CERD denounced the discriminatory law in its Decision 1(63) and Decision 2 (65), and called for its revocation.

3. The Legal Status Today

1. Section 1 determines that the temporary order applies to residents of the West Bank and the Gaza Strip, including those people who are registered in the Palestinian Population Registry, even if he or she does not currently reside in the Occupied Territories.
2. Section 2, the crux of the law, **determines the sweeping prohibition on granting Palestinians permanent status or a residency permit in Israel**.
3. Section 3, supposedly the section detailing exceptions (added in July 2003):
   - Allows the Military Commander to grant a temporary entry and remain permit in Israel to Palestinian spouses of Israeli citizens or residents, as long as they are above the **age specified in the arrangement** (Palestinian men must over 35 years old, and Palestinian women must be over 25 years old). **The permit does not entitle the permit holder to receive social security benefits or national health insurance**.
   - Section 3(a) allows the granting of a temporary residency permit in Israel to a Palestinian **minor, up to the age of 14**, in order to avoid separating him or her from the Israeli parent, and granting a temporary residency permit which entitles the holder to access social rights and health insurance – to a minor above the age of 14.
   - Section 3(b) allows the granting of a temporary entry and remain permit for the purpose of receiving **medical treatment**, or for work purposes or other temporary purposes, which must not exceed 6 months.
   - Section 3 (c) allows the granting of temporary residency or permanent residency or even the granting of Israeli citizenship in cases which are defined as a "**special matter for the state**."
   - Section 3(d) determines a tightening of the law in cases relating to **dangerous family ties**. According to this section, permits to reside in Israel are denied to persons (above the age of 14) who, according to the security agencies, are liable to pose a security risk to the state, or whose spouse, parent, child, sibling or sibling's partner, is a potential security threat. According to section 4, this also applies to persons who already in the midst of the naturalization process and hold any kind of temporary permit.

4. Section 4 determines that a Palestinian spouse, who has begun the naturalization process and received temporary status before the law went into effect**, cannot**

"upgrade" his or her status, and certainly cannot obtain permanent status, but must periodically renew the permit. Thus, for example, someone who receives a temporary permit in Israel, without a work permit and social rights, will remain with this status, which he will have to extend every few months. He cannot complete the naturalization process that he started, and he is forced to repeatedly appeal to the Ministry of the Interior and to the Civil Administration to renew his permit.

5. The main addition to the latest amendment of the law (added in May 2007) is the establishment of an **"Exceptions Committee**," according to which Palestinian spouses who do not meet the aforementioned criteria for obtaining status, can apply to the Committee on the basis of humanitarian considerations. The Committee then recommends certain cases in which status should be granted due to exceptional humanitarian reasons.

4. The Legal Claims – Violation of Human Rights

The legislation discriminates against Israeli citizens who are married to Palestinians, the sweeping law constitutes **collective punishment**, and it also infringes the **right to family life** which is a basic right recognized by international law, Israeli law, and enshrined in the Basic Law: The Right to **Human Dignity and Liberty**. This right includes the right to marry and the right to parenthood. These rights are based on the right of every individual to dignity and to privacy, and the importance of the family unit in society in general, and in Israel in particular.

As a result of family and cultural bonds, there is a natural connection between the Palestinian Israeli population and the Palestinians in the Occupied Territories, and marriage between members of these two population groups is therefore a common occurrence. For Palestinians who have already married but are denied renewal of their residency permit, the law means the disintegration of their family unit.

Our principal claim is that the law is too sweeping, and that the state cannot impose collective punishment on the Palestinian population, but instead should handle each application for status on a case-by-case basis, in order to strike a balance between the right to family and defending the security of the residents of Israel. There is no coherence in the approach to security and many contradictions are intrinsic to the state's policy. Thus, for example, the legislator is prepared to allow the entry of Palestinian workers to Israel, but denies entry to spouses, parents, or children. In other words, a Palestinian resident of the Occupied Territories can work in Israel, and can even reside there for a certain period of time, but if he forges a relationship with an Israeli citizen, and requests that his work permit be replaced with a permit on the basis of the relationship, he immediately becomes a security danger and loses his status in Israel.

In addition, section 3 arbitrarily determines distinctions based on age and gender which are not grounded on any factual foundation. This distinction exemplifies the absurdity that is inherent in the temporary order as a whole. Just as the presence or absence of a security threat concerning men over the age of 35, and women over the age of 25, can be determined, it is also possible to check the security threat posed by people who are below the specified ages. This security check has been routinely carried out on thousands of applicants for work permits, entry permits for commercial purposes, and others.

Even the humanitarian exception option is devoid of meaning, since it is qualified in the clause stipulating that "**the relationship of a couple or the existence of shared children do not in**

themselves constitute exceptional humanitarian reasons." In other words, the heart of the arrangement remains the same: partners and children, who are most harmed by the temporary order, are not entitled to obtain status in Israel.

Furthermore, section 3 (a) (1) determines that even those few, who are deemed "humanitarian exceptions," are still liable to find themselves without status in light of the "**yearly quota** of permits or licenses that will be approved according to this amendment." Thus the fate of people who find themselves in distress and are in need of humanitarian assistance, is dependent on the number of people in similar situations who already appeared before the committee that year.

5. Key Points in the Legal Proceedings until Now

In July 2003 ACRI submitted our petition against the law.

In January 2004, a hearing on this issue was held before an expanded panel of thirteen Supreme Court justices.

In July 2005, a number of minor "amendments" were introduced into the law, which permitted women over the age of 25 and men over the age of 35 to submit requests for entry permits. However, as mentioned earlier, the amendments also stipulate that Palestinians with "dangerous family ties" will not be granted an entry permit into Israel. This is a form of collective punishment.

Data submitted by the state on November 2005, following a specific request by the Supreme Court, was shocking in many ways as it contradicted the state's claim. The state's statistics show that **only 25 Palestinian individuals who received status in Israel, out of the thousands who received such status pursuant to "family reunification",** were **questioned on suspicion of involvement in terrorist activity during the previous five years**. Amongst them, only one was a woman. None of these people stood trial or were charged. These facts clearly contravene the state's claim of "consistent involvement" in terrorist activities.

The conclusion begging to be drawn from these statistics was that the **age threshold was determined without any factual basis at all.** On the basis of the one woman who was interrogated – whose age was not mentioned in the state's response – there can be no justification for targeting an entire population of Palestinian women. In addition, in regard to the minimum age requirements for Palestinian men whom "intelligence information" is liable to associate with terrorist activity, it is blatantly apparent that the age threshold set forth in the legislation is completely arbitrary. Thus, this is another clear example of collective punishment with no substantive foundation.

6. The Supreme Court's Ruling

On 14th May 2006, eleven Supreme Court justices handed down their ruling concerning the constitutionality of the Law of Citizenship and Entry into Israel (Temporary Order). **Six of the eleven judges, ruled that the law denying Palestinian spouses of Israeli citizens or residents the possibility of securing legal status in Israel is unconstitutional.** This was due to the disproportionate violation of the right to family and the right to equality. Five of these judges, including then-Chief Justice Barak, were of the opinion that in light of its unconstitutionality, the law must be cancelled within six months of the ruling. The sixth judge

who found the law to be unconstitutional stated that the law could not continue as is due to its unconstitutionality, and gave the state nine months to formulate an alternative arrangement. He pointed out that it was doubtful whether "the law could successfully get past judicial review again in the future." Following this ruling, the law as it was then was extended a number of times, after which, following certain changes, the law was extended until 31st July 2008.

7. The Current Status of the Legal Proceedings

In January 2007, nine months after the Supreme Court's ruling, ACRI filed a petition to the Supreme Court against the newly extended law. In May 2007 the law was once again amended and the "Exceptions Committee" was introduced, and ACRI petitioned the Supreme Court against the amended law as well. **Our claim was that the changes introduced to the law do not undo the essential flaw inherent in the law, which, in its current form, constitutes collective punishment and blatantly violates the constitutional rights to dignity, family life, equality and privacy.** In theory and in practice the law determines that the existing regulations for formalizing the status of spouses of Israeli citizens and residents and the regulations for arranging the status of other family members (parents and children), do not apply to Palestinian spouses or family members. The scope of the law has even been expanded to encompass spouses or family members who are from Iran, Lebanon, Syria, Iraq, and other "enemy states" which the state is entitled to determine.

Thus, despite its severe and unconstitutional violation of the rights to family and equality, the law remains valid – more than a year after the Court's ruling – and will continue to remain valid for another year.

Since March 2002, the clerks of the Ministry of the Interior have not handled new requests for status in Israel submitted by Palestinians. Since this is a **severe violation of rights, that has been in effect for more than five years** (and is due to continue for yet another year), the claim that this is a temporary measure is no longer legitimate. **The criticism articulated by the Supreme Court judges concerning the grave violation of basic rights caused by the law fell on deaf ears; and the legislative branch continues to perpetuate this violation of rights without considering the criticism of the majority of the justices on the panel.**

It is also important to emphasize that the differences in opinion among the judges did not revolve around the existence or non-existence of violations of basic rights, but rather, on their proportionality. The continuation of the violation, and the widening circle of people affected by the law, cannot be reconciled with the perception of the law as representing a proportionate violation – as was the opinion put forward by a number of the judges before the extension of the law's validity and the expansion of its scope. In addition, the introduction of the "humanitarian exceptions committee" is of little worth due to the existence of the yearly quota.

To date, the state has not yet filed its response to our petition; and the violation of the rights of Palestinian spouses of Israeli citizens continues.