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**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF
DISCRIMINATION**

**Written statement* submitted by the International Federation of Human Rights Leagues
(FIDH), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[1 February 2004]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

On August 14, 2003, the UN Committee on Elimination of Racial Discrimination, in its Decision 2(63)¹ called upon Israel to “revoke” the new ban on family unification law, and to “*re-consider its policy with a view to facilitating family unification on a non-discriminatory basis.*” The Committee found that “The Nationality and Entry into Israel Law (Temporary Order),” passed on 31 July 2003: “*raises serious issues under the International Convention on the Elimination of all Forms of Racial Discrimination [ICERD]*”, to which Israel is party since 1979.

The Committee was asked to consider this issue in an urgent action petition submitted on 8 August 2003 by the International Federation for Human Rights (FIDH), together with its member and partner organisations in Israel.

The purpose of the new law is to prohibit Palestinians from the Occupied Territories from obtaining citizenship, permanent residency, and/or temporary residency status in Israel by marriage to an Israeli citizen (“family unification”). The new law solely targets “residents of the region,” defined by the law as a person who lives in “Judea and Samaria and the Gaza Strip,” but “is not registered in the region’s Population Registry, excluding a resident of an Israeli community in the region.” It will primarily impact the rights of Palestinian citizens of Israel, the citizens of the state who are married to Palestinians from the Occupied Territories. Thousands of families will be affected, comprised of tens of thousands of individuals, forcing them to separate or to leave the country. The three main groups affected by the law are:

- Newly married couples - The law prevents the Palestinian spouse from being granted residency or citizenship status in Israel. No new applications for naturalization will be accepted.
- Pending applicants - Applications submitted before 12 May 2002 will be considered, however, no temporary or permanent residency or citizenship will be given. Only permits for a temporary stay in Israel may be given.
- Individuals with temporary residency status – The law prohibits the upgrading of temporary residency status, granted prior to 12 May 2002, to permanent residency or citizenship, even if the requests were authorized and the applicants met the necessary criteria.

The new law enshrines into statute the government’s administrative decision denying family unification in effect since 12 May 2002. Prior to that decision, between 1997 and April 2002, “foreign spouses” of Israeli citizens attained residency and naturalization through a “graduated procedure.” This multi-year process involved frequent security and criminal checks, including the provision of hundreds of documents. In 2001, the Ministry of Interior started changing its policy in order to prevent Palestinians from staying in Israel. On 12 May 2002, the government decided to temporarily freeze the processing of all family unification requests of non-resident Palestinians. One of the reasons was “the implication of processes in which foreigners of Palestinian descent immigrate and strike root, including through the family unification.”

¹ See: CERD/C/63/Misc.11/Rev.1.

The new law is valid for one year and renewable indefinitely. The new law is illegal for the following reasons:

- 1) The law severely violates the fundamental rights of individuals to equality, liberty, privacy, and family life. These rights are protected by the International Convention on the Elimination of Racial discrimination (ICERD), to which Israel is a party. Specifically, the law violates Article 5.d.(iv) of ICERD, which provides that “*States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to marriage and choice of spouse.*”
- 2) The law flagrantly discriminates against Palestinian citizens of Israel and Palestinians from the Occupied Territories. In practice, the law will affect Palestinian citizens of Israel, the citizens of the state who have non-citizen Palestinian spouses. Further, the total ban on family unification exclusively and solely targets Palestinians from the Occupied Territories; the general policy for residency and citizenship status in Israel for all other “foreign spouses” remains unchanged. These measures constitute discrimination on the basis of nationality and ethnic origin. Moreover, international human rights law, which forbids discrimination based on nationality and ethnic origin, particularly prohibits such discrimination in matters relating to the right to citizenship. In particular, article 1.3 of ICERD states that State parties may not discriminate against any nationality, and article 3 forbids racial segregation.
- 3) The new law is disproportionate to the alleged security reasons cited by the government to justify its enactment. The government claims that the bill is essential because Palestinians from Occupied Territories who have obtained citizenship/residency status in Israel via family unification have been increasingly involved in terror activity. The government claimed that 20 such persons were involved in the “rolling” of terror activity, but presented only the names of a few of those alleged with this involvement. Further, the state has many other tools and mechanisms, which it has utilized and continues to utilize in order to address security concerns. The “graduated procedure” for naturalization grants the government wide authority to conduct criminal and security background checks on all persons seeking to gain citizenship/residency status in Israel. These measures have been and continue to be utilized by the government. By setting forth such a sweeping ban, the new law amounts to collective punishment that cannot be justified by security concerns.
- 4) During the Knesset debate, some Members of Knesset who supported the proposed legislation stated clearly that the actual aim of the bill is to limit the number of Palestinian citizens/residents of Israel, the so-called “demographic threat” to maintaining a Jewish majority in the state, and not the security concerns as presented by the government to justify these measures.

The Committee’s decision follows the concluding observations on Israel, issued by the UN Human Rights Committee on 6 August 2003. The Committee also urged Israel to “revoke the Nationality and Entry into Israel Law ... and reconsider its policy with a view to facilitating

family reunification of all citizens and permanent residents.” The Human Rights Committee found that the law “raises serious issues under articles 17, 23 and 26 of the ICCPR:

« The Committee is concerned about Israel’s temporary suspension order of May 2002, enacted into law as the Nationality and Entry into Israel Law (Temporary Order) on 31 July 2003, which suspends for a renewable one-year period, the possibility of family reunification, subject to limited and subjective exceptions especially in the cases of marriages between an Israeli citizen and a person residing in the West Bank and in Gaza. The Committee notes with concern that the suspension order of May 2002 has already adversely affected thousands of families and marriages ».

The FIDH asks the Commission on Human Rights to urge Israel, to comply with CERD and the Human Rights Committee’s recommendations and abrogate “The Nationality and Entry into Israel Law (Temporary Order),” without any further delay.
