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# Families Divided: An Analysis of Israel's Citizenship and Entry into Israel Law

By Bethany M. Nikfar\*

## I. INTRODUCTION

¶1 As international leaders attempt to salvage the last vestige of the peace process between Israel and the Palestinian territories, the residents of the region continue to suffer human rights violations. Although the much-touted "road map to peace" once offered some glimmer of hope for stability in the region, the past few years have seen multiple violations of human rights and international humanitarian law since the outbreak of Israeli-Palestinian conflict. An anti-immigration measure that threatens to break up thousands of Israeli Arab families presents yet another violation of human rights.

¶2 The law, passed July 31, 2003 prohibits Palestinians spouses from obtaining citizenship, permanent residency and temporary residency status in Israel by marriage to an Israeli citizen, a process referred to as "family reunification." The provision also applies to children from the territories (West Bank and Gaza) who wish to live with an Israeli Arab parent.

¶3 Section 2 of the Citizenship and Entry into Israel Law (Temporary Provision) specifically limits citizenship and stay in Israel:

[T]he Minister of the Interior shall not grant the inhabitant of an area citizenship on the basis of the Citizenship law, and shall not give him a license to reside in Israel on the basis of the Entry into Israel Law, and the Area Commander shall not grant a said inhabitant, a permit to stay in Israel, on the basis with the security legislation in the area.<sup>1</sup>

¶4 The law defines "area" as Judea, Samaria or the Gaza Strip;<sup>2</sup> Judea and Samaria are more commonly known as the West Bank.<sup>3</sup>

¶5 The law does not rescind citizenship that has already been granted, but it does impact couples who had been living together in Israel while trying to get reunification approval. Under the new law, thousands<sup>4</sup> of Palestinians living in Israel must go back to

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<sup>1</sup> The Citizenship and Entry into Israel Law (Temporary Provision) 5763-2003, unofficial translation.

<sup>2</sup> *Id.*

<sup>3</sup> "West Bank." Encyclopædia Britannica. 2003. Encyclopædia Britannica Premium Service.

23 Nov. 2003 <<http://www.britannica.com/eb/article?eu=78625>>.

<sup>4</sup> Approximately 21,298 families will be affected: 5,291 from East Jerusalem and 16,007 in the rest of the state according to "Immigration of Foreigners in Israel," Ministry of Interior, Population Administration, May 2002. Source: Press Release, Mossawa Center (July 31, 2003), at [http://64.233.167.104/search?q=cache:eJuLgTm2qOQJ:www.boell.org.il/download\\_en/CitizenshipLaw.pdf+%22Immigration+of+Foreigners+in+Israel%22&hl=en](http://64.233.167.104/search?q=cache:eJuLgTm2qOQJ:www.boell.org.il/download_en/CitizenshipLaw.pdf+%22Immigration+of+Foreigners+in+Israel%22&hl=en).

the West Bank or Gaza, and they will be denied identity cards—their passports to get past police checkpoints.<sup>5</sup>

¶6 Interior Minister Avraham Poraz says the halt in the citizenship process is an essential security measure, made necessary by a few spouses from the occupied territories and their offspring, who have misused citizenship to join terrorist attacks.<sup>6</sup> Twenty Palestinians with Israeli identity cards who were either married to Israelis or the offspring of such a marriage have had suspected or proven ties to terrorist activities.<sup>7</sup> The law solidifies a ban on identity cards for Palestinians instituted in 2002 after a devastating suicide bombing in Haifa. The bombing had been carried out by a Palestinian who married an Israeli Arab and became an Israeli citizen through the family reunification procedure.<sup>8</sup>

¶7 As enacted, the law could have expired within a year, but on July 21, 2004, the Knesset approved the government's request to extend the measure for six more months.<sup>9</sup> The Israeli Supreme Court has the authority to overturn the law, and the Court has held two hearings in response to petitions filed by several groups that have urged the court to strike down the law. The groups include the Meretz political party, Adalah and the Association for Civil Rights in Israel.<sup>10</sup>

¶8 The Nationality and Entry into Israel Law may be construed as an effort to preserve a clear Jewish majority over Arabs—not only by preventing migration across the territory borders, but also by burdening marriage and, consequently, reproduction. Palestinian citizens of Israel (Israeli Arabs) comprise approximately one-fifth of the country's population, and the Jewish majority has an interest in retaining its superior numbers, which matter in a representative democracy such as Israel. Although Israeli Arabs vote and have the same individual rights as Jewish Israelis, Israeli Arabs face discrimination in all facets of life.

¶9 Essentially, the law bans marriage between Israelis and Palestinians, raising several human rights concerns. First, the law may violate a handful of articles of the International Covenant on Civil and Political Rights (ICCPR). Under Article 17:

- (1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
- (2) Everyone has the right to the protection of the law against such interference or attacks.<sup>11</sup>

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<sup>5</sup> "Issuing [an] identity card immediately turns the person who receives it into someone terrorist organizations would like to have," stated Yuri Stern, head of the Knesset's Interior Committee. Ben Lynfield, *Marriage Law Divides Israeli Arab Families*, CHRISTIAN SCIENCE MONITOR, Aug. 8, 2003, at 6.

<sup>6</sup> *Id.*

<sup>7</sup> Dan Izenberg, *ACRI Asks Court To Restore Rights of Palestinians Who Marry Israelis*, JERUSALEM POST, Sept. 9, 2003, at 2.

<sup>8</sup> Roundup: *Israeli High Court Disagrees with Government's Decision Against Israeli Arabs*, PEOPLE'S DAILY, July 15, 2002.

<sup>9</sup> Dan Izenberg, *Adalah Decries Reunification Law*, JERUSALEM POST, July 23, 2004, at 6.

<sup>10</sup> Ina Friedman, *Three Groups Urge Supreme Court to Strike Down Citizenship Law*, JERUSALEM REP., Sept. 8, 2003, at 6.

<sup>11</sup> International Covenant on Civil and Political Rights, Art. 17, at <http://www.hrweb.org/legal/cpr.html>.

¶10

Under Article 23:

- (1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
- (2) The right of men and women of marriageable age to marry and to found a family shall be recognized. . . .<sup>12</sup>

¶11

Article 26 states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>13</sup>

¶12

Second, the law raises serious concerns under the International Convention on the Elimination for All Forms of Racial Discrimination (ICERD).<sup>14</sup> Signatories of the ICERD promise to “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.”<sup>15</sup> Such equality guarantees civil rights, including “the right to marriage and choice of spouse.”<sup>16</sup> The Association for Civil Rights in Israel made a similar argument to Israel’s High Court of Justice,<sup>17</sup> stating that the law should be repealed because the “result of the amendment is that in actual fact, Israeli Arabs will be unable to realize their most basic right to choose a partner and establish a family in Israel.”<sup>18</sup>

¶13

This article will illustrate the discriminatory nature of the Nationality and Entry into Israel Law (Temporary Provision). The discussion proceeds in four sections. Section I explores the background of the law, including the measure’s inception and implementation. Section II draws on personal accounts offered by Israeli Arabs and provides an analysis of the law’s impact on Palestinian lives. This section pays particular attention to the harsh effects of being denied a nationality card. The section concludes that the law discriminates on the basis of birth and—rather than presenting a legitimate security solution—aims to undermine the population of Arabs in Israel.

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<sup>12</sup> ICCPR, Art. 23.

<sup>13</sup> ICCPR, Art. 26.

<sup>14</sup> Israel has been a party to the ICERD since 1979.

<sup>15</sup> ICERD, Art. 5, at <http://www.ohchr.org/english/law/cerd.htm#art5>.

<sup>16</sup> Id.

<sup>17</sup> The Israeli Supreme Court sits as the High Court of Justice in “matters regarding the legality of decisions of state authorities.” Source: State of Israel Judicial Authority Web site, at <http://62.90.71.124/eng/system/index.html>.

<sup>18</sup> Izenberg, *supra* note 7.

¶14 Section III examines the measure through the framework of Israel’s Basic Law as well as from the perspective of international treaties to which Israel is a signatory. In addition to seeking a response from the international community, Section III includes the observation that scant attention has been paid to the effects of the law. Section IV argues that the discriminatory actions taken by Israel possess the potential to create negative effects for U.S. interests, both domestically and internationally. Finally, the article concludes with the proposal that Israel’s Supreme Court strike down the Nationality and Entry into Israel Law as a violation of Israeli law and international covenants and human rights.

## II. BACKGROUND

### A. “Temporary Measure”

¶15 The amendments to the Nationality and Entry into Israel Law evolved from a measure taken by Israel’s Interior Ministry following the March 31, 2002 bombing of a restaurant in Haifa. A Hamas terrorist, Shadi Tubasim, carried out the suicide bombing, which killed fourteen others and wounded more than forty.<sup>19</sup> Tubasim had married an Israeli Arab, and, through the family reunification procedure, had become an Israeli citizen.<sup>20</sup> He was able to travel freely throughout the country with his Israeli identity card.

¶16 The day after the attack, the Interior Ministry stopped processing all family reunification requests, preventing Israeli Arabs from reuniting with family members who live in the West Bank and Gaza Strip. Each applicant became frozen in his or her respective stage of the application process.<sup>21</sup> This means that applicants who had not yet been granted official family reunification status could not receive it and those who were in the final stages of their applications—just shy of getting the much coveted blue identity cards—could not obtain citizenship.

¶17 Within six weeks of the Interior Ministry’s halt in requests, the cabinet officially approved the policy, solidifying the freeze and preventing the family unification for thousands of Arabs. A rough estimate of the number of affected Arabs can be drawn from the number of applications for citizenship that have been granted over the past few years. Each year since 1994, the government has granted citizenship to 12,000 Palestinians from the West Bank, Gaza Strip and Jordan who married Israelis.<sup>22</sup> Approximately 100,000 individuals, including children, have been added to the Israeli

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<sup>19</sup> James Bennet, *Mideast Turmoil: The Violence; Bomber Strikes Jews and Arabs at Rare Refuge*, N.Y. TIMES, Apr. 1, 2002, at A1.

<sup>20</sup> Dan Izenberg, *Court Hears Petitions Against Palestinian Naturalization Freeze*, JERUSALEM POST, July 18, 2003, at 6A.

<sup>21</sup> The procedure whereby a non-Israeli obtains Israeli citizenship by marrying an Israeli citizen involves three stages: 1.) A non-citizen applies for a permit to live in Israel on the basis of his or her marriage. Upon approval by the Interior Ministry, the applicant is granted B-1 status, allowing him or her to live and work in Israel; 2.) After six months, the applicant may receive A-5 status, which includes the right to receive National Insurance Institute payments. In the applicant maintains an unblemished security and criminal record, the A-5 status will be renewed each year for four years; 3.) After a minimum of four years, the applicant becomes eligible for Israeli citizenship. Source: Dan Izenberg, *High Court Issues Show-Cause Order on Family Reunification Ban*, JERUSALEM POST, July 15, 2002, at 2.

<sup>22</sup> *Id.*

Arab population in the past eight years.<sup>23</sup> These numbers seem to be the real source of tension and the true impetus for the switch in policy, which proponents introduced as a security measure.<sup>24</sup>

¶18 Indeed, when the High Court of Justice ordered the state to respond to a petition<sup>25</sup> against the June 2002 measure, the state's representative, attorney Yochi Gnessen, justified the freeze as a temporary move necessitated by the security situation.<sup>26</sup> Highlighting the cabinet's understanding of the measure's aggressive nature, Gnessen said that within six months, the government would develop a more circumspect policy.<sup>27</sup>

#### B. 2003 Amendment

¶19 The government, however, failed to pass a more cautious measure. Despite urging by Interior Minister Avraham Poraz to make the "problematic" bill as humane as possible,<sup>28</sup> lawmakers passed the Citizenship and Entry into Israel Law (Temporary Provision) on July 31, 2003. Tellingly, Poraz stated that he was not happy to bring the legislation before the Knesset and that "under normal circumstances" a nation should allow family reunification on humanitarian grounds.<sup>29</sup>

¶20 Yet Poraz cited the wave of terrorism and said that the "step ha[d] become necessary" since many of those who carried out attacks held Israeli identity cards.<sup>30</sup> Poraz expressed concern that Palestinians with the cards exploited their freedom of movement to perpetrate the attacks. Others echoed that concern: Cabinet Minister Gideon Ezra stated, "This law comes to address a security issue. Since September 2000, we have seen a significant connection, in terror attacks, between Arabs from the West Bank and Gaza and Israeli Arabs."<sup>31</sup> During the debate, MK Ehud Yatom said that Shin Bet director Avi Dichter informed the Knesset Interior Committee that there had been nineteen cases of Palestinians who used identity cards obtained through family reunification to execute attacks.<sup>32 33</sup>

¶21 The opposition within the Knesset, however, responded that the security concerns were inflated and that the measure was unnecessary. Arab legislator Azmi

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<sup>23</sup> *Id.*

<sup>24</sup> See discussion of Israeli disapproval of rising Israeli Arab population, *infra*.

<sup>25</sup> Adalah, a Palestinian rights group, filed the petition on behalf of fifty-seven members of fourteen families that included a spouse of Palestinian origin without full citizenship status. The petition argues that Israel's decision discriminates against the petitioners by violating their right to marry and found a family with their choice of spouse. Source: Press Release, Adalah (June 2, 2002).

<sup>26</sup> Izenberg, *supra* note 21.

<sup>27</sup> *Id.*

<sup>28</sup> Nina Gilbert, Legal Adviser: Palestinian Family Reunification Ban Illegal, JERUSALEM POST, July 30, 2003, at 2.

<sup>29</sup> Nina Gilbert, Knesset Okays Move To Block Citizenship for Palestinians Who Marry Israelis, JERUSALEM POST, June 19, 2003, at 4.

<sup>30</sup> Ben Lynfield, *Marriage Law Divides Israeli Arab Families*, CHRISTIAN SCIENCE MONITOR, Aug. 8, 2003, at 6.

<sup>31</sup> Justin Huggler, *Israel Imposes 'Racist' Marriage Law*, INDEPENDENT, Aug. 1, 2003, at 1.

<sup>32</sup> Nina Gilbert, *Palestinians Who Wed Israelis Will No Longer Receive Citizenship*, JERUSALEM POST, Aug. 1, 2003, at 4A.

<sup>33</sup> The Shin Bet also reported preventing a bombing with the arrest of an Islamic Jihad member who had an identity card. Cell leader Muhammad Matsri's mother married an Israeli citizen, enabling Matsri to obtain a card and freedom of movement across the Israeli-West Bank border. Source: Margot Dudkevitch, *Israeli Arabs Held for Operating Bomb Factory in Jaljulya*, JERUSALEM POST, Apr. 1, 2003, at 1.

Bishara stated, “This has nothing to do with security. The idea is to reduce the number of Arabs in Israel.”<sup>34</sup> Knesset member Roman Bronfman observed that there are already tools to fight terrorism and that the legislation was brought “one year late”—a reference to the Haifa bombing.<sup>35</sup> Bronfman said that a process to investigate and reject those who have a criminal or security record rendered the measure unnecessary.<sup>36</sup>

¶22 A handful of Knesset members also questioned the race-based nature of the measure. Taleb Sanaa, an Arab legislator, asked, “What would you say if a European government passed a law like this against Jews?”<sup>37</sup> Hadash leader Muhammad Barakei observed that those who had “suffered so much from racism should be ashamed to bring such a bill.”<sup>38</sup>

¶23 Additionally, Arab MKs attempted to keep the measure from the full Knesset by engaging in continuous rounds of shouting during committee discussions. Committee chairman Yuri Shtern<sup>39</sup> ejected MK Taleb Sanaa from the meeting.<sup>40</sup> Shtern imposed order by threatening to draw the coalition and hold an immediate vote on the proposal, without softening the measure. He later closed the session to the media.<sup>41</sup>

¶24 Two days after that confrontation, the Knesset approved the Citizenship and Entry into Israel Law (Temporary Provision) by a 53-25 vote.<sup>42</sup> The law remains in effect for one year and must be renewed for each subsequent year.<sup>43</sup> Under the law, Israeli Arabs who marry Palestinians from the West Bank or Gaza Strip will either have to move to the territories or remain separated from their spouses.<sup>44</sup> Children will be affected as well: those over the age of twelve will be denied citizenship and removed from Israel.<sup>45</sup>

¶25 The most striking aspect of the law remains that the measure does not affect any other ethnic or national group: Any person other than a Palestinian who marries an Israeli citizen remains entitled to Israeli citizenship. For example, an Israeli Arab woman who marries an Argentinian man may bring her husband to live in Israel, and the husband may apply for citizenship. Yet an Israeli Arab woman who marries a Palestinian from the West Bank must either join her husband in the West Bank or stay in Israel and live apart from her husband.<sup>46</sup> Israel’s policy deprives Palestinians of equal access to citizenship. This is discrimination.

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<sup>34</sup> Lynfield, *supra* note 30.

<sup>35</sup> Gilbert, *supra* note 32.

<sup>36</sup> *Id.*

<sup>37</sup> Lynfield, *supra* note 30.

<sup>38</sup> Gilbert, *supra* note 32.

<sup>39</sup> MK Yuri Shtern represents the National Union party, a conservative group concerned with demographic issues facing Israel. The party supports “massive Jewish immigration to Israel and the voluntary transfer of the Palestinians in the territories to Arab states. The party views these steps as the only way to maintain the demographic balance in Israel, preserving its Jewish character, territorial integrity and basic security needs.” Source: Upstart Activist Press Release, *Israel Votes* (2003), at [http://www.israelvotes.com/demo/platforms\\_unity.html](http://www.israelvotes.com/demo/platforms_unity.html).

<sup>40</sup> Gilbert, *supra* note 28.

<sup>41</sup> *Id.*

<sup>42</sup> Huggler, *supra* note 31.

<sup>43</sup> Gilbert, *supra* note 32.

<sup>44</sup> Huggler, *supra* note 31.

<sup>45</sup> *Id.*

<sup>46</sup> See discussion of discriminatory effect of law, *infra*.

¶26 Interior Minister Poraz, however, discounts the concern. When asked about a situation involving an Israeli Arab man whose wife is now blocked from gaining Israeli citizenship to join him at their home in Ma'a lot-Tarshiha, Poraz sent a clear message. "I don't think that forcing two Arabs—one an Israeli Arab and the other a Palestinian—to live in the West Bank is such a punishment."<sup>47</sup> Such a response callously ignores the poverty-stricken conditions of the West Bank and disregards the troubled lives of West Bank residents.

¶27 The power preserved by the measure also raises concerns. Under the law, the interior minister may

grant citizenship, or provide a license to reside in Israel, to an inhabitant of an area, if he is convinced that he identifies with the State of Israel and its goals, and that he or a member of his family performed a significant act to promote the security, economy or some other important matter of the State.<sup>48</sup>

Essentially, this allows the interior minister to retain an important chip that may be used to recruit and reward defectors from the territories—a vivid illustration of the power of the blue identity cards.<sup>49</sup>

### III. IMPACT

#### A. Denial of Economic Opportunity

¶28 Nationality cards hold great significance: The cards allow Palestinians from the occupied territories to pass through checkpoints into Israel. In the division between prosperous Israel and the abject territories, a blue card serves as a passport to a better life. The card means access to jobs in Israel, with its \$122 billion economy, and escape from the poverty of the territories.<sup>50</sup> In the territories, sixty percent of the population lives below the poverty line and the unemployment rate hovers around fifty percent.<sup>51</sup> Simply put, Palestinians who lack blue cards remain trapped.

¶29 They remain severed from the opportunities and cultural connections that exist only a few miles away because those who lack a blue card and attempt to cross into Israel through a checkpoint will be turned back. Israel recognizes the importance of access to the advantages within its borders, as evidenced by the law's retention of the power to give an identity card to Palestinian collaborators. For years, the Shin Bet security service has used the access and family reunification permits as a payoff to informers—an arrangement that provides a wealth of intelligence used to prevent terror attacks. Residents of the occupied territories are enticed to turn against their neighbors in exchange for access to medical treatment in Israel or for financial gain.<sup>52</sup> Under the new law, a family reunification permit can be delivered only as a payoff.

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<sup>47</sup> Lynfield, *supra* note 30.

<sup>48</sup> The Citizenship and Entry into Israel Law (Temporary Provision) 5763-2003, § 3(2).

<sup>49</sup> See discussion, *infra*.

<sup>50</sup> CIA World Fact Book, at <http://www.cia.gov/cia/publications/factbook/geos/we.html#Econ>.

<sup>51</sup> *Id.*

<sup>52</sup> Gershon Gorenberg, *The Collaborator*, N.Y. TIMES, Aug. 18, 2002, at sec. 6, p. 34.



## B. Denial of Familial Relations

### 1. “It Is Destroying a Family”

¶30 The Citizenship and Entry into Israel Law has devastated family life for those without cards. For example, consider Mohammed Omar, who is a Palestinian from Ramallah on the West Bank. His wife, Rula, is from East Jerusalem, and they are separated by only eight miles. Yet what should be a simple ride to visit his wife, his three-year-old boy and his baby daughter takes more than half a day. Without a blue card, Omar must make a fourteen-hour trek through the violent countryside—dodging Israeli army patrols and checkpoints. He describes his journey:

To get to Jerusalem, I set out from al-Amari at 8 a.m. It’s about a twenty-minute drive from here. But instead of heading south towards Jerusalem, I crossed to the northern side of Ramallah and walked through the hills and villages in a large circle. I went through Beduin encampments, behind Israeli settlements and reached Hizme, east of Jerusalem, where I came face to face with an Israeli tank. I laid low until the evening and came through the Shuafat refugee camp after the Israelis had left a checkpoint they have there during the day. I arrived at about 10 p.m.<sup>53</sup>

While the couple has a home in a refugee camp in Ramallah, Rula cannot live there without forfeiting her right to live in or visit her mother’s house in Jerusalem.<sup>54</sup> With the ban on applications, Mohammed will not be able to live with his wife and children in Israel. “We don’t know what’s going on. All our attempts to find out what these new measures are have failed. I applied to the Ministry of the Interior for permission to join my wife. It’s been nearly a year, and so far I’ve heard nothing,” Mohammed says.<sup>55</sup>

¶31 Weeks will pass between Mohammed’s visits. “The situation is having a terrible effect on my relationship with my wife and children. I’m always unhappy and I’ve become very nervous. Rula is frightened every time I leave,” he says.<sup>56</sup> His situation is not unique.

¶32 West Bank resident Bassam Mahedawi lives a mere two miles from his wife, Salamah, who is an Israeli citizen. She lives with the couple’s two young sons across the Green Line that separates the West Bank from Israel.<sup>57</sup> Although the couple has been

<sup>53</sup> Matthew Kalman, ‘Why Isn’t My Baba at Home?’, TIMES (London), Sept. 2, 2002, at Features, p. 8.

<sup>54</sup> Following Israel’s annexation of Jerusalem, Palestinians living in the city were classified as permanent residents—not as Israeli citizens. A decade ago, the Israeli Interior Ministry implemented the “center of life” policy, which allows for the revocation of a Palestinian Jerusalemite’s residency status if the interior minister determines that the individual’s “center of life” has moved beyond Israel’s borders. Consequently, Palestinian families awaiting reunification approval face the choice of either living separately or the Israeli Arab spouse may leave Jerusalem to join his or her spouse. If the spouse chooses to leave, the family will lose its Jerusalem residency rights under the “center of life” policy. Source: Ardi Imseis, “Facts on the Ground: An Examination of Israeli Municipal Policy in East Jerusalem,” 15 AM. U. INT’L L. REV. 1039 (2000).

<sup>55</sup> Kalman, *supra* note 53.

<sup>56</sup> *Id.*

<sup>57</sup> The Green Line is the border established in 1948 between Israel and the West Bank. The demarcation existed before Israel conquered the West Bank in 1967. Source: Matt Rees, *Walling Off the Peace*, TIME, Dec. 22, 2003, at 37.

married since 1998, they have spent only a few weeks together. Mahedawi used to travel to Israel to visit his wife and children, but after he was arrested for being in Israel without a permit, the couple decided that Sala mah would travel to the West Bank for their visits.<sup>58</sup>

¶33 Now, she and her sons, both under three years old, travel unpaved dirt roads to visit Mahewadi—a tedious trek that they can only undertake once every month and a half. “I want to be with him,” Salamah says. “I got married so I wouldn’t be alone.”<sup>59</sup> Like Rula, Salamah could forfeit her Israeli citizenship to join her husband. But the sacrifice appears too great. Explains Mahedawi, “It’s really difficult for someone who lives in heaven to come to and live in hell.”<sup>60</sup>

¶34 Ibrahim Hawari also sees himself as a victim of the new law, which blocks his wife from obtaining Israeli citizenship. Married since 1998 to a woman from the West Bank city of Nablus, he now fears that his pregnant wife may be expelled.<sup>61</sup> The couple applied for “family reunification” after their wedding, and the process seemed to be moving along—until Israel froze all applications.

¶35 While the law does not rescind citizenship that has already been granted, the law impacts couples who have been living together in Israel while awaiting reunification approval. Interior Minister Avraham Poraz acknowledges that there are thousands of these cases. “According to the law, they must go back to the West Bank,” Poraz says.<sup>62</sup>

¶36 The Israeli government claims that there is little point in deporting Palestinians who lack identification cards, since the wall that will separate Israel from the West Bank remains under construction. Also, Poraz has stated that “there is no intention at the moment of entering Arab villages to check every person and to carry out mass expulsions.”<sup>63</sup>

¶37 But this provides little consolation to families who hope for reunification. Note the language used by the interior minister as he emphasizes the *current* plan. By implication, the law allows for future mass expulsions. “This is a law that separates husband and wife, and wife and children. It is destroying a family that lives peacefully and believes in coexistence,” Hawari says.<sup>64</sup>

¶38 In one highly publicized case, the law has been used to prevent the reunification of a Palestinian father with his son, who is serving in the Israeli army. Muhammad Hussein is the result of a rare union between a Jewish Israeli woman and a Palestinian man. Stella Peretz and Adel Hussein raised their son as a Muslim in the West Bank until he was a teenager, when, despite his father’s warnings to remain apolitical, he came home dressed in the Palestinian uniform. To prevent the region’s violence from devouring his son, Adel sent his wife and sixteen-year-old son to Israel, where Muhammad would be raised Jewish. As Adel told the *New York Times*, “I saw my son deteriorating. I have only one son. I have nothing else.”<sup>65</sup>

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<sup>58</sup> Davan Maharaj, *Israeli Ruling Puts a Freeze on Family Ties*, L.A. TIMES, May 24, 2002, at 3.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Lynfield, *supra* note 5.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> James Bennett, *Between Two Homes and Two Peoples, a Soldier Wanders*, N.Y. TIMES, Nov. 9, 2003, at A1.

¶39 Adel planned to remain behind in Nur Shams and regularly visit his son, who eventually reached military age and began his mandatory service in the Israeli army. But when Palestinian officials demanded that he bring Muhammad back and after his house was partly burned, he fled to Israel, where he lived like a fugitive passing as an Israeli Arab. He tried unsuccessfully for years to get permission to live legally in Israel. The Interior Ministry, citing the amended Nationality and Entry into Israel Law and ignoring his background, summarily rejected his recent attempt at getting citizenship.

¶40 On January 23, 2004, Adel Hussein was caught by an Israeli policeman, transferred to Israeli soldiers, driven past a checkpoint and left in the West Bank.<sup>66</sup> After calls to Mohammad and to the media, the son was able to retrieve Adel from the deserted stretch of West Bank road and escort him back into Israel. Two days after Adel Hussein's expulsion and prompt return across the border, Israel's high court suspended for thirty days the state's efforts to expel him.<sup>67</sup> No action will be taken against him until a hearing on granting him the right to remain in Israel. No date for the hearing has been set.<sup>68</sup>

## 2. Cultural Ties

¶41 The effect on families may be particularly severe, considering the long-standing cultural, familial and social ties between Israeli Arabs and Palestinians in Gaza and the West Bank. Social networks transcend the borders between Israel and the territories, and Israeli Arabs frequently marry individuals from the territories. Inter-marriage is common among extended Palestinian families with branches in both Israel and the territories.<sup>69</sup> Since 1994, tens of thousands of Israeli Arabs have applied for reunification with a spouse from the territories.<sup>70</sup> In that same period, the Israeli government has granted citizenship to 12,000 Palestinians from the West Bank, Gaza Strip and Jordan who have married Israelis—adding 100,000 to the Israeli Arab population.<sup>71</sup> In a region where each person is defined by his or her ethnic identity and religion, great emphasis is placed on preservation of culture; cross-cultural unions are rare. As a result, Israeli Arabs bear the brunt of the law, as, overwhelmingly, they are the ones who marry Palestinians from the occupied territories.

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<sup>66</sup> James Bennett, *At a West Bank Checkpoint, a Soldier's Duty Is to His Father, Too*, N.Y. TIMES, Jan. 24, 2004, at A6.

<sup>67</sup> James Bennett, *Israeli High Court Suspends Expulsion of Soldier's Palestinian Father*, N.Y. TIMES, Jan. 26, 2004, at A8.

<sup>68</sup> *Id.*

<sup>69</sup> Laura King, *New Law Aims to Keep Out Palestinian Spouses of Israelis*, L.A. TIMES, Aug. 1, 2003, at 3.

<sup>70</sup> Population Administration Director Herzl Gedz has stated that from 1993 to 2002, 22,400 applications were filed to grant a status to residents of the West Bank and Gaza Strip. This number likely does not reflect the actual number of those who sought applications to join spouses or parents in Israel. For several months in 2002, Population Administration officials did not accept applications in accordance with instructions from former Interior Minister Eli Yishai. Also, prohibitive bureaucracy and red tape delay the application process. MK Wasel Taha recounted the story of a woman who tried to register her newborn son: "There is the case of a mother who was waiting in line and did not succeed to enter the office. She went home. For fifty days, she has been trying to register her son and has not yet been successful."

Source: Adalah, *Petition for an order nisi and temporary injunction*, Israel Supreme Court, H.C. 7052/03.

<sup>71</sup> Izenberg, *supra* note 21.

## C. *Discrimination Under the Citizenship and Entry Into Israel Law*

### 1. Overbroad Prohibition

¶42 The claim that the law serves to prevent terrorist attacks lacks merit. Under the former system, the naturalization process for couples lasted four-and-a-half years.<sup>72</sup> Couples were scrutinized for authenticity of the union as well as for any potential security issues.<sup>73</sup> The previous system effectively weeded out most security risks, as the overwhelming majority of suicide bombers do not gain access to Israel through the naturalization process. Note that attacks by suicide bombers continue at an escalating pace despite the new provision—making the blanket prohibition overbroad. Knesset Speaker Ruby Rivlin questioned why the law had to be so sweeping. He expressed opposition to the law, observing that it makes a “person guilty until proven innocent.”<sup>74</sup>

¶43 That only twenty potential violations have been attempted by Israeli Arabs with identification cards presents a minuscule fraction of Israel’s potential risks. Furthermore, the potential violations cited by the interior minister were classified as suspected and actual violations<sup>75</sup>—meaning that perhaps only as few as one Israeli Arab actually attempted to breach the Israeli border with terrorist intent. The crackdown on a population of thousands proves grossly disproportionate with the actual violations.

¶44 Those who defend the law stress that Israel is at war, and, as one Israeli columnist noted, “there is nothing racist in refusing enemy nationals to move to one’s country in time of war; that is standard practice worldwide.”<sup>76</sup> The Israeli-Palestinian conflict, however, must be distinguished from other global conflicts since most “enemy nationals” did not formerly live on the land possessed by the nation denying their immigration. The columnist also noted that

Even the suspicion with which both official Israel and ordinary Israelis often regard the country’s Arab citizens is not racist: When an overwhelming majority of Israeli Arabs consistently vote for Knesset members who openly advocate violence against the state and its citizens, it is not hard to conclude that most of the Arab public supports these views, and therefore a measure of suspicion is justified.<sup>77</sup>

Yet that suspicion *is* racist: It attributes a characteristic to an entire population based on the actions of part of the population. Also, supporting a political goal is not the same as adopting the methods to achieve that goal. Under that rationale, all Palestinians who support an independent state are suspected bombers.

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<sup>72</sup> *Id.*

<sup>73</sup> MK Yuri Stern (National Union) stated that checks under the previous system revealed that in many cases there were “no signs of security risks.” Source: *Knesset Passes Law Denying Citizenship to Palestinians Marrying Israelis*, JERUSALEM POST, July 31, 2003.

<sup>74</sup> Gilbert, *supra* note 32.

<sup>75</sup> Izenberg, *supra* note 7.

<sup>76</sup> Evelyn Gordon, *Not Only Racist, But Stupid Too*, JERUSALEM POST, Feb. 3, 2004, at 13.

<sup>77</sup> *Id.*

## 2. Discriminatory Intent

¶45 The true aim of the law is to reduce the number of Palestinians living in Israel. Arabs make up approximately one million of Israel's overall population of six million,<sup>78</sup> and many Israelis fear that a mass Arab immigration could vote the Jewish state out of existence. Over the last few decades, scores of policies have been put in place to remove Palestinians from Israel,<sup>79</sup> and the ban on reunification continues that trend. Indeed, comments by some Israeli officials suggest that the ban is intended to serve as a one-way ticket out of Israel for some Arabs. For example, in attempting to prevent the ban, Arab groups presented to the Knesset Interior Committee an Israeli Arab woman whose husband lives near Jenin and has not been allowed in Israel since 1996. In response to the woman's pleas, Minister-without-Portfolio Gideon Ezra told her to "go be with her husband"<sup>80</sup>—in effect telling her and other Palestinians that they are no longer welcome in Israel. She responded that she "loves her country and wants to live in it."<sup>81</sup> Her powerful retort acknowledges the implication in the minister's comments; he intends for her to leave.

¶46 Because the democratic country remains defined by the numbers, the Jewish population—and Jewish politicians in particular—has a vested interest in retaining its majority. Former Interior Minister Eli Yishai, who pushed for the ban on family reunification, said he wanted to keep Israeli Arabs and other non-Jews out of Israel because their rising numbers threaten the state's Jewish character.<sup>82</sup>

¶47 Echoing that sentiment, cabinet minister Gideon Ezra told the Knesset, "None of us, including the Arab MKs, wants Israel to stop being a Jewish state . . . The state of Israel does not intend, and the government of Israel certainly does not intend, to permit a creeping right of return."<sup>83</sup> This thread unites members of Israel's right-wing parties and groups. For example, Tel Aviv lawyer Haim Misgav, a leader in Professors for a Strong Israel, acknowledged that the demographic threat posed to Israel's Jewish nature by the naturalization of Palestinians provided the true impetus for the law. "We are entitled to defend the Jewish character of this country," says Misgav.<sup>84</sup>

¶48 While the Jewish character of the state may have been established in Israel's Declaration of Independence, the concerns about stemming the tide of Palestinian immigrants to preserve that character are premature and misplaced. The outright ban on family reunification seems disproportionate with the few thousand who have immigrated in the past decade. Although the numbers of Palestinian immigrants have been on the rise since the Oslo Peace Accords, Jewish persons still outnumber Arab persons in the state by five to one.

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<sup>78</sup> Kalman, *supra* note 53.

<sup>79</sup> *See gen.* "Greater Jerusalem Plan" (municipal boundaries of Jerusalem expanded to include ten percent of the land area of the West Bank), "Town Planning Scheme" (economic and bureaucratic obstacle to Palestinians: only thirteen development permits approved for Palestinian neighborhoods in twenty-one years), "Green Area" zoning designation (Israeli authorities may zone any unexpropriated tract of Palestinian land as a "green area," restricting it to agricultural use). Source: Imseis, *supra* note 54.

<sup>80</sup> Gilbert, *supra* note 28.

<sup>81</sup> *Id.*

<sup>82</sup> Maharaj, *supra* note 58.

<sup>83</sup> Ina Friedman, Three Groups Urge Supreme Court to Strike Down Citizenship Law, JERUSALEM REP., Sept. 8, 2003, at 6.

<sup>84</sup> *Id.*

¶49 Also, the immigration of Palestinians is not the true threat to Israel's Jewish character. Instead, Israel is putting itself at risk by pursuing conflicting policies: While passing measures to push Israeli Arabs out of Israel proper, the state continues to construct a wall through the West Bank, encompassing settlements and carving out land that Palestinians hope to claim as part of a future independent nation. Many Palestinians say that the barrier is little more than an attempt to preempt the borders of their promised state.<sup>85</sup> This effectively precludes a two-state solution, as Palestinians would not accept the paltry remainder of the West Bank land not swallowed by Israel.

¶50 Acknowledging that the current occupation cannot continue indefinitely, the remaining option is for one unified state. This would leave Israeli Jews and Israeli Arabs coexisting in a state bordered on the east by the Mediterranean Sea on the west by Jordan. With the development of one state and the accompanying rise in the Palestinian population, the voting demographic would be wholly altered, thus wiping out the Jewish character of Israel. A prudent lawmaker ought to prevent a legacy of legal discrimination, as those who are oppressed today may someday use an equal vote to their own advantage.

### 3. Discriminatory Effect

¶51 As the measure moved through the Knesset, members expressed concerns about the law's discriminatory effect. MK Ahmed Tibi (Arab Movement for Change) called the law "inhumane" because it bans marriage between Palestinians and Israelis.<sup>86</sup> He noted that he would not have been able to get citizenship for his wife if the law had been passed when he got married.<sup>87</sup> Another MK, Yossi Sarid (Meretz) warned that the law is "un-Jewish" and risks a wave of international protest.<sup>88</sup> As Israeli lawmaker and rabbi Michael Melchior posited, "Do you know what this looks like to the rest of the world? We are saying that everyone, even a young child, is a potential terrorist. . . . We must create a different mode of coexistence."<sup>89</sup>

¶52 The law has been soundly criticized from human rights groups both in Israel and internationally. B'Tselem, a human rights organization based in Israel, has called the legislation "racist," and says the government is "using the cynical excuse of security considerations" to discriminate.<sup>90</sup> Yael Stein, a B'Tselem spokesman, stated, "This is a racist law that decides who can live here according to racist criteria."<sup>91</sup> Human Rights Watch also has weighed in. Stated Hanny Megally, executive director of the Middle East and North Africa Division of Human Rights Watch, "This bill blatantly discriminates against Israelis of Palestinian origin and their Palestinian spouses."<sup>92</sup> Adds Amnesty International, "A law permitting such blatant racial discrimination, on grounds

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<sup>85</sup> Israel's Security Fence To Annex Six Percent of West Bank, A GENCE FRANCE PRESSE, Jan. 4, 2004.

<sup>86</sup> Gilbert, *supra* note 32.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* Note, the wave of international protest has not yet swelled, *see infra*.

<sup>89</sup> King, *supra* note 69.

<sup>90</sup> Gilbert, *supra* note 32.

<sup>91</sup> Huggler, *supra* note 31.

<sup>92</sup> Press Release, Human Rights Watch, *Israel: Don't Outlaw Family Life* (July 28, 2003) at <http://www.hrw.org/press/2003/07/israel072803.htm>.

of ethnicity or nationality, would clearly violate international human rights law and treaties which Israel has ratified and pledged to uphold.”<sup>93</sup>

¶53 The law casts a collective suspicion over the entire population of Arabs living in Israel and prevents Israeli Arabs from exercising their basic human right of freedom to choose a spouse. That this specific group is targeted also is made clear by the fact that the law offers complete freedom to Israelis who wish to marry a spouse of any other national origin: the general policy of gradual naturalization for all other “foreign spouses” of Israeli citizens remains unchanged.

¶54 Ironically, the security that Israel seeks may be put off by passing such a discriminatory law, which plants yet another seed of resentment in the Palestinian community. Palestinian children who find themselves deprived of a parent because of the law will be steeped in anger against Israel. For example, Rula’s son, Ali, asks “Where’s Baba? Why isn’t he home? Take us to Baba.” Rula notes that when she and Ali get detained at a checkpoint, the boy says “Why don’t I take a bomb, Mummy, and go and blow myself up and kill the soldiers?”<sup>94</sup> This is precisely the sort of mentality that Israel should seek to prevent. But a generation raised in a climate of violence and under a cloud of discrimination will yield only more suicide bombers.

#### IV. CONTRAVENTION OF AUTHORITY

##### A. *Violation of Israeli Law*

¶55 Unlike most democracies, the state of Israel lacks a constitution. Instead, the Knesset enacts Basic Laws on various subjects, from The Army to The Judiciary. In 1992, lawmakers passed the Basic Law: Human Dignity and Liberty, which recognizes that “all persons have the right to privacy and to intimacy.”<sup>95</sup> Marriage represents the core of intimate relationships, and any restriction on marriage thus contravenes the Basic Law. Because the Citizenship and Entry into Israel Law unduly prohibits Israeli Arab marriages by forcing those affected to choose either their home or their spouse, the measure violates the Basic Law.

¶56 When a basic law and a subsequently passed ordinary law contradict one another, the basic law should prevail—just as the U.S. Constitution trumps federal law. Although the Knesset has not yet legislated the issue (amendments to the Basic Law: Legislation are pending), the High Court of Justice has asserted judicial supremacy in recent years. In 1997, the Court struck down several provisions in the law for regulating investment consulting as violations of the Basic Law: Freedom of Occupation. In 1999, the Court declared null and void article 237a(a) of the Military Judgment Law as a violation of the Basic Law: Human Dignity and Liberty.<sup>96</sup> Thus, the Court has demonstrated the power to strike down laws that conflict with the Basic Law, and the

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<sup>93</sup> Press Release, Amnesty International (July 28, 2003) at <http://web.amnesty.org/library/print/ENGMDE150662003>.

<sup>94</sup> Kalman, *supra* note 53.

<sup>95</sup> Israel Basic Law: Human Dignity and Liberty, § 7(a). English translation at [http://www.knesset.gov.il/laws/special/eng/basic3\\_eng.htm](http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm).

<sup>96</sup> Knesset, *Basic Laws—Introduction*, available at [http://www.knesset.gov.il/description/eng/eng\\_mimshal\\_yesod.htm](http://www.knesset.gov.il/description/eng/eng_mimshal_yesod.htm)

justices ought to assert that power here to strike down the Citizenship and Entry into Israel Law.

### B. *International Human Rights Treaties*

¶57 The citizenship law also breaches Israel's duty under several international treaties to which the state is a signatory. Under Article 17 of the International Covenant on Civil and Political Rights (ICCPR):

3). No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

4.) Everyone has the right to the protection of the law against such interference or attacks.<sup>97</sup>

¶58 A marriage is the core foundation of a family and is universally recognized as a basic human right.<sup>98</sup> By hindering a select group of marriages, Israel is interfering with the fundamental right to choose one's spouse in violation of the ICCPR, which prohibits arbitrary interference with the family. The blanket prohibition on Palestinian reunification arbitrarily and subjectively excludes an entire group of people for the actions of a few based on the belief that *all* Palestinians are potential terrorists.

¶59 Israel may respond that Israeli Arabs are still free to choose any spouse: An Israeli-Arab may marry a Palestinian; the state does not prevent such a union. Yet under the Israeli policy, that marriage would result in either forcing the Israeli Arab spouse to leave his or her home or to live apart from his or her partner. This is not freedom to choose a spouse or start a family.

¶60 In its petition to the High Court, Arab rights group Adalah observed:

Simply put, we are dealing with human beings. Men and women will continue to fall in love, dream together, commune with each other, become engaged, marry, and build a family. The [I]aw will cause much suffering and will embitter their lives. . . . It will present the couple with harsh alternatives on a daily basis regarding their lives and the intimacy between them. The [I]aw will control their private sphere.

¶61 Also, ICCPR Article 23 states:

1.) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

<sup>97</sup> ICCPR, *supra* note 11.

<sup>98</sup> The United States Supreme Court has weighed in on this issue: "The freedom to marry has long been recognized as one of the vital person rights essential to the orderly pursuit of happiness by free men. Marriage is one of the 'basic civil rights of man,' fundamental to our very existence and survival." *Loving v. Virginia*, 388 U.S. 1, 12 (1967).



2) The right of men and women of marriageable age to marry and to found a family shall be recognized. . . .<sup>99</sup>

¶62 Here, Israel holds a duty to protect the family—not to keep husbands from living with wives, children from living with parents. Prior to the enactment of the Citizenship and Entry into Israel law, the reunification process already displayed enough flaws. Families waded through mountains of red tape and waited for years to attain legal status. Now, Arabs living on opposite sides of the Israeli border cannot create or solidify a family unit.

¶63 Also, Article 26 states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>100</sup>

¶64 Such a civil rights scheme should be standard in a developed democracy such as Israel. But the state falls short of its obligations under Article 26. Israel impugns the entire Israeli Arab population by assuming that a Palestinian with freedom of movement would present a security risk. Notably, the law provides an explicit exception to Jewish Israeli settlers living in the West Bank; each settler remains free to choose a spouse of any origin. Such race-based distinctions made under the color of law present a violation of equal protection.

¶65 The law also raises serious concerns under the International Convention on the Elimination for All Forms of Racial Discrimination (ICERD).<sup>101</sup> Signatories of the ICERD promise to “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.”<sup>102</sup> Such equality guarantees civil rights, including “the right to marriage and choice of spouse.”<sup>103</sup> By excluding the entire population of Palestinians from the West Bank and Gaza, Israel violates its obligation to each of its citizens to choose his or her spouse. ICERD and the other international treaties should not be brushed aside with an exaggerated security risk.

¶66 The law also violates the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 2 of the ICESCR provides that:

The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion,

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<sup>99</sup> ICCPR, *supra* note 12.

<sup>100</sup> ICCPR, *supra* note 13.

<sup>101</sup> Israel has been a party to the ICERD since 1979.

<sup>102</sup> ICERD, *supra* note 15.

<sup>103</sup> *Id.*

political or other opinion, national or social origin, property, birth or other status.<sup>104</sup>

¶67 The law fails to meet the obligations to the family under the ICESCR. Article 10 requires that the “widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society.”<sup>105</sup> By keeping a West Bank parent separated from his or her child in Israel, the law tears at the family cloth for no other reason than the place of birth—a distinction to which the law of a free society should be blind.

¶68 Similarly, the United Nations Committee on Economic, Social and Cultural Rights remains troubled by Israel’s actions. “The Committee is also concerned about the practice of restrictive family reunification with regards to Palestinians, which has been adopted for reasons of national security.”<sup>106</sup>

¶69 All of these provisions emphasize that states shall not impose discrimination based on national origin. Yet, by burdening only Israeli Arabs and singling out those from the West Bank and Gaza, the citizenship law contravenes multiple international covenants.

### C. *International Reaction*

¶70 Although the international organizations command a broad audience and have extensive publicity and lobbying campaigns, their influence on this issue may be limited.

¶71 First, criticism of Israel’s human rights violations spurs few into action. One possible reason for this lack of outrage may be the fear of being accused of anti-Semitism. There persists a general reluctance to criticize the state of Israel. Yet, criticizing a state’s policies should not be equated with impugning a religion. For example, if the law had been passed by any other sovereign nation—one not defined by its religious character—the law could be criticized on a political level, with no mention of religion. But with Israel, criticism of the state’s security actions is instantly equated with a desire to see the state succumb to attacks from its Arab neighbors, wiping out the Jewish homeland. This unenlightened conclusion, often aimed at those who criticize Israel, has grown stale.

¶72 Second, any international consternation is likely to be brushed off by the United States, which tends to give the Israeli government carte blanche to handle the security situation as leaders see fit.<sup>107</sup> U.S. politicians have little incentive to criticize

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<sup>104</sup> International Covenant on Economic, Social and Cultural Rights, Art. 2, at [http://www.unhcr.ch/html/menu3/b/a\\_ceschr.htm](http://www.unhcr.ch/html/menu3/b/a_ceschr.htm).

<sup>105</sup> *Id.*, Art. 10.

<sup>106</sup> Adalah petition, at 24.

<sup>107</sup> Tellingly, a vast majority of Israelis give a strong vote of confidence to President Bush, who has done little to curtail the security efforts undertaken by Israeli Prime Minister Ariel Sharon. Eighty-three percent of Israelis express at least some confidence in his ability to handle world affairs, and 51% voice *a lot of* confidence in him, according to the Pew Research Center. This voicing of approval is stronger in Israel than in any other country surveyed, including the United States, where seventy-eight percent of Americans express a lot or some confidence in his ability to do the right thing regarding world affairs. Source: The Pew Research Center for the People and the Press, *Views of a Changing World* (June 2003), available at <http://people-press.org/reports/pdf/185.pdf>.

Israeli leaders for two main reasons. First, the American public pays scant attention to the situation in Israel and the occupied territories. The mainstream news media contributes little to the discussion by presenting a limited picture of the conflict. Indeed, a search of U.S. newspapers for the Citizenship and Entry into Israel Law after the law was passed revealed four articles: two in the *L.A. Times*, one in the *Christian Science Monitor*, and an op-ed in a Newark newspaper criticizing the law. Such limited coverage will not spur public outrage. The other factor that encourages U.S. leaders to ignore Israel's actions remains the powerful lobbying groups that promote Israeli interests in Congress. Criticism is unlikely as political coffers swell.

## V. U.S. INTERESTS

¶73 Over the past thirty years, U.S. administrations have given billions in aid to Israel, which the United States considers a valuable ally in the region. Although a tightening of the purse strings by the United States could carry great sway with Israel and induce a change in policy, such action is unlikely as the United States continues to court its Mid East ally.

¶74 But, in the wake of 9/11, the U.S. administration and U.S. legislators should rethink this policy. Gone are the days when a visible enemy could be fought on a traditional battlefield; the battles now are for hearts and minds as domestic security depends on prevention of terrorism. This means that the United States has a vested interest in cultivating good will all across the Middle East, not just in Israel. After all, the same culture that breeds suicide bombers in Israel stews with resentment for the world power that backs its oppressor. A June 2003 study conducted in the Middle East by the Pew Research Center for the People and the Press found that although attitudes towards the United States are generally hostile, only one percent of those in Jordan and the Palestinian Authority have a positive image of the country.<sup>108</sup>

Middle Eastern anti-Americanism stems largely from a deep ambivalence towards U.S. foreign policy. . . . Particular concerns in the region stem from the U.S. relationship with Israel . . . and perceptions that Washington will always side with Israel on regional issues.<sup>109</sup>

¶75 In a vacuum created by the demise of Arab nationalism, Islamic extremists fan the flames of resentment against U.S. policies in the region and U.S. support of Israel. By not taking an active role reining in Israel's discriminatory policies, U.S. lawmakers fail to seize an opportunity to reinforce domestic security.

## VI. CONCLUSION

¶76 Israel's High Court of Justice should strike down the Citizenship and Entry into Israel Law as a violation of its Basic Law and a contravention of several international human rights treaties. The law discriminates on the basis of birth and

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<sup>108</sup> More than eighty-five percent of Palestinians say they feel very unfavorably toward the United States, far more than any other group surveyed by the Pew Research Center. Source: *Id.*

<sup>109</sup> Oxford Analytica Daily Brief, July 23, 2003, at <http://www.oxweb.com>.

nationality, and the measure increases the hardships faced by Palestinians. While Israel's security concerns cannot be underestimated or minimized, security provides a weak excuse for this law, which, at its heart, aims to undermine the population of Arabs in Israel. Furthermore, the measure stokes anti-Israeli sentiment among Arabs across the region. Such resentment will only increase Israel's present and future security risk. In this era of global interconnectedness, such a risk may have a domino effect as the United States' ties to and backing of Israeli policy foment even more resentment by an oppressed people.