

Date: October 23, 2006

To:
The Honourable Amir Peretz
Minister of Defense



Honourable Minister:

Re: **The Right to Family Life in the Territories – Criteria for Family Unification and Visitor Permits**

1. We request your intervention in a policy which cruelly impairs family life for ordinary civilians in the Territories.
2. Finding a spouse, sharing a life with him or her, having children – these are some of the experiences which shape people's lives and through which they are fulfilled. For many, the family home is a source of support, comfort, continuity and solidarity. The family has often been described as the basic unit of human society.
3. At war, as in peace, people marry and have children. This need is an insurmountable driving force. The issue of couples and their children sharing their lives is clearly a civilian one. The right to family life is a basic right. It is not a political or security issue. It is a human issue in every sense.
4. For the civilian population in the Territories, the right to family life has been trampled under foot. Opposed to all military, legal and political logic, Israel has formulated **a policy which takes a cruel toll on a population which is most clearly civilian. Women, children and infants are those who pay the price.** This price takes the form of damage to the well being of children, the destruction of the social fabric and the obstruction of the path of family life as an avenue for leading non-violent productive lives.
5. This appeal concerns the right of residents of the Territories to maintain family life there in cases where their spouse does not hold residency status in the Territories. Israel is preventing this by refusing to issue visitor permits to non-resident spouses and by refusing to approve family unification.

The Arrangements up to 2000 and the Current Freeze

6. Until 2000 arrangements were in place designed to address the right of the residents to family life.

The Oslo Accords established arrangements for granting residency in the Territories. One criterion includes spouses and children of residents of the Territories. In addition, the two sides established a commitment to grant residency to other persons in order to promote and upgrade family unification. These agreements were incorporated into Israeli military legislation.

At the end of the 1990's, tens of thousands of visitors entered the Territories each year with visitor's permits. Others entered with visas issued by the Ministry of the Interior. At the same time, following petitions to the High Court of Justice, the State undertook to grant residency status to spouses of residents of the Territories who were married between 1990 and 1992, as long as the foreign spouse visited the Territories during this time. Another group is eligible for long term visitor's permits. The State also pledged to the Court, to establish annual residency quotas (2,000 families per year initially, then rising to 4,000).

These arrangements did not fully secure the family rights of the residents, yet they were a step in the right direction.

7. With the onset of the intifada, Israel froze the matter altogether. The policy implemented was to refrain from processing all applications for visitor's permits or family unification with the exception of:
 - a) Visitor's permits for children of residents, under 16 years of age, in order to fulfill their right to be registered and receive an identity number.
 - b) "Exceptional humanitarian cases". This is a very narrow category. The division of families and the separation of children from one of their parents is not considered a humanitarian problem which falls under this category.
8. For six years few visitor permits were issued, mostly after legal steps were taken, or following diplomatic intervention. The number of permits issued was a fraction of those of previous years.

The Legal Aspect: Illegal Policy

9. In H CJ 7052/03, Adalah v. Minister of the Interior, eight Supreme Court Justices ruled that a person's right for a shared life with his or her spouse in his or her original place of residency is a substantial part of the right to family life and human dignity. Thus, Justice Levy notes that the temporary order, the subject of the petition, violates "**a person's right to family life, which contains two secondary rights without which it seems to lack substance – the basic right of a person to marry whomever he chooses in accordance with his wishes and worldview, and his and his family's right to be given leave to conduct their lives together, including in terms of the geographic location of the family unit, which they have chosen for themselves.**"
10. Israeli and international law, as well as the laws of occupation require respecting the family life of the residents.

11. The freeze on the processing of visitor's permits and family unification applications for over six years has torn apart the fabric of normal life, which Israel, as the occupying power, is entrusted with protecting.
12. The policy is illegal also in that it is indiscriminate.
13. In the above mentioned case of Adalah, a majority of Justices decided to refrain from intervening in a law that limited family unification. This was a result of the restraint shown vis-à-vis Knesset legislation, the temporary nature of the prohibition, the exceptions to it and its purpose, which was described as preventing terrorist attacks and saving human lives. However, in the matter before us now, there is no security purpose.

The very same individuals who are barred from entering the Territories to reunite with their spouses, would be allowed to enter Israel itself, and receive citizenship, were they married to Israeli citizens. Is it possible that there is a greater risk in a Jordanian woman entering the Territories, from which Israel is in the process of disengaging, than in her entering Israel itself?

14. The purpose of this policy may be one of two.

The first is demographic-racist. While Israel continues to send Israeli citizens into the settlements, it pushes the local protected residents to emigrate. They must choose between living in their country or living with their families. They can register their children in the population registry (so that the number of registered residents does not decrease), but only abroad can they raise them together with their spouses.

Beyond the clear impropriety of such a purpose, it is baffling in view of the intention to disengage from the Territories. Why should Israel be concerned with the number of Palestinians living in Ramallah or Nablus?

The second purpose is collective punishment. The isolation of the Territories from the rest of the world caused by ceasing to issue visitor's permits is a factor in the humanitarian crisis therein. Is it possible to fathom a modern locality with all its border crossings closed to visitors? The destruction of families is a direct blow to the civilian population. It is intended to disrupt life and create suffering and despair. Civilians are inappropriately held hostage as a means of putting pressure on Palestinian organizations and authorities.

15. **Legally, it is a wholly inappropriate policy.**

Politically, it is an unintelligent policy.

Changing this policy would constitute an immediate, tangible improvement in the daily lives of ordinary Palestinians – with no security, economic or public image drawbacks for Israel.

16. **We request you order the military to urgently implement a policy according to which a conjugal relationship is a satisfactory criterion for**

family unification and visitor permits, subject (only) to a determination that the foreign spouse does not pose a security risk. A determination to the contrary must be based on a probable high degree of danger posed by the foreign spouse - and him or her alone.

17. We would be grateful for your speedy response, as we are considering taking further action in the legal realm.

Respectfully,

Yossi Wolfson, Advocate

CC:

Adv. Menachem Mazuz, Attorney General

Adv. Osnat Mendel, Director, High Court of Justice Department, State Attorney's Office

Major General Yosef Mishlav, Coordinator of Government Activities in the Territories

Colonel Pnina Sharvit Baruch, Head of International Law Division, Military Advocate General's Office

Colonel Yair Lotstein, Military Legal Advisor for the West Bank

Lieutenant Colonel David Binyamin, Head of Civilian and International Branch, International Law Division, Military Advocate General's Office

Brigadier General Kamil Abu Rokon, Head of the Civil Administration