



NORWEGIAN  
REFUGEE COUNCIL

## Legal Memo

### *Child Registration in the Occupied Palestinian Territories*

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#### OBJECTIVE:

This memo discusses Israel's changing policy towards child registration in the population registry of the occupied Palestinian territories (**oPt**).<sup>1</sup> It focuses on the differences between children born in the oPt and children born outside of the oPt and on the harsh implications of the policy changes implemented throughout the years.

#### Control of the Population Registry from the outset of the Occupation and until the Oslo Accords (1967- 1994)

Israel began occupying the West Bank and the Gaza Strip in June 1967. Following the occupation, the Israeli military authorities declared the oPt a "closed area" and obliged the Palestinian residents to obtain permits for any and every entry or leave of the oPt. Throughout August and September 1967, the Israeli military conducted a census of the population physically present at the time. This census became the basis for the Israeli registry of the Palestinian population. According to the Israeli calculations, the total population of the West Bank (including East Jerusalem) and the Gaza Strip was 954,898.<sup>2</sup> It is estimated that at least 270,000 Palestinians were not registered in the census for various reasons.<sup>3</sup> Non-registered Palestinians had to obtain temporary visitor permits in order to enter the oPt and could not permanently reside there, unless a first-degree Palestinian relative applies for "family unification" for them.

Following the census, Israel issued ID cards to those Palestinians whom it registered in the population registry and were over 16 years of age. Children under 16 were registered in their parents' IDs.

Resident status entitled its holders to reside in the oPt, work, move about within the oPt and take trips abroad—subject to different restrictions imposed by Israel (see NRC Fact Sheet: 'Travelling abroad from West Bank and the Gaza Strip').

Between 1967 and 1987, Israel permitted the registration of children under 16 of age in the oPt's population registry provided they were **born in** the oPt or **born abroad** and **one** of their parents was a resident of the oPt.

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<sup>1</sup> The term "occupied Palestinian territories" in this fact sheet refers to the West Bank and the Gaza Strip, which Israel occupied in 1967. The term does not relate to East Jerusalem since different rules applies to its residents.

<sup>2</sup> Joel Perlmán, The 1967 Census of the West Bank and Gaza Strip: A Digitized Version, Levy Economics Institute of Bard College.

<sup>3</sup> Human Rights Watch "Forget about him, He is not here -Israel's Control of Palestinian Residency in the West Bank and Gaza", February 2012.

In 1987, as a result of the outbreak of the first Palestinian intifada, the military commander issued an order dramatically changing the requirements for child registration. The order declared that children under 16 years old could register in the population registry based only on their mothers' registration status regardless of their fathers' registration status or their place of birth. Thus, a child **born in** the oPt to a father registered in the oPt's population registry could **not** be registered himself/herself if the child's mother was not an oPt resident. The order also denied children **born abroad** from registering after the age of five, regardless of either parent's residency status.<sup>4</sup>

**As a result of the new order, in many Palestinian families, the older children were residents but their younger siblings, born after 1987, were living in the oPt illegally.**

Eight years later, in January 1995, an order was issued **cancelling the restrictions**.<sup>5</sup> Nonetheless, the Civil Administration officials ignored the new order, refusing to register children who did not meet the harsh criteria set forth in the order issued in 1987. The order issued in 1995 included a new requirement: in order to register a child, it was not sufficient that at least one parent was registered as a resident of the oPt, he/she had to **prove that his/her permanent residence was in the oPt**. The order furthermore raised the relevant age of registration from 16 to 18. It was only a few months later that the situation changed with the signing of the Interim Agreement.

### The Oslo Period Prior until the Second Intifada (1995 -2000)

In 1993, Israeli and Palestinian representatives signed the first of the Oslo accord agreements. The Interim Agreement (commonly referred to as the second 'Oslo Accord'), was signed in 1995. Under the Interim Agreement, "the Palestinian side shall maintain and administer a population registry and issue certificates and documents of all types",<sup>6</sup> and "inform Israel of every change in its population registry".<sup>7</sup> The agreement granted the Palestinian side "the right to register in the population registry all persons who were **born abroad** or **in** the Gaza Strip and West Bank, if under the age of 16 years and if either of their parents is a resident of the Gaza Strip and West Bank".<sup>8</sup>

The Interim Agreement thus provided, in general, that Israel was to maintain a copy of the population registry, which it would update with information provided to it by the relevant Palestinian authorities, the latter holding the master document. The agreement did not require the Palestinian side to obtain Israel's authorization or consent prior to registration, nor did it grant Israel the right to impose conditions or restrictions on registration. In practice, however, the Israeli military authorities retained control of the population registry also after signing the Interim Agreement. Israel's version of the registry continued to function as the primary registry since Israeli soldiers manning checkpoints on the ground would act based on it.

It is noteworthy that the agreement refers only to registration of children under the age of 16. Hence, children **born in** the oPt who for some reason were **not** registered before they turned 16, regardless of their parents' registration status, can only use the family unification procedure (which, as will be explained later, has been frozen since 2000) to be registered in the population registry and obtain an

<sup>4</sup> Order Regarding Identity Cards and Population Registry (Judea and Samaria), No. 297, 1969, Section 11A, as amended by Order No. 1208, of September 13, 1987. A similar order was issued for the Gaza Strip.

<sup>5</sup> Order Regarding Identity Cards and Population Registry (Amendment No. 23) (Judea and Samaria) (Order No. 1421), 5755 – 1995.

<sup>6</sup> Interim Agreement, Annex III, Appendix I, Article 28 (2).

<sup>7</sup> *Ibid*, Article 28 (10) (a-b).

<sup>8</sup> *Ibid*, Article 28 (12).

ID. Israel considers these children to be ‘illegally present’ in the oPt, whether or not they have ever lived anywhere else and even if they have nowhere else to live abroad.<sup>9</sup>

It should also be noted that even though the 1995 order raised the age for registration from 16 to 18, this change was not implemented in the Interim Agreement. Hence, requests to register minors aged 16 to 18 were usually denied. In a petition to the High Court of Justice (HCJ) challenging the refusal to register children between the age of 16 and 18<sup>10</sup> the state responded in 1997 that the order was no longer valid, yet agreed to examine each case on its merits.

Israel implemented an additional policy change following the Interim Agreement: it registered Palestinian children under 16 of age who were **born abroad** to a registered parent. But this time, it added a new condition, that the child had to be **physically present** in the West Bank or the Gaza Strip at the time of application for residency. This condition was not included in the Interim Agreement and is therefore in violation of it.

### The Israeli Policy since the Outbreak of the Second Intifada (2000-present)

On September 29, 2000, Israel froze most changes to the population registry following the outbreak of the second intifada. This freeze still remains in effect. The only changes Israel regularly continues to process are requests to register children under 16 born to a Palestinian parent who was a registered resident and where the child is also **physically present** in the oPt at the time of application for residency.

Non-registered Palestinians who wish to enter the oPt must apply for visitor permits, including children over 5 years old. Yet, the same time Israel stopped processing requests related to the population registry in 2000, it also stopped issuing almost any oPt visitor permit to non-registered Palestinians. Since children under the age of 5 enter the oPt as accompanying dependants of their parents, they could enter the oPt and be **physically present** in the oPt at the time of application for residency. Children over 5 years old **born abroad**, however, could not obtain a visitor permit, hence, could not be **physically present** in the oPt at the time of application for residency. Thus, Israel’s freeze on visitor permits eliminated the ability of Palestinian children **born abroad** and over 5 years old to apply for registration as residents in the oPt.

Moreover, in December 2002, Israel stopped recognizing the registration of children aged 5 to 16 who were **born abroad** to oPt residents, even if they were in the oPt at the time of the registration application. In November 2003, Israel announced that it would once again approve registration of children who were **born abroad** provided that they were physically present in the oPt at the time of registration. However, since the freeze on visitor permit remains in effect and those children could not be physically present in the oPt at the time of application for residency, this announcement changed nothing.

Despite the freeze, Israel agreed to issue visitor permits for Palestinian children **born abroad** and allowed children who had turned 16 to enter the area and register on an individual basis. This change in practice was brought about only after each child filed a petition with the HCJ,<sup>11</sup> and **provided that the request was made before the child had turned 16**. However, Israel rejected demands for a formal change of policy which would enable all children in same situations to be registered.

<sup>9</sup> ‘Perpetual Limbo’ – a report by B’Tselem and Hamoked, 32. Available at:

[http://www.hamoked.org/Document.aspx?dID=222\\_update](http://www.hamoked.org/Document.aspx?dID=222_update) (last accessed: October 26, 2016).

<sup>10</sup> HCJ 2151/97, *Shaqir et al. v. Commander of IDF Forces in the West Bank et al.* (not published).

<sup>11</sup> E.g. HCJ 4416/05 *Abu shama et al v. Commander of Military Forces in the West Bank*.

In September 2005, Israel exempted some children from the freeze on visitor permits to the West Bank, provided that their case met certain criteria, namely: that the child had not yet turned 16, or had requested an Israeli military visitor's permit to the oPt before having turned 16 (even though the freeze on permits made such requests seemingly futile), and had at least one parent who was a registered resident.<sup>12</sup>

Despite the improvement, many residents — whose children had turned 16 after the year 2000 — encountered difficulties in obtaining visitor permits, even if the request to register was filed before their children turned 16. Here again, Israel approved permits and registration only after individual petitions were filed with the HCJ.<sup>13</sup>

Since late 2006, Israel has reverted to its pre-2000 position on the registration of children under the age of 16 **born abroad**. In doing so, it lifted the overall freeze and began implementing a relatively regular procedure for issuing visitor permits for the purpose of registration of children under 16.

That stated, **there is still no solution for two classes of children**: A) children over the age of 16 **born in** the oPt to registered parents who never left the oPt but were never registered themselves; B) children **born abroad** to residents who are over the age of 16 and who passed the age limit during the period when Israel was refusing to accept and approve requests for visitor permits.

This situation of unregistered children tears families apart. The children cannot travel freely inside the oPt since almost all movement carries with it the risk of being stopped and detained by police or army. These children are subject to trauma, arrest, deportation and living as ghosts in their homeland.

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<sup>12</sup> Letter from the Israeli Civil Administration Office of the Legal Advisor for the West Bank to Hamoked, September 6, 2005.

<sup>13</sup> E.g. HCJ 7479/06 *Dababse et al v. Commander of Military Forces in the West Bank*.