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المجلس النرويجي للاجئين



## **Fractured Lives: Restrictions on Residency Rights and Family Reunification in Occupied Palestine**

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Cover photo (front): Palestinians crossing at Qalandia checkpoint (Mathew Truscott, 2015).

Cover photo (back): A Palestinian couple, facing residency issues, holding their ID cards (Nader Muaddi, 2015).

The **Norwegian Refugee Council (NRC)** is an independent, international humanitarian non-governmental organisation that provides assistance, protection and durable solutions to refugees and internally displaced persons worldwide.



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## Executive Summary

Amongst the many serious violations of international law committed in occupied Palestine by Israel as Occupying Power, restrictions on residency are perhaps the most insidious. Human rights law tells us that the family is the natural and fundamental unit of society and is to be protected as such.

International humanitarian law informs us that protected persons, namely the Palestinian population in occupied Palestine, are entitled to respect for their person, their honour and their family rights.

Despite the applicability of both sets of laws, protection of the right of family unity is absent in practice for many Palestinians. Instead, these protections are replaced with a complex, bureaucratic nightmare of restrictions, quotas, processing freezes, revocations of residency, temporary permits, changing procedures and arbitrary decision making. The cumulative effect of this regulatory maze is to make family unification for Palestinians living in different parts of the occupied territory, namely the West Bank, East Jerusalem and Gaza, a near impossibility. This, in turn, has a devastating impact on the life of Palestinian families and serves to consolidate the fragmentation of Palestine.

This report aims to detail the various laws, categories and procedures that compartmentalize Palestinian family life, but within the broader context of displacement. The categories of persons affected by the jumble of rules is considerable. Jerusalemites seeking to marry West Bank ID holders, residents of Gaza seeking to change their place of residence, children of Palestinians born abroad who are not registered in the Palestinian population registry, persons who are ineligible to apply for family re-unification owing to restrictive Israeli conditions, persons who were displaced during the 1967 conflict, children who live with their parents in Jerusalem but who are registered in the population registry covering the West Bank – all of these are just some of the categories of persons impacted by the rules.

The report starts by setting out the normative framework for residency rights under international humanitarian and human rights law. It then sets out Israeli policies limiting residency in the West Bank and Gaza Strip before moving on to consider restrictions on residency rights in East Jerusalem. The report concludes with a brief comment on the role of the Palestinian Authority in dealing with family reunification and residency matters. The historical development of the rules and restrictions are detailed, together with the position of Israeli courts on residency issues that have come before them. In the end, the rules and restrictions on residency must be viewed as mechanisms for the disenfranchisement and displacement of Palestinian as part of a broader political and demographic objective.

Whilst the right to family unity is precisely that – a right, Israeli courts have held that the right is in fact a discretion. This discretion is subject to the whim of the Military Commander or the Minister of Interior, but also to ‘political, security, economic and demographic’ considerations. Israeli courts consider themselves to have a very limited mandate to review the use of this discretion and have consistently taken a narrow view on the scope of applications for registration or family unification. Whilst control of the Palestinian population registry was to have been handed to the Palestinian Authority following the signing of the Oslo Accords, Israel has retained the power to determine who is eligible for residency within the occupied territory.

The situation in East Jerusalem, which remains part of the occupied West Bank under international law, but which has been annexed to the State of Israel by the government of Israel, remains vastly more complex. Not only is it difficult for Palestinian residents of Jerusalem to marry Palestinians

from the West Bank, let alone the Gaza Strip, but the residency of a Palestinian Jerusalemite can be revoked if he or she has spent too much time out of their home town and thus moved their 'center of life'. The revocation of a Palestinian's 'permanent residency', in itself somewhat of legal absurdity, often renders them without residential status of any kind.

In conducting principled advocacy around these violations, it is easy to become entangled in the details of residency restrictions...and sometimes to give up. It is important to focus on the key issue, namely that Palestinians are legally treated as 'foreigners' in their homeland. With the right to an identity, a nationality, freedom of movement and family life in one's own country as a guiding principle, it becomes easier to systematically challenge the obstacles that impede the realization of this basic right.

## 1 Introduction

With the start of Israel's military occupation of the West Bank and the Gaza Strip, the Israeli government was forced to confront the new reality its military occupation created: on the land that Israel now occupied were more than 900,000 Palestinian non-citizens,<sup>1</sup> adding to Israel's existing population of 2.7 million Israelis.<sup>2</sup> Wanting the land and not the people, Israel now faced what its leaders called a "demographic problem" with the numbers of Palestinians threatening to undermine a Jewish majority in the country.<sup>3</sup>

In order to determine the size of the Palestinian population in the West Bank and Gaza Strip, Israeli authorities decided to carry out a census in August and September 1967,<sup>4</sup> after first declaring the West Bank and the Gaza Strip "closed military areas," from which entry and exit required the approval of the Israeli military commander.<sup>5</sup> This census later formed the basis of the Israeli registry of the Palestinian population, a registry that includes only those Palestinians in the West Bank (excluding East Jerusalem) and the Gaza Strip.<sup>6</sup> The Palestinian population of occupied Palestine, as recorded in the census at the time, was 889,041 excluding those in East Jerusalem, and an additional 65,857 in East Jerusalem.<sup>7</sup>

In the West Bank (excluding East Jerusalem) and the Gaza Strip, following the census, Israel issued identification documents to those registered in the population registry,<sup>8</sup> while children under the age of sixteen were listed on the identity cards of their parents.<sup>9</sup> These identification cards only granted Palestinians permanent residency in Palestine, and not Israeli status.<sup>10</sup> The registry did not contain the names of the hundreds of thousands of Palestinians displaced during the 1967 conflict, Palestinians residing, working or studying elsewhere, or those who were absent during the census for any reason.<sup>11</sup> The UN Relief and Works Agency (UNRWA) estimates that the number of

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<sup>1</sup> See, *infra*, note 7, for the population statistics breakdown.

<sup>2</sup> Israel Central of Statistics, *Population Estimates, 1948-2002*, [http://www1.cbs.gov.il/shnaton54/st02\\_01.pdf](http://www1.cbs.gov.il/shnaton54/st02_01.pdf).

<sup>3</sup> Israeli PM Eshkol described this problem in the following terms, "We'll have to devote some thought to the question of how we'll live in this land without giving up what we've conquered and how we'll live with that number of non-Jews", Gershon Gorenberg, *The Accidental Empire: Israel and the Birth of the Settlements: 1967-1977*, 2006, 46. 2006.

<sup>4</sup> A copy of the census can be found at: [http://www.levyinstitute.org/pubs/1967\\_census/questionnaire.pdf](http://www.levyinstitute.org/pubs/1967_census/questionnaire.pdf). Two different forms were used; one for the West Bank and the Gaza Strip and a second for the residents of occupied Jerusalem.

<sup>5</sup> Order of Area Closure (Gaza Strip and North Sinai), (No. 1), 1967 (issued on 8 June 1967); Order Regarding Closed Areas (West Bank Area) (No. 34), 1967 (issued on 8 July 1967).

<sup>6</sup> Human Rights Watch, *"Forget About Him; He's Not Here": Israel's Control of Palestinian Residency in the West Bank and Gaza*, February 2012, p. 17.

<sup>7</sup> According to the data provided by the Levy Institute at Bard College, the breakdown of the Palestinian population living in the occupied Palestinian territory at the time of the census was: West Bank, excluding East Jerusalem, 532,780; Gaza Strip, 356,261 and East Jerusalem 65,857. See: [http://www.levyinstitute.org/pubs/1967\\_census/vol\\_1\\_intro\\_tab\\_b.pdf](http://www.levyinstitute.org/pubs/1967_census/vol_1_intro_tab_b.pdf) and [http://www.levyinstitute.org/pubs/1967\\_census/vol\\_6\\_tab\\_5.pdf](http://www.levyinstitute.org/pubs/1967_census/vol_6_tab_5.pdf).

<sup>8</sup> Pursuant to the Order Relating to Identity Cards and Population Registry (Judea and Samaria) (No. 234), 1968, March 17 1968. A similar order was issued for the Gaza Strip.

<sup>9</sup> Pursuant to the Order Relating to Identity Cards and Population Registry (Judea and Samaria) (No. 297), 1969, Section 11. A similar order was issued for the Gaza Strip

<sup>10</sup> This permanent residency status entitled holders to reside in the occupied Palestine, based on conditions that will be further elaborated upon below.

<sup>11</sup> B'Tselem and HaMoked, *Families Torn Apart: Separation of Palestinian Families in the Occupied Territories*, July 1999, p. 17.

Palestinians displaced in 1967 was more than 390,000, including 120,000 displaced for the second time since 1948.<sup>12</sup>

While Israeli leaders busily debated the fate of the newly occupied lands, there was consensus among Israel's leaders that they did not want the population on that land to be absorbed and become part of the permanent population of Israel.<sup>13</sup> In the words of then Justice Minister Yaakov Shimson Shapira, the granting of citizenship to Palestinians would mean that, "we're done with the Zionist enterprise".<sup>14</sup>

The situation in East Jerusalem was different. Palestinians who were physically present at the time of the census in the territory annexed by Israel to the city of Jerusalem (and, as a result, to the State of Israel) after 1967 were registered in the Israeli population registry and were granted Israeli identity cards, but not Israeli citizenship. In 1988, in the case of *Mubarak Awad v. Prime Minister of Israel*, the Israeli High Court of Justice ruled that the status that was given in 1967 to these Palestinians was defined as 'permanent residency'.<sup>15</sup> Although the formal system of rights given by Israel to permanent residents is quite similar to that of citizens,<sup>16</sup> there is still a significant difference between the two under Israeli domestic law. Thus, for example, a permanent resident may vote in local elections, but is not entitled to vote in the Knesset elections. Also, under the Passports Law of 1952, a permanent resident is entitled to a *laissez passer*, but not to an Israeli passport. A permanent resident who settles in another country loses permanent residency status in Israel. A citizen, on the other hand, retains citizenship.<sup>17</sup>

This report examines the various measures used by Israeli authorities to limit the size of the Palestinian population residing in Palestine since 1967, by means of controlling the Palestinian and Israeli population registries. The report will first examine the measures employed with regard to

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<sup>12</sup> United Nations Relief and Works Agency, *Resolution 302* <http://www.unrwa.org/content/resolution-302>. This is buttressed by the work of the Levy Institute in its comparison of the Jordanian census of the West Bank in 1961 and the Egyptian census of the Gaza Strip in 1966, as compared with the 1967 Israeli census. This comparison shows a dramatic change in population, with a nearly 22 percent drop in the West Bank's population between 1961 and 1967 and a 27 percent drop in the Gaza Strip's population. See, Levy Economics Institute of Bard College, *Gaza Strip Population According To 1967 Census And Egyptian Estimate For 1966*, [http://www.levyinstitute.org/pubs/1967\\_census/vol\\_1\\_intro\\_tab\\_i.pdf](http://www.levyinstitute.org/pubs/1967_census/vol_1_intro_tab_i.pdf) and *West Bank Population According To 1967 Census And Jordanian 1961 Census*, [http://www.levyinstitute.org/pubs/1967\\_census/vol\\_1\\_intro\\_tab\\_i.pdf](http://www.levyinstitute.org/pubs/1967_census/vol_1_intro_tab_i.pdf).

<sup>13</sup> For a summary of the decision-making process following the 1967 occupation, see *Gorenberg, supra*, note 3, pp. 42–71.

<sup>14</sup> *Id.*, p. 52.

<sup>15</sup> HCJ 282/88 *Mubarak Awad v. Prime Minister of Israel* (1988) 42(2) PD 424.

<sup>16</sup> Resident permits that are given to Palestinian residents have formalized (at least by law) residents' eligibility to work in Israel, to receive medical insurance and socio-economic benefits. They have granted these residents identifying documents (Population Registry Law, 5725-1965, Laws of the State of Israel No. 466, 1 August 1965, p. 270, Article 24) and social rights (National Insurance pensions are paid according to the National Insurance Law [amended version], 5755-1995, Laws of the State of Israel No. 1522, 15 May 1995, p. 210 to someone who is a resident of Israel. The State Health Insurance Law, 5754-1994, Laws of the State of Israel No. 1469, 26 June 1994, p. 146 applies to anyone who is regarded a resident of Israel in accordance with the National Insurance Law).

<sup>17</sup> According to Article 11(C) and Article 11A of the Entry into Israel Regulations, 5734-1974, Israeli Collection of Regulations No. 3201, 18 July 1974, p. 1517 a permanent resident will be considered to have settled abroad if he or she 1) lived for more than seven years in a foreign country; 2) received the status of permanent resident in a foreign country; or 3) became a citizen of a foreign country. It is important to note that as far as Palestinian residency rights are concerned, Israel considers the West Bank and the Gaza Strip to be a "foreign country".

the Palestinian population registry, affecting Palestinians in the Gaza Strip and the West Bank (excluding East Jerusalem), and then the measures employed against the residents of East Jerusalem including restrictions on West Bank and Gaza Strip residents marrying East Jerusalemites. Such restrictions make a normal family life almost impossible for many Palestinians. The report begins with an examination of the international legal position on this matter. Not only is Israel required to comply with both International Humanitarian Law (IHL) as well as International Human Rights Law (IHRL) throughout occupied Palestine, but it is prohibited from imposing Israeli domestic law in East Jerusalem which remains occupied territory.

As will be demonstrated later on, Israel places extreme barriers on the rights of Palestinians to reside in their place of origin by: (i) implementing policies aimed at limiting residency; (ii) limiting family unification through the imposition of conditions or quotas; and (iii) conditioning family unification on progress in the political negotiations. Such restrictions result in family separation, displacement and have a devastating impact on the right to family life and the well-being of children of the relationships. Fundamentally, they are in serious violation of basic principles of IHL and IHRL. This report does not address the situation of Palestinian citizens of Israel who are also affected by Israel's discriminatory residency laws. This report also does not address the situation of residents of the Gaza Strip who are not, for a variety of reasons, included in the Palestinian population registry.<sup>18</sup>

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<sup>18</sup> On this issue, please see, Norwegian Refugee Council, *Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip*, 2012.

## 2 International Norms Governing Family Reunification in Occupied Territory

Any assessment of Israeli residency laws, practices and policies in the West Bank, including East Jerusalem, and the Gaza Strip must be made in accordance with the applicable international law framework, consisting of international humanitarian law (IHL) and international human rights law (IHRL). In all matters pertaining to the residency status of Palestinians throughout occupied Palestine, Israel, as the Occupying Power, must adhere strictly to the provisions and protections of IHL and IHRL. It is prohibited from treating Palestinians as ‘foreigners’. It must treat all Palestinians under its jurisdiction (in the West Bank, in East Jerusalem and in the Gaza Strip) equally as ‘protected persons’ under IHL. Fundamentally, it is prevented from applying Israeli domestic law in East Jerusalem.

The following section sets out the key international norms governing residency and family reunification in occupied territory. These norms can then be applied to the reality of the Israeli permit and residency regime in Palestine contained in the subsequent part of the report. The gap is significant and widening. The juxtaposition of the applicable international standards with the actual situation on the ground allows conclusions to be drawn on the legality of the regime and consideration of the steps that must be taken to bridge this crevasse.

### 2.1 Applicable Norms

#### 2.1.1 International Humanitarian Law

##### 2.1.1.1 *Family Reunification and Family Life*

International law protects the family and considers it a fundamental unit of society. It also protects the ability of an individual to maintain family life.

In the context of armed conflict and/or occupation, Article 27 of the Fourth Geneva Convention sets the general principle that “protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights...”<sup>19</sup> Whilst the Article authorizes the Occupying Power to “take such measures of control and security in regard to protected persons as may be necessary as a result of the war”, these measures should not affect the fundamental rights of the persons concerned, and those rights must be respected even when measures of constraint are justified by security reasons.<sup>20</sup>

The Commentary to the Convention explains that the duty to respect family rights is intended to safeguard marital ties and the group of parents and children which constitutes a family – the natural and fundamental group unit of society.<sup>21</sup> More specifically to the safeguarding of family ties, IHL imposes a duty on States to avoid separation and to facilitate the reunion of family members, thus this duty has both negative and positive aspects.

According to the Fourth Geneva Convention, when an Occupying Power takes measures, based on imperative military reasons, to evacuate the local population from an area where hostilities take place, it must ensure – to the greatest practicable extent – that members of the same family are not

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<sup>19</sup> See also 1907 Hague Regulations, art 46.

<sup>20</sup> Jean Pictet, *Commentary on the Geneva Conventions of 12 August 1949: Volume IV*, ICRC, 1958, p. 207.

<sup>21</sup> *Id.*, p. 202.

separated.<sup>22</sup> Under the 1977 First Additional Protocol to the Geneva Conventions (AP I), in case family ties have been broken as a result of a wartime event, not limited to evacuation or other form of displacement, States shall facilitate, in every possible way, the reunion of families dispersed due to the armed conflict.<sup>23</sup>

Professor Yoram Dinstein accepts that AP I requires the Occupying Power to assist the procedure of family reunification in the occupied territory. He, however, argues that by imposing a duty *to facilitate* the reunion of families, AP I goes beyond what is required by the Fourth Geneva Convention. The latter only instructs States “to facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible”. Given that Israel is not a party to the Additional Protocols, this innovative obligation, according to Dinstein, does not bind Israel.<sup>24</sup>

The ICRC Study on Customary IHL notes in this regard that “collected practice shows that respect for family life requires, to the degree possible, the maintenance of family unity...” and that “a number of agreements, laws and policies have been adopted by States involved in armed conflict and facing the problem of dispersed families, which seek to implement the principle of family reunification”.<sup>25</sup> It therefore seems that when it comes to obligations pertinent to the maintenance of family ties of protected persons, the Occupying Power is not only required to assist with renewing contact and meetings (if possible) between family members, but also to proactively assist, in every possible way, with the reunion of family members. This obligation is considered customary law which is binding on all States. In the current context, it requires a permit and residency regime that will enable the reunion of families and the maintenance of family unity.

Dinstein further notes that the obligations concerning family reunification do not apply in the case of couples that were married after the occupation began, as arguably they are not “families dispersed as a result of armed conflicts”.<sup>26</sup> The Israeli High Court, however, has referred to these IHL obligations also when discussing family reunification applications submitted by couples that were married following the beginning of occupation.<sup>27</sup> Moreover, this argument ignores the prolonged nature of the Israeli occupation which is the cause of such separation. The prolonged occupation and military control of the Palestinian territory involve continuous restrictions, imposed by Israel, on the freedom of movement of family members to, from and within the occupied territory, and thus on their ability to live together as a functioning family.

It should be remembered that the responsibilities of the Occupying Power in relation to maintaining the family life of those who are subject to its effective control, including new married couples, stem from its responsibility for the well-being of the local population in accordance with Article 43 of the Hague Regulations. In this respect, while the general rule is preserving the *status quo* and the applicable laws at the beginning of occupation, the Occupant should at the same time “restore, and ensure, as far as possible, public order and life”. In this context, Israel may introduce some changes

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<sup>22</sup> Fourth Geneva Convention, art 49.

<sup>23</sup> *id.*, arts 26-27; AP I, art 74; AP II, art 4(3); Pictet Commentary, *supra*, note 20, pp. 202-203; ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, 1987, pp. 858-859.

<sup>24</sup> Yoram Dinstein, *The International Law of Belligerent Occupation*, CUP, 2009, p. 261.

<sup>25</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law* (‘ICRC Study’), vol 1, 2006, pp. 380-381 (Rule 105), pp. 465-466 (Rule 131).

<sup>26</sup> Dinstein, *supra*, note 24, p. 261.

<sup>27</sup> *Id.*, pp. 261-262; cf HJC 673/86 *Al-Saudi v Commander of the Civil Administration*, 30 July 1987, and the cases discussed below.

in the occupied territory in order to enable the natural development of civilian life. In the words of the Israeli High Court:

*The life of the population, as well as the life of an individual, does not stand still, but is in constant motion which includes development, growth and change. A military administration cannot ignore all that. It is not allowed to freeze life.*<sup>28</sup>

The natural dynamic of life and the responsibility of the Occupying Power for the welfare of protected persons therefore justify the adoption of policies that would enable reunion of separated families in the occupied territory, including granting entry and a permanent stay permit for a foreign spouse (subject to security screening).

### **2.1.1.2 IHL Norms and Residency Rights in East Jerusalem**

Under international law, East Jerusalem is occupied territory and the relevant norms of IHL and human rights law – apply.

Article 47 of the Fourth Geneva Convention relates to the situation of those citizens –protected persons under IHL – who, as a result of conflict, find themselves under the rule of a foreign power. The Article stipulates that these protected persons “who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory,” including the annexation of the whole or part of the occupied territory. Since, from a pragmatic perspective, it is clear that any country annexing territory may claim the legality of the annexation, the drafters of the Convention ensured that even if such a claim is made, it shall not be sufficient to deprive the protected persons of their rights as defined by IHL.<sup>29</sup>

Nonetheless, following the annexation of East Jerusalem in 1967, Israel treats East Jerusalem as part of its own sovereign territory and will not apply IHL rules. When family members wish to unite in East Jerusalem, their family reunification application will be dealt with by the Minister of the Interior according to Israeli domestic law. The Minister’s discretion is subject to judicial review under the standards of Israeli administrative law. This means judicial restraint unless the petitioner is able to prove that the decision was, for example, arbitrary, extremely unreasonable, corrupted or lacked good faith.<sup>30</sup> The extension of the restrictive Israeli legislation – in this regard as in other legal areas – cannot comply with Israel’s obligations to refrain from introducing any new legislation which is contrary to the best interests of the local population.<sup>31</sup>

As explained below, following the Israeli annexation of East Jerusalem, Israel has granted the Palestinian residents of East Jerusalem permanent residency. Despite the title, this status does not grant the right to reside permanently in the city, but rather expires upon relocation of the center of one’s life outside of Israel (or, in this case, also outside of East Jerusalem). The consequence of

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<sup>28</sup> HCJ 393/82 *Gamiyat Al-Iskan v Military Commander in the West Bank*, 28 December 1983, para. 26 (unofficial translation).

<sup>29</sup> Pictet, *supra*, note 20, pp. 275-276.

<sup>30</sup> HCJ 209/73 *Odeh (Lafi) v Minister of the Interior*, 11 November 1973.

<sup>31</sup> Article 43 of the Hague Regulations. For relevant commentary in this regard, see: Marco Sassoli, 'Article 43 of the Hague Regulations and Peace Operations in the Twenty-first Century, Background Paper prepared for Informal High-Level Expert Meeting on Current Challenges to International Humanitarian Law, Cambridge, June 2004, pp. 5-6; David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Territories*, State University of New York Press, Albany, 2002, p. 63.

revoking that status is a deprivation of the right of Palestinians to continue to live in their homes and the risk of being forcibly deported. Revocation of residency deprives them of freedom of movement within the occupied West Bank, which includes East Jerusalem. This policy is, therefore, contradictory to the provisions of Article 49(1) of the Fourth Geneva Convention that prohibit the Occupying Power from carrying out any type of forcible transfer of the protected persons.

According to Israeli policy, permanent residents are permitted, if they desire and meet certain conditions, to receive Israeli citizenship. These conditions include swearing allegiance to the State of Israel, proving they are not citizens of any other country, and demonstrating some knowledge of the Hebrew language. Most of the Palestinian residents of East Jerusalem have not requested Israeli citizenship.<sup>32</sup> As protected persons under IHL, the State of Israel cannot force citizenship upon them, and cannot compel them to naturalize and to swear loyalty to it.<sup>33</sup> Conditioning fundamental rights – such as the right not to be transferred or deported from the occupied territory – on swearing loyalty to the Occupying Power, therefore contravenes IHL.

## 2.1.2 Human Rights Law

### 2.1.2.1 Family Reunification and Family Life

Under human rights law, which also applies in occupied Palestine, especially given the prolonged nature of the occupation,<sup>34</sup> the family is recognized as the “natural and fundamental group unit of society” and is protected as such.<sup>35</sup> For example, the International Covenant on Economic, Social and Cultural Rights (ICESCR) states that “the widest possible protection and assistance should be accorded to the family”.<sup>36</sup> Similarly, the Convention on the Rights of the Child notes in its preamble that “the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community”.

With respect to family reunification, the Human Rights Committee, monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR), explains that the right to found a family includes the possibility of family members to live together. This implies a duty on State Parties to the Covenant to adopt appropriate measures to ensure the unity or reunification of families, particularly when their members are separated for political, economic or similar reasons.<sup>37</sup>

Addressing the situation of separation of children from their parents, the Convention on the Rights of the Child provides that States Parties shall ensure that a child shall not be separated from his or her parents against their will, and that applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by State Parties in a positive,

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<sup>32</sup> Notwithstanding a relatively steady rise in the number of East Jerusalem Palestinians who were naturalized in the past decade, according to some sources, until 2012 only approximately 10,000 Palestinian residents of East Jerusalem requested and received Israeli citizenship. See: Nir Hasson, '3,374 East Jerusalem Residents Received Full Israeli Citizenship in Past Decade', *Haaretz*, 21 October 2012; Moshe Amirav, *The Jerusalem Syndrome Israel's Unification Policy Delusions, 1967-2007*, Jerusalem, 2007. p. 260.

<sup>33</sup> Hague Regulations, art 45.

<sup>34</sup> See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, ICJ Reports 2004, p. 136, paras. 111-113.

<sup>35</sup> International Covenant on Civil and Political Rights (ICCPR), art 23; Universal Declaration of Human Rights, art 16.

<sup>36</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), art 10(1).

<sup>37</sup> Human Rights Committee, *General Comment No. 19: Article 23 (The Family)*, 1990, para. 5.

humane and expeditious manner.<sup>38</sup> In light of the growing number of unaccompanied refugee and internally displaced children exposed to the risks of, *inter alia*, armed conflict, the UN General Assembly has urged States on several occasions “to give priority to programmes for family tracing and reunification”.<sup>39</sup>

Under human rights law, the right to family life can be restricted in time of public emergency which threatens the life of the nation, however only to the extent strictly required by the exigencies of the situation.<sup>40</sup> The ICESCR seems to allow the limitation of family rights provided that the limitation is determined by law, and is “compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society”.<sup>41</sup>

In light of the foregoing, it seems that the duty of a State to facilitate the reunion of the family in occupied territory is stronger than the duty imposed by human rights law on a sovereign government *vis-à-vis* its citizens or those subject to its control. Under IHL, the Occupying Power is required to act “in every possible way” for this purpose. This seems to be in line with the fact that the Occupying Power is not the sovereign in the occupied territory but only authorized to administer the territory temporarily. In comparison, a sovereign government enjoys a considerable amount of flexibility to establish an immigration policy as it sees fit according to the national interests of the sovereign territory. This, however, will exceed the powers of the Occupant under the law of occupation.

### **2.1.2.2 Residency Rights**

Article 13(2) of the Universal Declaration of Human Rights (1948) states: “Everyone has the right to leave any country, including his own, and to return to his country”. Article 12(4) of the ICCPR, which was ratified by the State of Israel in 1991, continues and states the following: “No one shall be arbitrarily deprived of the right to enter his own country.”<sup>42</sup> It should be noted, in this regard, that the Human Rights Committee has held that the right to return to one’s country as per Article 12(4) of the Covenant is not available exclusively to those who are citizens of that country. It most certainly also applies, so the Committee held, to those who, because of their special ties to that country, cannot be considered a mere “alien”. As an example, the Committee points out that this right shall also be available to residents of territories whose rule has been transferred to a foreign country of which they are not citizens.<sup>43</sup>

Thus, according to international law, East Jerusalem residents should be entitled, like any other person, to leave their home and to return to it, without thereby being at risk that their travels abroad or their departure to other areas of Palestine, and even their acquisition of status in another country, will lead to the deprivation of their rights to return to their homeland. The right of persons to leave and return to their country is secured in international human rights law.

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<sup>38</sup> Convention on the Rights of the Child, arts 9, 10(1).

<sup>39</sup> UNGA Res 53/128 (23 February 1999), 68/147 (7 February 2014).

<sup>40</sup> ICCPR, art 4.

<sup>41</sup> ICESCR, art 4.

<sup>42</sup> ICCPR, art 12(4). This principle is enshrined in other human rights conventions. See: Article 10(2) of the Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force 2 September 1990. Article 5(d)(ii) of the International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc A/6014 (1966), 660 U.N.T.S. 195 .entered into force 4 January 1969.

<sup>43</sup> Human Rights Committee, *General Comment 27*, CCPR/C/21/Rev.1/Add.9 (1999), para. 20.

## 3 Israeli Policies Aimed at Limiting Residency in the West Bank and Gaza Strip

### 3.1 Israeli Policies: 1967 to 1995

This section will examine the various measures employed by Israel to limit residency, from the start of the 1967 occupation until the signing of the 1995 Interim Agreement. These measures included: (i) providing Palestinians with financial incentives to leave and concomitant disincentives to remain; (ii) revoking residency; (iii) hindering family unification of those Palestinians who resided outside Palestine; and (iv) limiting the registration of children. Each of these measures will be examined, in turn.

#### 3.1.1 Financial Incentives to Leave; Disincentives to Remain

Israeli officials have in the past encouraged Palestinians to leave Palestine, particularly the Gaza Strip,<sup>44</sup> through financial incentives, just as they encouraged Palestinians who remained in the aftermath of the Nakba to migrate elsewhere. For example, as Israeli historian, Tom Segev, notes in his book, *1967: Israel, the War, and the Year that Transformed the Middle East*, that Israel actively encouraged emigration. Segev writes that:

*In early 1968, eight months after the war, a small unit of five people began operating in Gaza under the direction of an IDF major. Their job was to encourage the local population to leave. They worked through collaborators who went around the camps promising people money in return for their agreement to go. This was a joint operation of the military government, the Shabak, and the prime minister's advisor on Arab affairs. The Foreign Ministry also tried to promote refugee emigration, and the Ministry of Finance was asked to fund the operation.*<sup>45</sup>

According to Segev, the Israeli Central Bureau of Statistics found that in the first half of 1968, an estimated 20,000 Palestinians from the Gaza Strip emigrated while an estimated 200,000 to 230,000 left the West Bank.<sup>46</sup> According to other estimates, the figures are significantly higher. For example, UNRWA estimated that the 1967 conflict displaced about 390,000 Palestinians from Palestine.<sup>47</sup> Those departing were required to leave behind their Israeli-issued identity cards and sign a form that they were leaving on their own will and that they would not be able to return without a special permit.<sup>48</sup>

It is not clear whether these emigrations were motivated by financial incentives to leave Palestine. On this point, Israeli officials noted that if Palestinians could not be incentivized to leave, they could be disincentivized to remain. To facilitate this effort, according to historian Tom Segev, efforts by the then military governor, Mordechai Gur, were underway to encourage people “to leave Gaza by eroding their standard of living” but he noted that this approach was not uniformly accepted by the government. For example, “Dayan believed that although a deterioration of life in the Gaza Strip might bring about the departure of refugees, it might also make things difficult for

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<sup>44</sup> As noted by Gorenberg, “Israel sought to keep Gaza, based on the hope that its Palestinian refugees could be resettled elsewhere”, Gorenberg, *supra*, note 3, p. 53.

<sup>45</sup> Tom Segev, *1967: Israel, the War, and the Year that Transformed the Middle East*, 2007, 532.

<sup>46</sup> *Id.* p. 537.

<sup>47</sup> Human Rights Watch, *supra*, note 6, p. 18.

<sup>48</sup> Segev, *supra*, note 45, p. 536.

the military government and damage Israel's preparation for the new budget, it was decided that the standard of living in Gaza should be "reasonable" but only "close to that which existed before the occupation." What this meant, according to one document, was that new sources of income would not be created for refugees living in the camps. In that same period, unemployment in Gaza reached 16.6 percent.<sup>49</sup>

### 3.1.2 Residency Revocation

As noted above, following the census, Israel conferred residency status on Palestinians living in Palestine. This residency status, while conferring the right to stay in Palestine was not unconditional in its scope and was subject to frequently amended military orders. Specifically, pursuant to military orders,<sup>50</sup> Palestinians leaving Palestine were required to obtain "exit cards" upon their departure, valid for a period of one to three years.<sup>51</sup> Israel regarded Palestinians who did not return within the three-year period as having "ceased" their residency. In addition, the fact that a Palestinian remained abroad for a period of more than six consecutive years,<sup>52</sup> or who acquired citizenship or residency abroad was also grounds for revocation of residency in the West Bank and Gaza Strip.<sup>53</sup> Additionally, there were no notice requirements for revoking one's residency. Thus, Palestinians' status was revoked without any notice, hearing or individual review of their case.<sup>54</sup>

According to the data obtained by the legal rights NGO HaMoked, between the period of 1967 and 1994, Israel revoked the residency of an estimated 250,000 Palestinians (including more than 108,000 from the Gaza Strip and not including East Jerusalem), using this procedure.<sup>55</sup>

The consequences of such revocation are appalling: Palestinians who lost their residency status were permanently exiled from their homeland, some of them remained stateless as they had no other nationality. In addition, many of these Palestinians had family ties to Palestine and, as a result of the revocation, could not – for long periods of time, including today – even visit their family members who remained in Palestine.

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<sup>49</sup> Tom Segev, *The June 1967 War and the Palestinian Refugee Problem*, <http://prn.mcgill.ca/research/papers/segev.pdf>.

<sup>50</sup> Order No. 314 – Procedure Regarding Exit of West Bank and East Jerusalem Residents to the East Bank, October 1977.

<sup>51</sup> B'Tselem and HaMoked, *supra*, note 11, pp. 17–18. According to military orders valid at the time, the following procedures were in place:

If the person left through the Ben Gurion airport with a *laissez-passer*, they were required to hand in their identification card and granted a visa allowing them to return to Israel within one year. The visa was written in Hebrew and English but not Arabic. After the expiry of the one-year period, the person was unable to regain their identity card.

If the person left through the bridge to Jordan or through Rafah to Egypt, s/he must apply for an exit permit, valid for three years. Similar to those departing from Ben Gurion airport, the person is required to hand in their identification card and must collect the card within three years. An extension can be obtained for an additional three years. If an extension is not obtained and the person does not return on time, then s/he ceases to be considered a resident by the Israeli military authorities.

<sup>52</sup> *Id.*, p. 18. While there was a procedure available for appealing such revocations, it is not clear how many such appeals were granted.

<sup>53</sup> *Id.*, p. 18.

<sup>54</sup> HaMoked, "'Ceased Residency': Between 1967 and 1994 Israel Revoked the Residency of Some Quarter Million Palestinians from the West Bank and the Gaza Strip", <http://www.hamoked.org/Document.aspx?dID=Updates1175>.

<sup>55</sup> *Id.*

### 3.1.3 Hindering Family Unification

*The policy is to grant the **minimum possible number** of applications for family reunification, and to grant them only in the most exceptional circumstances (or when it is in the interests of the authorities).<sup>56</sup>*

As noted above, during the period of the 1967 War, a conservatively-estimated 250,000 Palestinians were displaced from Palestine and barred by Israeli authorities from returning. The majority of these individuals ended up in Jordan. This displacement resulted in the division of many Palestinian families between Palestine and Jordan (or other countries). Divided families faced three options: (i) apply for family unification on behalf of the displaced family member; (ii) enter the West Bank on an Israeli-issued tourist visa (and either continue to renew the discretionary visas or overstay) and (iii) reside abroad together.

In September 1967, Israel introduced its family unification policy (in the West Bank and Gaza); a process by which Palestinians already in the Israeli registry could apply for residency status for those members not listed in the registry. As will be demonstrated below, this family unification process served only as a means to demonstrate that Israel was returning a small subset of displaced Palestinians and did not stop the displacement process in its entirety.

The individuals eligible to apply<sup>57</sup> for family unification included: (i) individuals who were not registered during the 1967 census; (ii) first degree relatives of those who were West Bank or Gaza residents (parent, spouse, child or sibling) who lived in the West Bank or Gaza Strip before 5 June, 1967 and who left no later than 4 July 1967; (iii) those whose residency was revoked and whose appeals were denied; (iv) children born abroad or whose mother was not considered a resident and therefore not registered (post 1987); and (v) families where one spouse was not registered and who wished to reside in the West Bank and the Gaza Strip.<sup>58</sup>

Despite the seemingly broad categories, according to B'Tselem and HaMoked, family reunification was approved solely in cases where a registered resident submitted a request for his or her spouse, unmarried children under the age of sixteen, unmarried sisters, orphan grandchildren under the age of sixteen or parents over the age of 60 who had no other relatives.<sup>59</sup>

According to B'Tselem and HaMoked, an estimated 140,000 Palestinians filed applications for

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<sup>56</sup> H.C. 106/86, *Al-Safiri v. Head of Civil Administration of the Gaza Strip*.

<sup>57</sup> There were no published regulations governing applications for family unification. In general, however, applicants were required to submit applications to the Israeli army (Civil Administration) after first obtaining clearing from the Israeli income tax and value added tax departments, the municipality, the police and after obtaining security clearance. The intended individual seeking to enter the country was required to be outside of the country when the application was submitted, see H CJ 683/85 *Mishtaheh v. Military Commander in the Gaza Strip*, PD, 40 (1) 309, 310.

<sup>58</sup> An Israeli military committee oversaw the applications in which no hearings were afforded and applicants were not given the opportunity to present their case. In most cases of refusal, no reasons were given. Applicants could appeal to the Israeli High Court of Justice but the Court has refused to exercise its jurisdiction. Applicants could re-file after a year after receiving a rejection.

<sup>59</sup> In one report, B'Tselem and HaMoked note that, "No data exist as regards the degree of familial relationships in the cases approved" and another report notes that "Israel allowed area residents to submit first-degree relatives who had become refugees following the war, except for males aged 16-60, who were not permitted to return". See, B'Tselem and HaMoked, *supra*, note 11, p. 29. See also, B'Tselem and HaMoked, *Perpetual Limbo: Israel's Freeze on the Unification of Palestinian Families in the Occupied Territories*, 2006, p. 9.

family unification between 1967 and 1973.<sup>60</sup> Other sources note that more than 150,000 Palestinians filed applications between 1967 and 1979.<sup>61</sup> According to different sources, an estimated 40,000 to 50,000 applications were approved during the first decade following the 1967 War, leaving more than 200,000 Palestinians, who were displaced during the 1967 war, unable to return.<sup>62</sup>

Despite the low numbers of approved applications, Israeli officials moved to tighten the criteria for family unification. The criteria remained confidential because the army opposed their publication. According to Professor Meron Benvenisti, Israel approved approximately 900 to 1,200 applications per year for a period of ten years, until 1983.<sup>63</sup>

In 1983, Israel changed its policy of family unification. The Israeli Attorney-General described the details of the new policy in the following terms:

*...the policy in practice since 1984 in the Judea and Samaria [West Bank] and Gaza Strip areas is that only in exceptional and extremely special cases, for humanitarian or administrative reasons, are requests for family reunification granted.*

*It should be stressed that the great majority of requests for family reunification submitted every year in both areas are requests for reunification between couples. It is thus clear that the very fact that the person in question are couples **cannot, in and of itself, render a request exceptional and special in said manner.***<sup>64</sup>

According to B'Tselem and HaMoked, "requests would be examined according to two criteria: (1) administrative considerations, which generally meant favoring families of collaborators, and, infrequently, wealthy Palestinians who promised to invest in the Occupied Territories, and (2) exceptional humanitarian considerations, though no definition of the term was given".<sup>65</sup>

By 1987, the US Department of State's Country Reports on Human Rights Practices noted, in relation to Palestine, that while there were more than 10,000 applications for family unifications, only 1,400 were granted in 1987.<sup>66</sup> The following year, the US Department of State noted that Israeli officials approved only 300 applications and further noted that, "Israeli officials acknowledge that family reunification is limited for demographic and political reasons...".<sup>67</sup>

As noted above, split Palestinian families – with one or more member displaced during the 1967 war – were either forced to live abroad, apply for family unification or enter Palestine after obtaining Israeli-issued visitor visas, valid for up to three months. In 1985, Israeli authorities began to deny visitor visas to spouses of registered Palestinian residents who had filed family unification applications on their spouses' behalf.<sup>68</sup> In addition, Palestinians were not allowed to file family

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<sup>60</sup> B'Tselem and HaMoked, *supra*, note 11, p. 30.

<sup>61</sup> Meron Benvenisti, *The West Bank Handbook: A Political Lexicon*, 1986, p. 89.

<sup>62</sup> B'Tselem and HaMoked, *supra*, note 11, p. 30.

<sup>63</sup> Benvenisti, *supra*, note 61, p. 21.

<sup>64</sup> Statement by the Israeli Attorney-General in H CJ 1979/90 *Awashra et al v. Commander of IDF Forces in Judea and Samaria* as cited in Al-Haq, *The Right to Unite*, 1990.

<sup>65</sup> B'Tselem and HaMoked, *supra*, note 59, p. 10.

<sup>66</sup> US Department of State, *Department of State's Country Reports on Human Rights Practices for 1987, "The Occupied Territories"*, 1988, p. 9.

<sup>67</sup> US Department of State, *Department of State's Country Reports on Human Rights Practices for 1987, "The Occupied Territories"*, 1988, p. 11.

<sup>68</sup> Human Rights Watch, *supra*, note 6, p. 21.

unification applications for individuals present on a visitor's visa in Palestine.<sup>69</sup> This culminated in the deportation of some 200 women from Palestine during the period of May to December 1989.<sup>70</sup> These women were non-residents married to residents, who had overstayed their visitor's visas in order to live normally with their spouses.

At the time, visitor visas were issued for up to three months with a compulsory period of three months spent out of the country before another visa was issued. In 1989, many of these women were rounded up during nighttime raids, given only moments to pack their belongings and forced to pay to travel to the border crossing to Jordan where they were then expelled.<sup>71</sup> In several of these cases, children who were registered in the population registry were also forced to leave with their expelled mother.<sup>72</sup> Following international condemnation, Israeli human rights organizations petitioned the Israeli High Court of Justice to grant family unification to the deported spouses.<sup>73</sup> However, the Court rejected the petition following Israel's change in policy toward family unification in which it granted those deported the status of "long-term visitors" with renewable six-month residency permits.<sup>74</sup>

In 1993, following a petition to the Israeli High Court by HaMoked, Israeli authorities announced that they would approve a yearly quota of 2,000 requests for family reunification.<sup>75</sup> This quota announcement, once again, demonstrated the position taken by the Israeli government that marriage or parentage were not enough to qualify one for unification and that demographic considerations superseded humanitarian circumstances.

The announcement, however, was never fully implemented and Israeli authorities continued to vacillate in their requirement that the applicant spouse remain outside of Palestine while the application was pending. Furthermore, the resident could not stay with his or her family outside Palestine for a prolonged period for fear that the request for family unification would be denied. The fear was justified as Israel customarily denied requests for family unification in such cases, contending that the resident has changed his or her 'center of life' to outside of Palestine.<sup>76</sup>

In addition to the problematic nature of quotas, the annual quota of 2,000 requests was divided into 1,200 approvals per year for the West Bank and 800 for the Gaza Strip.<sup>77</sup> The approvals were further subdivided into "humanitarian requests" and "spouse quotas" and spread out over various districts in the West Bank. For example, only 5 requests were allowed per year for Jordan Valley applicants, while 190 requests were approved annually in the Ramallah district.<sup>78</sup> In May 1995, Israeli authorities admitted that the quotas set were not sufficient to meet demand: "there are several thousand requests pursuant to the quota that are waiting [for processing in the West Bank]."<sup>79</sup> Residents facing these difficulties chose not to apply for family reunification and this led many to enter the Palestine with a visitor's visa (to Israel) and remain even after the permit expired. In

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<sup>69</sup> *Id.*

<sup>70</sup> "Non-Resident" Palestinians Forced Out; Rights Groups Assail Deportations as Being Politically Motivated', *Washington Post*, 1990.

<sup>71</sup> *Id.*

<sup>72</sup> For an account of the process of deportations, see, B'Tselem, *Renewal of Deportation of Women and Children from the Occupied Territories on Account of 'Illegal Residency'*, 1994.

<sup>73</sup> H CJ 1979/90 *Awashra et al v. Commander of IDF Forces in Judea and Samaria*.

<sup>74</sup> *Id.*

<sup>75</sup> B'Tselem and HaMoked, *supra*, note 59, p. 11.

<sup>76</sup> B'Tselem and HaMoked, *supra*, note 11, p. 53.

<sup>77</sup> *Id.*, p. 51.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*, p. 52.

several cases, individuals who remained in Palestine on an expired visitor's permit were later deported.<sup>80</sup>

### 3.1.4 Limitations on Child Registration

Israeli efforts to limit the size of the Palestinian population in the West Bank and Gaza also extended to the registration of children. In general, children who are not registered in the population registry are not allowed to live in Palestine with their parents. If one parent is registered in the population registry and lives in Palestine, children are permitted to see the parent only during brief visits. As mentioned below, Israel has also set significant limitations in providing visit permits throughout the years. In some cases, the fact that these children are not registered in Palestine registry means that they are stateless and thus face the consequences of not having the nationality of any State (in terms of the ability to travel abroad, access to social and medical services, access to education and other rights).

Unregistered children are compelled to accustom themselves to moving from country to country and to repeated separations from their immediate family. As a result, these children have no real 'center of life' anywhere and lack a sense of security and stability.<sup>81</sup> Furthermore, they have no continuity in their education and social life. As a result of the above, the ability of unregistered children to have a normal future is extremely questionable.

Prior to 1987, children could be registered in the Palestinian population registry if either parent held a local identity card, although, in practice, registration depended upon the father holding an identity card. This permitted the child to remain a resident in Palestine.<sup>82</sup>

In 1987, Israel issued a new military order concerning the registration of children. These orders can be summarized as follows:

- The birth of a child born in Palestine must be filed with the appropriate authorities within 10 days of the child's birth. If a child is born to parents who are both registered, the child can be registered in the population registry until the child reaches the age of sixteen.<sup>83</sup>
- If a child is born outside of Palestine, and both of the parents are registered in the registry, the child must be registered before the age of 5.<sup>84</sup>
- If a child is born to a couple where only the mother is registered in the registry, the child can be registered up until the age of 5, irrespective of the place of birth.<sup>85</sup>

The effect of these measures is that children born to mothers who were not registered in the registry, irrespective of whether they were born in Palestine, could not be automatically registered in the Palestinian population registry. Instead, they had to go through the process of family unification.

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<sup>80</sup> *Id.*, p. 54.

<sup>81</sup> *Id.*, pp. 107-108.

<sup>82</sup> B'Tselem and HaMoked, *supra*, note 59, p. 13.

<sup>85</sup> Order Regarding Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5729 – 1969, Section 11A, as amended by Order No. 1208, of 13 September 1987. A similar order was issued for the Gaza Strip.

This new procedure created an absurd situation in which some children were considered residents of Palestine since they were listed in the Palestinian population registry prior to the signing of the order, while their younger siblings were deemed to be staying illegally in Palestine even though born there.

Eight years later, in January 1995, the Israeli army cancelled this military order but added a new requirement: children needed to prove that their permanent residence was in Palestine.<sup>86</sup> However, this requirement later changed with the signing of the Interim Agreement with the Palestine Liberation Organization and the establishment of the Palestinian Authority.

## 3.2 The Interim Agreement and the Palestinian Population Registry

### 3.2.1 Provisions of the Interim Agreement

It is arguable that with the signing of the Gaza-Jericho Agreement in 1994 and the Interim Agreement in 1995, Israel lost the formal power to revoke residency for residents of the West Bank and the Gaza Strip. This was due to the fact that the Interim Agreement formally transferred control of the population registry to the Palestinian Authority (PA).<sup>87</sup>

But the signing of the Interim Agreement neither ended Israel's control over the Palestinian population registry nor its ability to limit the entry of Palestinians into Palestine. This is due to the provisions of the Interim Agreement which specifically provide that:

*Article 28(11). To reflect the spirit of the peace process, the Palestinian side has the right, **with the prior approval of Israel**, to grant permanent residency in the West Bank and the Gaza Strip to:*

- a. investors, for the purpose of encouraging investment;*
- b. spouses and children of Palestinian residents; and*
- c. other persons, for humanitarian reasons, in order to promote and upgrade family reunification.*

In addition, under the Interim Agreement, the PA can register, without Israel's approval, children under the age of sixteen, irrespective of where they were born and even in cases in which only one parent is registered in the Palestinian population registry.<sup>88</sup> In practice, however, Israel conditioned registration of children on their physical presence in Palestine.<sup>89</sup> Thus, apart from children under the age of five who are permitted to enter Palestine with their parents, children born abroad who are not registered in the Palestinian population registry, are required first to apply for a 'visitor permit' in order to enter Palestine and only then be registered.<sup>90</sup>

In addition to requiring prior Israeli approval before registering Palestinians over the age of sixteen in the Palestinian population registry, Article 28(10)(b) of the Interim Agreement provides that the

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<sup>86</sup> Order Regarding Identity Cards and Population Registry (Amendment No. 23) (Judea and Samaria) (Order No. 1421), 5755 – 1995.

<sup>87</sup> Specifically, the Interim Agreement, Annex III, Appendix I, Article 28(1) provides that: Powers and responsibilities in the sphere of population registry and documentation in the West Bank and the Gaza Strip will be transferred from the military government and its Civil Administration to the Palestinian side.

<sup>88</sup> Interim Agreement Annex III, Article, Appendix I, 28 (12).

<sup>89</sup> Hussein Al-Sheikh, Minister of Civil Affairs, Interview (2012).

<sup>90</sup> *Id.*

PA must “inform Israel of every change in its population registry, including, *inter alia*, any change in the place of residence of any resident.”<sup>91</sup>

While the provisions of the Interim Agreement relating to the population registry imply that the PA’s copy is the original and determinative version, in effect, owing to Israel’s control over all border crossings and checkpoints, Israel’s copy of the population registry came to override any changes made by the Palestinian Authority to its registry. In essence, the PA serves as a broker between Palestinians and the Israeli Civil Administration. As such, the PA serves as an intermediary, receiving the applications and passing them on, after screening, for Israel’s approval.

### 3.2.2 The 'Quota' System

As noted above, in 1993, Israeli authorities announced that Israel would implement a quota system to deal with the family unification requests. The PA demanded that Israel cancel the quota system, as the system did not meet the demands of the Palestinian population and continued to limit Palestinian unification based on Israel’s demographic desires.<sup>92</sup> In protest, until 1998 the PA refused to forward such family unification requests to Israel for approval.<sup>93</sup> According to the US Department of State Country Report, Israel issued only 1,500 family unification permits from the signing of the Interim Agreement to the end of 1997,<sup>94</sup> with more than 17,500 requests for family unification pending.<sup>95</sup> By 1999, Israel raised the West Bank family unification quota to 2,400.<sup>96</sup>

## 3.3 The Palestinian Population Registry Following the Second Intifada

Following years of frustration with the continued military occupation and the flailing peace process, Palestinians took to the streets on 29 September 2000 to protest then Minister Ariel Sharon’s provocative march on the Haram al-Sharif/Noble Sanctuary compound. Within days, Israeli forces killed more than 50 Palestinians,<sup>97</sup> and the *intifada* was in full swing.

With the outbreak of the second *intifada*, Israel froze all matters relating to the Palestinian population registry, including family unification requests, registration of children requests, the issuance of visitor permits for Palestinians seeking to make family unification requests and the processing of pending family unification applications. Israel also froze all change of address requests for Palestinians already registered in the registry. Each of these issues will be described below.

### 3.3.1 Freeze on Processing Family Unification Requests

With the beginning of the second *intifada*, Israel halted all handling of applications for family reunification and visitor permits for spouses. While Palestinians continued to submit applications for family reunification, Israel’s Military Commander, via the Civil Administration, refused to

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<sup>91</sup> Interim Agreement Annex III, Article, Appendix I, 28 (10)(b).

<sup>92</sup> B’Tselem and HaMoked, *supra*, note 59, p. 12.

<sup>93</sup> *Id.*

<sup>94</sup> US Department of State, *Country Reports on Human Rights Practices, 1997: The Occupied Territories*.

<sup>95</sup> B’Tselem and HaMoked, *supra*, note 59, p. 12, quoting Amira Hass, 'Families by Quota', *Ha’aretz*, 15 June 1998.

<sup>96</sup> US Department of State, *Country Reports on Human Rights Practices, 1999: The Occupied Territories*.

<sup>97</sup> Sharm El-Sheikh Fact-Finding Committee Report, <http://2001-2009.state.gov/p/nea/rls/rpt/3060.htm> (last visited Nov 21, 2015).

receive requests from the PA or directly from families making such requests. Applications that were already pending before the Civil Administration were neither reviewed nor finalized and those applications that had been approved were halted.<sup>98</sup>

According to Human Rights Watch:

*The PA Civil Affairs Ministry estimated that from the outbreak of the second intifada to August 2005, it relayed to Israel more than 120,000 requests for family reunification that Israeli authorities did not process. An October 2005 survey, commissioned by B'Tselem, found that 17.2 percent of Palestinian residents of the West Bank and Gaza had at least one first-degree relative who was not registered in the population registry; in 78.4 percent of those cases, a family reunification request had been filed with the Israeli authorities but had not yet been processed.*<sup>99</sup>

While Israel contends that the freeze on family unifications was in direct response to the security risks following the start of the *intifada*, Israel has never provided evidence that such blanket denials are indeed justified by security reasons.<sup>100</sup>

### **3.3.2 Freeze on Issuance of Visitor Permits**

As noted above, for many of the family unification applications, those seeking to be registered in the registry must demonstrate that they are physically present in Palestine in order for their application to be processed. Yet, at the same time, Israel stopped issuing any ‘visitor permits’ to non-registered individuals, meaning that they could not enter Palestine, and spouses of registered Palestinians, already present in Palestine, could not renew their permits. Individuals who reside in Palestine without a valid permit, cannot lawfully leave or re-enter Palestine and cannot lawfully pass through Israeli checkpoints without threat of arrest or deportation. As a result, unregistered individuals were forced to either remain in the Palestine after their permit expired, separated from their family abroad and risk being deported by Israel for overstaying their visa or leave Palestine, their spouse, and sometimes also the children, for an indefinite period of time.<sup>101</sup>

### **3.3.3 Freeze on Registration of Children**

Pursuant to the Interim Agreement, Israel transferred to the PA the sole authority to register in the Palestinian population registry children under the age of sixteen, irrespective of whether those children were born abroad, provided that one of the parents was registered in the Palestinian population registry. Thus, the PA did not need to obtain Israel’s prior approval, but only had to inform Israel retroactively of the child’s inclusion in the population registry. In practice, however, Israel demanded that children be physically present in Palestine before registration would be effected. This condition violated the Interim Agreement but remained in place until December 2002 when Israel stopped recognizing altogether the registration of children from five to sixteen who were born abroad to residents of Palestine, even if the child was now present in the

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<sup>98</sup> According to B’Tselem and HaMoked, Israel agreed to process a small number of family unification requests classified as “exceptional humanitarian cases” but Israeli authorities, “consistently refrained from stating the relevant criteria in determining whether a case comes within this category”, B’Tselem and HaMoked, *supra*, note 59, p. 17.

<sup>99</sup> Human Rights Watch, *supra*, note 6, p. 41.

<sup>100</sup> B’Tselem and HaMoked, *supra*, note 59, p. 41.

<sup>101</sup> *Id.*, 20.

Palestine.<sup>102</sup>

In November 2003, Israel once again changed its policy and allowed the registration of children under sixteen born abroad, provided that they were physically present in Palestine. Yet, at the same time, it froze the issuance of visitor permits.

In September 2005, following a series of petitions before the Israeli High Court of Justice, the Israeli army announced a change in policy, according to which it would be possible to submit requests for visitor permits for children under the age of sixteen at the Palestinian District Coordination Office which would then forward the requests for processing to the relevant Israeli body.<sup>103</sup> Despite the change in policy, Palestinian children born abroad continue to encounter difficulties with registration. Whether owing to the long freeze or due to the protracted time that it takes to process such requests, the process of registering children who turned sixteen at the time of the change in policy in 2005 has remained arduous. Israel refused to register those children who did not submit a request to register before the age of sixteen, even if they reached this age during the five years of the freeze. Court challenges were filed on behalf of those children who had applied for registration during the period of the freeze but who later had passed age sixteen during the period of the freeze. Yet, in order to prevent the High Court from rendering a decision on a matter of principle, thus creating a legally-binding precedent, the Israeli army eventually approved the late registration of these children. Accordingly, in cases where applications had not been filed before the child turned sixteen due to the Israeli freeze, the Israeli army maintained, and still does, that anyone who had not applied on time has lost his right to be registered.<sup>104</sup>

Since late 2006, the Israeli army has reverted to its pre-2000 position on the registration of children under the age of sixteen born abroad. In so doing, the military lifted the overall freeze and began implementing a relatively regular procedure for issuing visitor permits for the purpose of registration of children under sixteen in the Palestinian population registry.<sup>105</sup> Cases are still pending for two classes of children: (i) children over the age of sixteen born in Palestine to Palestinian-registered parents and who never left Palestine but were never registered; and (b) children born abroad to residents of Palestine who are over the age of sixteen and who passed the age limit during the period when Israel was refusing to accept and approve requests for visitor permits. As regards the former, these individuals are considered to be staying “illegally” in Palestine even though some of them have no other home and have no status anywhere else. They do not have identity cards and their travel throughout Palestine is therefore difficult. Moreover, with current Israeli military orders in place, they may be subject to arrest and/or deportation.

### 3.3.4 Freeze on Change of Address Requests

Israeli-issued and Palestinian-issued identity cards indicate whether the person is a resident of the West Bank or the Gaza Strip. In 1969, the Israeli army issued a new military order requiring residents of Palestine to inform authorities of any change in their address within 30 days.<sup>106</sup> At the time, Palestinians could move freely between the West Bank and Gaza Strip and change residence between these areas. This military order was repealed in 1995 with the signing of the Interim Agreement. In keeping with the Interim Agreement, the PA holds the authority to update registered addresses in the population registry. Prior to 2000, the PA regularly updated the addresses of

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<sup>102</sup> *Id.*, p. 25.

<sup>103</sup> *Id.*, p. 26.

<sup>104</sup> See: [http://www.hamoked.org/topic.aspx?tid=sub\\_47](http://www.hamoked.org/topic.aspx?tid=sub_47) (Last visited 25 November 2015).

<sup>105</sup> *Id.*

<sup>106</sup> Order Regarding Identity Cards and Population Registry (Judea and Samaria), No. 297, 1969, Section 13.

Palestinians in the population registry and sent the update to the Israel side that maintains a copy of the registry. However in 2000, Israel stopped accepting updates to the population registry.

The failure to update the change of address has had a number of consequences on residency, particularly for mixed families (where one or more family member is registered in the West Bank while other family members are registered in the Gaza Strip). In 2003, Israeli authorities began arresting and forcibly transferring Palestinians from the West Bank to the Gaza Strip due to the fact that their ID cards listed their residence as Gaza Strip. Israel argued, *inter alia*, that the issue of moving from Gaza to the West Bank and settling there, including changing the address in the population registry, was “a political issue,” which concerned the relationship between Israel and the PA.<sup>107</sup> Between 2004 and 2010, Israel forcibly transferred 94 Palestinians from the West Bank to the Gaza Strip based on a registered address in Gaza.<sup>108</sup> Between 2000 to 2011, Israel approved only 2,775 applications for change of address from Gaza to the West Bank, while applications of Palestinians wishing to move from the West Bank to Gaza were approved as a matter of course.<sup>109</sup>

In light of Israel’s policy, the PA’s Ministry of Civil Affairs refused to accept requests for a change in address, as they wanted to avoid situations in which Palestinians were caught at checkpoints, believing that they had a West Bank address which was properly updated in the registry only to face the threat of forcible transfer pursuant to Israeli military orders.<sup>110</sup> In 2010, following a petition by a Palestinian businessman whose request to the Palestinian Civil Affairs Committee to alter his registered address was refused, the Palestinian Supreme Court ordered that the Palestinian Civil Affairs Committee accept Palestinians’ notices on change of residence from Gaza to the West Bank in the Palestinian population registry, despite opposition by Israel.<sup>111</sup>

### 3.3.5 From ‘Humanitarian’ to ‘Bargaining Chips’

Similar to family unification requests, the issuance of visitor visas and child registration all halted with the outbreak of the second *intifada*. In 2007, the Israeli government took another decision as regards residency: to turn residency from being a right to being a ‘bargaining chip’ to extract political concessions or to “reward” the PA for such.

In the context of the renewed political talks between the PLO and Israel, brokered by the United States, Israeli authorities decided in 2007 to make a “gesture” to PA President Mahmoud Abbas by approving the outstanding requests for family reunification. However, according to HaMoked:

*Most of the individuals who received status were spouses of oPt residents who had been illegally present in the oPt. Apparently, no more than 1,000 spouses were permitted to enter the oPt from abroad when the quota was implemented. At a certain stage, Israel explicitly announced that the “gesture” was intended solely for those already present in the oPt. In addition to spouses of residents of the oPt, a few thousand other status-less individuals also received status in the framework of the quota, most of whom were born in the oPt or entered as children but were never entered into the population registry.<sup>112</sup>*

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<sup>107</sup> See, e.g. HCJ 3519/05 *Ward v. Military Commander in the West Bank*, 26 July 2006.

<sup>108</sup> Human Rights Watch, *supra*, note 6, p. 28.

<sup>109</sup> Hussein Al-Sheikh, Minister of Civil Affairs, *supra*, note 89.

<sup>110</sup> *Id.*

<sup>111</sup> ‘Ramallah Court Gives Gazans Right to Stay, *Maan News Agency*, <http://www.maannews.com/eng/ViewDetails.aspx?id=326599> (last visited 13 Apr 2015).

<sup>112</sup> HaMoked, *Activity Report – 2008-2010*, pp. 67-68

The decision to approve the family unification application was not publicized, and the Israeli government's legal representatives, relying on this one-time gesture, requested that the High Court dismiss all petitions pending before the Court on the issue of family reunification. The petitioners argued that *ad hoc* gestures fail to provide real solutions and more importantly, that Israel was using the personal circumstances of civilians as a "bargaining chip" in political negotiations. The Court failed to make any decision on the merits, choosing instead to give the government 60 days within which to address the possibility of a change in its procedures as regards accepting requests for family reunification from the PA.<sup>113</sup>

By October 2007, the Civil Administration began processing the family reunification requests for those individuals who had filed a request with the PA and were residing in Palestine. As of the writing of this paper, according to Hussein al-Sheikh, the PA Minister of Civil Affairs, an estimated 31,830 requests have been approved, leaving an estimated 20,000 cases pending and 90,000 cases outstanding.<sup>114</sup> The pending 22,000 cases include *only* those individuals who are currently residing in the West Bank or Gaza Strip who made an application for family reunification, while the outstanding 90,000 cases also include: (a) applications from families in which, one or both spouses, is living outside of Palestine; (b) applications from siblings, parents or grandparents; and (c) applications from children over the age of sixteen who were not born in Palestine.<sup>115</sup>

Al-Sheikh notes that despite meeting with Israeli authorities several times since 2008 in order to discuss this issue, Israeli authorities have, so far, refused to process these cases. The Minister believes that given that the Court did not rule on the issue of the use of such cases as a political 'bargaining chip', Israeli authorities will continue to stall on this issue, as they do for other issues, as a means of extracting political concessions from the PA/PLO.<sup>116</sup>

### 3.3.6 'Stay' Permits

Following Israel's unilateral withdrawal from its settlements in the Gaza Strip in 2005, Israel declared that its occupation of the Gaza Strip ended and accordingly sought international recognition in support of its position. Yet, Israel continued to hold onto the Palestinian population registry, including the registry of the residents of the Gaza Strip, and continued to refuse to update address changes or to process family reunification applications. While Israel kept contact with the PA Ministry of Civil Affairs in the Gaza Strip, this was primarily for the purpose of processing requests of businessmen to enter Israel and travel to the West Bank following Israel's complete closure of the Gaza Strip.

In 2007, relations between the PA and Israel took on a new form. In June 2007, following Hamas's takeover of the Gaza Strip an estimated 1,200 Palestinians from Gaza – mostly Fatah activists affiliated with the ousted government in the Gaza Strip and businessmen – fled the Gaza Strip to the West Bank. While Israeli authorities largely facilitated their departure from the Gaza Strip owing to the strong relations between Israel and the PA, Israel refused to change the addresses of these individuals and instead instituted a new form of permit in the West Bank – that of a 'stay permit'.

The origins of the 'stay permit' remain murky. It appears that the PA's Ministry of Civil Affairs was forced to ask Israel to introduce stay permits as a means of "regularizing" the status of

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<sup>113</sup> HCJ 8881/06, *Gazuna v. The Civil Administration in the Judea and Samaria Region*.

<sup>114</sup> Hussein Al-Sheikh, Minister of Civil Affairs, *supra* note 89.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

Palestinians, including those Gazans who fled the Gaza Strip for the West Bank, enabling them to stay and reside legally in their country.<sup>117</sup> For the Israeli Military Commander, the stay permits are designed to limit and oversee the presence in the West Bank of Palestinians whose registered address is in the Gaza Strip, even if they have lived in the West Bank for several years. The stay permits are valid for six months only. They can be renewed for an additional six months, and then once a year, up to seven years from the original date of issuance. Only then will the possibility of granting ‘permanent residence’ in the West Bank be considered. The temporary permit can be revoked under three conditions: lack of security clearance, termination of the humanitarian need, and leaving the West Bank for Gaza or another destination for a long period of time.<sup>118</sup> As of writing, no cases of ‘permanent residence’ in the West Bank of Gazan holders of stay permits have been considered.

The issue of the validity of stay permits came under scrutiny in 2009 following the forcible transfer of a Bethlehem University student, Berlanty Azzam, who was picked up at a checkpoint in possession of her identification card with a registered Gaza address. Berlanty was in her final semester of studies at Bethlehem University. She had previously applied for permission to study at a West Bank university, but her request was denied. Using a permit issued to her for religious worship, she traveled from the Gaza Strip through Israel to the West Bank where she remained from 2005 until her deportation in 2009. She had attempted, on several occasions, to change her address, but her request was refused. Before the Israeli High Court, the State argued that she was not in possession of a valid stay permit and therefore her deportation was legal. While the Court did not rule on the validity of the stay permit, the Court instead found that she had misused her ‘entry to Israel’ permit and therefore her stay in the West Bank was “illegal”.<sup>119</sup> There have been no cases determining the validity of stay permits but according to the Ministry of Civil Affairs, a mere 1,200 stay permits were issued despite the fact that, in the West Bank, there remain more than 25,000 Palestinians with Gaza addresses.<sup>120</sup> With Military Order 1650 (discussed below) these individuals could be subject to deportation.

Although serious tensions remain between the PA and the Hamas authorities in the Gaza Strip, there is cooperation in one realm – that of civil affairs. The Fatah-run West Bank PA continues to maintain a liaison office in the Gaza Strip with the office serving as the conduit for Palestinians in the Gaza Strip seeking permits to travel to Israel for medical treatment or for other reasons.

In March 2009, Israel’s Coordination of Government Activities in the Territories (“COGAT”) changed its policy regarding moving from the Gaza Strip to the West Bank and receiving a ‘stay permit’. Under current procedures, a permit may only be approved in the following exceptional circumstances:

1. In the case of patients requiring nursing care – passage from Gaza to the West Bank will be permitted only to applicants without a first-degree or second-degree relative (nuclear family or grandmother, grandfather, grandchild) who can care for them in Gaza.
2. In the case of an orphaned minor who has lost a Gazan parent – the condition of a relative

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<sup>117</sup> *Id.*

<sup>118</sup> HaMoked and B’Tselem, *So Near and Yet So Far: Implications of Israeli-Imposed Seclusion of Gaza Strip on Palestinians’ Right to Family Life*, January 2014, p. 14.

<sup>119</sup> For further analysis of the case, see Alon Margalit and Sarah Hibbin, ‘Unlawful Presence of Protected Persons in Occupied Territory? An Analysis of Israel’s Permit Regime and Expulsions from the West Bank under the Law of Occupation’, 13 *Yearbook of International Humanitarian Law*, 2011, pp. 245-282.

<sup>120</sup> Hussein Al-Sheikh, Minister of Civil Affairs, *supra*, note 89.

in Gaza who can care for him or her, however distant, has been cancelled.

3. In the case of the elderly – the condition is having no first-degree relative in Gaza to care for them.
4. In exceptional cases, at COGAT’s discretion, permits may be given to first - or second - degree relatives of a West Bank resident, if the request pertains to exceptional humanitarian circumstances that render the applicants unable to continue living in Gaza. The procedure explicitly states that marriage and joint children are not considered humanitarian circumstances in this context.

Since these threshold conditions are so rigid, compliance with them is almost impossible. Thus, since the procedure entered into effect in March 2009 and until September 2014, only two applications for 'relocation' from Gaza to the West Bank were submitted - one of which was approved by the military and the other dismissed.<sup>121</sup>

### **3.3.7 Military Order 1650**

On 13 October 2009, the Israeli military commander issued military order 1650.<sup>122</sup> The order came into effect on 13 April 2010 and is an amendment to an already-existing military order from 1969 designed to prevent 'infiltration' into the West Bank. The previous order defined 'infiltrator' as someone who had entered the West Bank without a permit after being in one of the following countries: Jordan, Syria, Egypt or Lebanon. In other words, the old order applied mainly to Palestinian refugees and others who came from countries which, when the order was amended in 1969, were 'enemy countries'. The new order, however, encompasses a broader definition of 'infiltrator' and includes: anyone entering the West Bank “unlawfully” from any place and anyone who entered lawfully but “does not lawfully hold a permit”. The new order actually defines everyone as an infiltrator unless he or she can prove his or her entrance into the West Bank and presence there is lawful.<sup>123</sup>

In the previous order, the individual could present a document identifying its bearer as a resident of the West Bank in order to demonstrate lawful presence. A resident of the West Bank was defined as anyone whose permanent place of residence is in the West Bank. In other words, according to the old order, a person could prove the lawfulness of his or her presence with any document proving residency in the West Bank, with residence being determined only by actual place of residence, i.e. the site of their home. The new order, however, requires a document or permit issued by the military commander or the authorities in Israel authorizing presence in the West Bank. Therefore, under the new order, lawful presence can be proven only by a document or permit issued by the State of Israel. The definition of “resident of the West Bank” as someone whose permanent place of residence is the West Bank was deleted from the new order. Israel, which controls the Palestinian population registry, thus determines who is a “resident” of the West Bank rather than being bound by a factual determination arising from the actual place of one’s residence or center of life.

Because the order is worded in vague language, it is hard to know exactly what the intentions are for its enforcement. However, the new order indicates two main and problematic changes. First, for

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<sup>121</sup> See: HaMoked, 'Military's Responses to the Inquiries of HaMoked and Gisha Prove: the Procedure for Handling Applications by Gaza Strip Residents for Relocation in the West Bank Remained Impossible also after the Amendments Which Were Made Therein', 28 October 2014.

<sup>122</sup> Order Regarding Prevention of Infiltration, No. 1650, Amendment No. 2.

<sup>123</sup> Margalit and Hibbin, *supra*, note 119.

the tens of thousands of Palestinians who live in the West Bank and whose residency is not recognized by Israel,<sup>124</sup> the order imposes up to seven years in prison for a person's very presence in his or her own home. Second, the order indicates an attempt to formalize or codify the policy of deportation and separation between Gaza and the West Bank into the military legislation of the West Bank. Even though there were deportations before the order came into effect, the issuance of the order: (a) indicates an intention to enforce the policy of deportation among groups Israel has promised in the past not to deport; and (b) gives the Israeli army a clearer power to act.

It should be noted that as part of a petition by HaMoked: (HCJ 6685/09 *Kahouji vs. Military Commander of the West Bank*), the Israeli government declared that even if it believes that a Palestinian resident whose address is listed in Gaza but resides in the West Bank is doing so unlawfully, it currently does not intend to deport such people if they entered the West Bank before the outbreak of the second *intifada* in September 2000, barring any security claims against them. The new order seemingly permits soldiers at checkpoints to detain and deport anyone who cannot prove he or she is lawfully present in the West Bank, in contrast to the declaration made in the *Kahouji* case.

The very issuance of the new order results in severe restrictions on the movement of Palestinian residents who, for fear of arrest, forego visiting family, seeking medical treatment or taking advantage of economic and educational opportunities in neighboring cities or abroad.

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<sup>124</sup> According to Israeli military records, approximately 35,000 Palestinians from Gaza who entered the West Bank remain there without valid permits, see Human Rights Watch, *supra*, note 6, p. 8.

## 4 Challenges to Israeli Policy Before Israeli Courts

### 4.1 Family Unification in the West Bank

The Israeli government observes that IHL does not necessarily refer to family reunification within the occupied territory. In this respect, the Occupying Power may discharge its obligation to respect family rights by permitting the exit of a protected person from the occupying territory in order to unite with the foreign spouse.<sup>125</sup> This, however, ignores the obligation *to facilitate* the reunion of the family *to the extent possible*. If such a reunion is possible in the occupied territory, and in the absence of a security reason, it seems that the Occupant must allow it. It is also noteworthy that maintaining the family unity is not always possible and practicable in another country. Further, in practice, Israel restricts the movement from the occupied territory and the ability of protected persons to leave.

Following the rejection of family reunification applications by Israeli authorities and their refusal to allow a foreign spouse to enter and stay permanently in Palestine, Palestinian spouses turned to the Israeli High Court of Justice. The Court, however, has largely failed to recognize that the Military Commander carries a positive obligation to facilitate the reunion of families in Palestine in accordance with international law. It has also clarified that the Court will intervene in the exercise of the Military Commander's discretion only when the latter's decision in this matter is arbitrary or extremely unreasonable.<sup>126</sup>

An exceptional case is the *Samara* case (1980), challenging the Israeli authorities' refusal of the applicant's initial application for family reunification.<sup>127</sup> The Court, however, found that the refusal was unlawful, and that a permanent stay permit should be granted to the foreign spouse based on the following reasons: 1) the application concerned first degree relatives (the married couple and their children); 2) there was no security reason for the refusal; and 3) the family's attempt to settle outside of Palestine (in Germany) was unsuccessful.

In later cases, the Court withdrew from the notion that the issue of family reunification imposes a legal obligation on the Military Commander that requires the authorities to review each application according to the individual circumstances of the specific case.

In the *Awad* case, the Israeli High Court considered the handling of family reunification applications a *discretionary gesture* grounded in humanitarian considerations rather than in the IHL-based obligation "to facilitate the reunion of the family".<sup>128</sup> The Court upheld the refusal of the family reunification application, although there were no specific security reasons that prevented the approval of the application.

The High Court's approach, accepting the Israeli government's position that family unification is not a right but a privilege based on "humanitarian grounds", was reaffirmed in the *Alatrash* case:

*Family reunification is not a guaranteed right. Granting such a request is, as stated, a special*

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<sup>125</sup> *Al-Saudi*, *supra*, note 27; Dinstein, *supra*, note 24, pp. 261, 263.

<sup>126</sup> Kretzmer, *supra*, note 31, p. 107.

<sup>127</sup> HCJ 802/79 *Samara v. Military Commander*, 29 April 1980.

<sup>128</sup> HCJ 263/85 *Awad v. Commander of the Civil Administration*, 13 April 1986.

*act of compassion on the part of the authorities, supported by humanitarian considerations.*<sup>129</sup>

The government's argument that the blanket rejection of a family reunification application is legitimately based on general security, political and economic considerations – rather than on an individual security impediment – was affirmed in *Shaheen*.<sup>130</sup> The Court accepted the government's position that individual screening is no longer possible given that the issue concerns thousands of applications per year and thus involves large-scale immigration into the occupied territory. The Court also opined that while the Fourth Geneva Convention protects the family rights of protected persons, it does not require the Military Commander to allow the entrance of foreign nationals, including the foreign spouse of a protected person, into Palestine.<sup>131</sup> The court cited the Military's opinion and refused to intervene:

*The respondent [the IDF Commander of the West Bank] ... does not ignore the fact that there are serious humanitarian problems and he is not renouncing his willingness to examine each case in its context, but he was entitled to conclude that when a particular phenomenon becomes a mass phenomenon, encompassing many thousands each year, it is not possible to continue to apply standards which are strictly individual; rather the above respondent has a duty, on the basis of his considerations in accordance with the laws of warfare and in light of the nature of his position to attach importance to the security, political, economic and general significance of the phenomenon and its consequences.*<sup>132</sup>

After the aforementioned rulings, the Israeli High Court of Justice has not re-examined its previous assertions as specified in the *Shaheen* case. Yet, human rights organizations have since continued to petition the High Court in order to change policies relating to family unification. Thus, during 2007, HaMoked filed approximately 50 individual petitions of couples residing in Palestine whose family unification applications had not been processed by Israel. As a result, Israel announced its decision to initiate a process towards the approval of a certain number of family unification applications, as part of a 'political gesture' towards the PA.<sup>133</sup>

Yet, the Israeli High Court has failed to serve as an effective means to challenge the policies of the Israeli authorities in regards to family unification. Specifically, the Court has failed to uphold Israel's duty to enable Palestinians – protected persons in Palestine – to fulfill their right to family life within Palestine, viewing it instead as a privilege. The Court has also refrained from intervening in the political nature of Israel's demographic policies underlying various measures aimed at limiting the Palestinian presence in Palestine.<sup>134</sup>

## **4.2 Changing Place of Residency from Gaza to the West Bank**

In 2010, HaMoked, along with 12 other organizations, challenged the Israeli procedure for changing one's address on their ID cards before the Israeli High Court. The current procedure almost entirely bars Gaza residents from official relocation to the West Bank, even if they have

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<sup>129</sup> HCJ 209/86 *Alatrash v. Head of the Civil Administration*, 1986.

<sup>130</sup> HCJ 13/86 *Shaheen v Military Commander*, 11 January 1987, para. 11.

<sup>131</sup> *Id.*, paras. 6, 9.

<sup>132</sup> *Id.*, para. 11.

<sup>133</sup> See chapter 3.3.5 above.

<sup>134</sup> See, e.g., HCJ 13/86 *Shaheen v Military Commander*, 11 January 1987.

lived there for years, and allows for submission of requests only in exceptional cases.<sup>135</sup> The petition argued, *inter alia*, that the procedure's criteria denied Gaza residents any possibility of living with their partners in the West Bank, thereby violating their right to family life. The three conditions under which a permit may be granted (see chapter 3.3.6 above) are so extreme that it is almost impossible to imagine a single case of a person meeting them.

The High Court of Justice rejected the petition on the grounds that the Court's interference with the State's discretion could not be justified, after having accepted the State's position that its decisions are based on security concerns. The Court accepted the State's position that a restrictive policy in regard to movement between Gaza and the West Bank is needed, and, as in many cases in the past, the Court asserted that the Military Commander is the expert in outlining the security concerns and the Court should not put itself in the Military Commander's shoes.<sup>136</sup>

Yet, the Court determined that the military should exercise discretion and broaden the criteria for relocation. The justices ruled that restricting relocation to "humanitarian exceptions" was overly rigid. The Court was also critical of the provision in the procedure whereby family ties, even of the first degree, did not constitute an independent humanitarian justification for relocation to the West Bank, and held that applications for relocation due to marriage should not be automatically dismissed, and that each application should be examined on its merits with consideration for the entire circumstances relating to the couple.

In view of the Court's criticism, the Israeli government undertook to revise the procedure, and in August 2013, COGAT published the revised procedure. However, a careful reading of the procedure reveals that, contrary to the Court's instructions in the judgment, the amendments made to the procedure are superficial and minor. This case is thus another example of how the High Court of Justice's reluctance in real intervention in Israeli policies have helped solidify extreme practices, violating the rights of Palestinians to freedom of movement and family life.

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<sup>135</sup> HCJ 2088/10 *HaMoked v. Commander of the Military Forces in the West Bank*, 24 May 2012.

<sup>136</sup> *Id.*, paras. 16-18.

## 5 Conclusions on Residency in the West Bank and the Gaza Strip

The maze of regulations, practices and 'humanitarian gestures' for determining residency status in the West Bank and Gaza creates a bureaucratic nightmare for Palestinians seeking to navigate through the process and assert their basic rights to reside in their homeland. Organizations working on residency issues feel that they are engaged in a game of "cat and mouse" with the Israeli Civil Administration and the Israeli government.<sup>137</sup> For every legal 'victory', the Military Commander conceives of new mechanisms to maintain separation between the West Bank and the Gaza Strip and to limit the number of Palestinians on the population registry. For example, following two victories regarding the issue of 'stay' permits (*Azzam* and *Salah*), the Civil Administration appeared to rush to issue military order 1650 so as to close the legal loophole created by these two court decisions.

Moreover, lawyers involved in such cases uniformly indicate that, in addition to closing loopholes, the Israeli government is ready to use the issue of family reunification and the registration of children as 'bargaining chips' in order to gain political concessions from the PA/PLO. The PA Minister of Civil Affairs Hussein al-Sheikh reiterated this claim.

The following classes of individuals continue to face difficulties to enter or remain in the occupied Palestinian territory:

- Palestinians who fled the West Bank or Gaza Strip during the 1967 War or who were absent during the period of the Israeli census, particularly full families or males between the ages of 16 and 60;
- Palestinians who left Palestine following the start of Israel's military occupation;
- Palestinians whose residency is revoked following the lapse of an exit permit;
- Palestinians whose residency is revoked due to obtaining second citizenship;
- Individuals who were denied family unification for unspecified reasons;
- Individuals whose family unification cases remain frozen, whether located inside or outside Palestine;
- Individuals who are ineligible to apply for family unification owing to Israeli conditions (eg. over-stayers, entering without visitor permits, etc.)
- Individuals who have been denied 'visitor' permits or denied entry although trying to make a family unification application;
- Children of Palestinians born abroad who have not been registered;
- Children of Palestinians born abroad who did not apply for registration during the period of the freeze who are now over the age of sixteen;
- Palestinians whose addresses have not been changed (including those forcibly transferred to

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<sup>137</sup> Interviews with Gisha, Adalah and HaMoked.

either the Gaza Strip or West Bank).

Whilst Israeli restrictions on family unity and contact between the West Bank and Gaza Strip continue to have a serious deleterious impact on the family life of many Palestinians, international experts have also commented on the illegality of the Israeli policy separating Gaza from the West Bank, as a matter of international law. After noting the existence of the Separation Policy, as acknowledged by Israeli officials, Professor Michael Bothe considers that such a policy is not compatible with the fundamental duty of the Occupying Power to ensure public order and safety, nor the right to family life under human rights law. As the West Bank and Gaza Strip remain part of a single territorial unit, Israel is obliged to facilitate freedom of movement and the right to family life throughout the entire occupied territory.<sup>138</sup>

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<sup>138</sup> Michael Bothe, *Expert Opinion on the Legality of Prolonged and De Facto Permanent Fragmentation and Separation of Occupied Territories in the Context of the Gaza Blockade*, 28 March 2015.

## 6 Residency Rights in East Jerusalem

Following Israel's occupation of East Jerusalem in 1967, Israel annexed nearly 71 square kilometers of Palestinian West Bank land to Jerusalem. Moshe Dayan, then Israeli Defense Minister, proclaimed, "[t]he Israeli Defense Forces have liberated Jerusalem. We have reunited the torn city, the capital of Israel....[and vow] never to part from it again."<sup>139</sup> Twenty-two days later, on 27 June 1967, the Israeli government passed the Law and Administration Ordinance (Amendment No. 11) Law, which provided for the extension of Israeli law, jurisdiction, and administration to the newly occupied Arab East Jerusalem. The annexation brought 30 Palestinian villages and a refugee camp into Israel's municipal jurisdiction. With the annexation, Israel extended the application of Israeli law to the area, and Palestinians living within the municipal boundaries of the city became subject to Israeli law, despite international condemnation.<sup>140</sup> The newly expanded East Jerusalem was joined with West Jerusalem, thereby creating the fiction of an 'undivided Jerusalem'. In keeping with this 'united' city, the twelve-person elected Arab Municipal Council of East Jerusalem was dismissed and, since that time, the Palestinian residents of East Jerusalem have remained unrepresented in municipal councils as they mostly refuse to vote in Israeli municipal elections, and the municipality refuses to allow Palestinian residents of Jerusalem to hold their own elections.<sup>141</sup>

While the UN Security Council and General Assembly have repeatedly condemned Israel's actions and have denounced Israel's annexation of East Jerusalem as contrary to international law (and in particular the Fourth Geneva Convention), Israeli authorities continue to implement policies designed to integrate occupied East Jerusalem with West Jerusalem.

The penultimate expression of Israel's policies came with the passing of Israel's *Basic Law on Jerusalem* on 30 July 1980. According to this law, "complete and united" Jerusalem was declared the Capital of the State of Israel. While the UN Security Council condemned the law and reaffirmed the inadmissibility of the acquisition of territory by force, Israel has continued to pursue policies designed and aimed at fundamentally changing the physical landscape of Jerusalem while also pursuing policies aimed at engineering migration from the city.

Since its unilateral annexation, Israel has invested great effort in preserving what it calls the "demographic balance" in Jerusalem, which means reducing the number of Palestinians living in the city and maintaining a Jewish majority of some 70 percent, although the numbers and figures have varied over the years. Residents of East Jerusalem struggle for their right to continue living in the place where they were born and where their families have lived for generations, and despite this, many of them are forced to leave the city due to Israel's ongoing policy of discrimination that includes, among other things, revocation of residency status, strict limitations on building, failure to provide adequate infrastructure, and low budget allocations for education and other services. In the context of this report, Israel tries to reduce the number of Palestinians living in Jerusalem, *inter alia*, through the following measures: (a) limiting the granting of (or revoking) the permanent legal status in Israel to Palestinian residents of Jerusalem; (b) limiting the number of family reunification cases; and (c) highly regulating the registration of Palestinian children in the Israel population registry.

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<sup>139</sup> Shlomo Slonim, *Jerusalem in America's Foreign Policy: 1947-1997* (1998) p. 192.

<sup>140</sup> See, United Nations Security Council Resolution, S/Res/252 (1968), 21 May 1968, (Canada and USA abstaining), S/Res/267 (1969), 3 July 1969, (adopted unanimously).

<sup>141</sup> Elie Rekhess, *The Palestinian Political Leadership in East Jerusalem After 1967*, in Tamar Mayer & Suleiman A. Mourad (eds.), *Jerusalem: Idea and Reality*, 2008, pp. 266-282, especially 268.

Each of these policies will be discussed, in turn.

## 6.1 Measures to Decrease Palestinian Population in Jerusalem

Immediately following the start of the occupation, Israel conducted a census<sup>142</sup> in the annexed areas of Jerusalem and only granted ID cards to residents present at the time of the census. Some 65,857 Palestinians were recorded during the census.<sup>143</sup> Residents of the annexed territory who, for one reason or another, were not there at the time the census was conducted lost their right to an Israeli identity card.<sup>144</sup> In order for them to live in the city, their families had to submit a request for family unification on their behalf.

In carrying out this study, a former census taker – a Palestinian citizen of Israel – was interviewed. On the condition of anonymity, the census taker “A” revealed:

*I am now 60 years old, so you can see that I was very young at the time. I was unemployed and sent by the Unemployment Office in Nazareth to conduct the census. This was my first 'real' job and I felt it was important to please my new employer, believing that more work would be given to me in the future if I did a good job. I was informed that I would be sent to Jerusalem to take the census. It was very exciting for me – I had never been to Jerusalem before that time. When I arrived, I was instructed that I could only register those Palestinians whom I actually saw and not anyone who did not introduce themselves before me. In short, I wasn't allowed to register the names of anyone I did not meet. We worked in teams of two – my partner was a Jewish man. Two stories stand out in my mind about my work at the time and it was only after seeing what happened to those in Jerusalem that I became haunted by the work. The first case involved a young, disabled man – no older than me – who was unable to make it to the door. I was not allowed to enter the homes of those I was counting and as a result, the young man was never registered as a Jerusalemite. The second case involved a young couple who had gotten married just a day before the Six Day War. They went on a honeymoon to Amman, I was told. The mother of the groom insisted that I register the honeymooning couple, but I was under strict instruction not to do so. His mother cried – perhaps she knew what would happen to her son and daughter-in-law. I find myself thinking about these people from time to time and sometimes feel guilty that I created so many problems in their lives.<sup>145</sup>*

Those registered in the Israeli census were granted permanent residency. As mentioned above, permanent residency differs substantially from citizenship. In contrast to its literal meaning, it is not permanent and can be revoked. Permanent residency status does not confer the right to vote, or to be elected, to the Israeli parliament (the Knesset), although permanent residents can vote in

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<sup>142</sup> For a copy of the 1967 census questionnaire, please see: The Levy Economics Institute at Bard College: [http://www.levyinstitute.org/pubs/1967\\_census/questionnaire.pdf](http://www.levyinstitute.org/pubs/1967_census/questionnaire.pdf).

<sup>143</sup> The Levy Institute at Bard College, *The 1967 Census of the West Bank and Gaza Strip: A Digitized Version*, Volume 6, Table 5, [http://www.levyinstitute.org/pubs/1967\\_census/vol\\_6\\_tab\\_5.pdf](http://www.levyinstitute.org/pubs/1967_census/vol_6_tab_5.pdf).

<sup>144</sup> Yet, over the years the status of permanent resident was granted in very few cases also to people who did not register in the 1967 census but managed to demonstrate unequivocally that they had been residents of East Jerusalem prior to the 1967 War and continued to live in Jerusalem without interruption since 1967. This is no longer possible due to section A of government resolution 2492 dated 28 October 2007. See more below, in this regard.

<sup>145</sup> Name Withheld, Interview with “A” Census-Taker, 2010.

municipal elections. Owing to political considerations, most Palestinian residents of Jerusalem have refused to vote in municipal elections. Permanent residents do not hold Israeli passports.<sup>146</sup>

The main right granted to permanent residents is to live and work in Israel without the necessity of special permits. Permanent residents are also entitled to social benefits provided by the National Insurance Institute. Unlike citizenship, permanent residency is only passed on to the holder's children where the holder meets certain conditions. A permanent resident with a non-resident spouse must submit, on behalf of the spouse, a request for family unification.

There are two pieces of legislation governing citizenship and residency in Israel. These are (1) the *Nationality Law*, 1952; and (2) the *Entry into Israel Law*, 1952. This second law is, as the title suggests, a law that governs the entry of individuals as tourists and their stay as immigrants. Implemented by the Ministry of the Interior, the *Entry into Israel Law* gives the Minister almost complete discretion to terminate permanent residency status (see below). In effect, Israel applies to the residents of East Jerusalem the same arrangements it applies to immigrants from foreign countries, even though the Palestinians did not immigrate to Jerusalem from another country – but rather Israel's jurisdiction was imposed upon them.

## **6.1.1 Revocation of Residency – 'Center of Life' Policy**

### ***6.1.1.1 Entry into Israel Law and Regulations***

The principal method employed by Israel to limit residency is through the implementation of the so-called 'center of life' policy. According to this policy, a Palestinian Jerusalemite's residency status may be revoked if the Interior Minister determines that the individual's 'center of life' has moved outside of Israel. The governing legislation is the Entry into Israel law and its accompanying regulations. According to Regulation 11(c) of the Entry into Israel Regulations, "a permanent residency permit expires if the holder leaves Israel and settles in another country". Furthermore, Regulation 11A provides that "a person will be considered to have settled in a foreign country if he or she: (1) lived for more than seven years in a foreign country; (2) received the status of permanent resident in a foreign country; or (3) became a citizen of a foreign country".<sup>147</sup>

The importance of Regulation 11(c) and the temporary nature of "permanent" residency became apparent in 1988,<sup>148</sup> in the High Court's decision in the case of Mubarak Awad, head of the Center for the Study of Non-Violence. Awad was a resident of Jerusalem who had gone to the United

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<sup>146</sup> While Israel declared that Palestinian residents of East Jerusalem could be granted full Israeli citizenship upon application and fulfillment of certain requirements (namely taking an oath of loyalty to the State of Israel, not holding citizenship in another state and having some knowledge of Hebrew), most Palestinians declined to apply for political reasons choosing instead to adhere to their rights under international humanitarian law and, in particular, Article 45 of the Hague Regulations that forbids an Occupying Power from compelling inhabitants of occupied territory from swearing allegiance to the occupier.

<sup>147</sup> Entry into Israel Regulations, 5734-1974, Israeli Collection of Regulations No. 3201, 18 July 1974, p. 1517, Sections 11(c), 11A.

<sup>148</sup> From the time of Israel's occupation of East Jerusalem in 1967, Palestinian residents of the city could leave the country, live elsewhere, even for prolonged periods provided that they returned to Jerusalem every few years to renew the exit permits issued to them before their departure. These exit permits were generally issued for three years and the Ministry regularly renewed exit permits and identity cards and registered changes in their family status. Nonetheless, a continuous stay of more than seven years outside Israel without have renewed exist permits could result in the revocation of residency. Palestinians who moved elsewhere in the occupied Palestinian territory were not required to have exit permits, and some continued to receive allotments from the National Insurance Institute.

States to study, married there, and received United States citizenship through his American spouse. During one of his visits to Jerusalem, Awad applied to replace his identity card. The Interior Ministry denied his request on the grounds that he was no longer a resident of Israel. Awad petitioned the High Court. He argued that the status that Israel granted in 1967 to East Jerusalem Palestinians was “a type of citizenship” or “constitutional citizenship,” which the Minister of Interior may not revoke at his or her discretion.<sup>149</sup>

Justice A. Barak, writing for the Court, held that the status demanded by Awad does not exist under Israeli law, and no such status can, therefore, be granted. However, Barak found another legal solution: that the status of East Jerusalem’s Palestinian residents could be determined pursuant to the Entry into Israel Law. In this way, they would be considered permanent residents, holding the right to reside permanently in Israel. Justice Barak wrote:

*As we saw, the legislation’s intent is to synchronize the State’s law, jurisdiction, and administration with East Jerusalem and its residents. The goal of the interpreter is to effectuate this intention to enable its incorporation within the language of the law. This incorporation is not difficult in that residents of East Jerusalem may be considered to have received a permanent residency permit.<sup>150</sup>*

Barak added that granting special status to East Jerusalem residents would discriminate against other permanent residents in Israel, those who are not Palestinian. In *Awad*, Justice Barak rejected the petitioner’s fear that under the status granted, the Minister of the Interior could deport all residents of East Jerusalem by revoking their permanent residency. Barak held that “the Minister of Interior may only act pursuant to substantive considerations”, and that the Minister’s authority is subject to judicial scrutiny.<sup>151</sup>

In Barak’s opinion, permanent residency status must reflect the factual reality of actual permanent residency. Where this reality is not found, the entitlement to permanent residency no longer exists, and the status expires by itself, without any need for formal revocation.

Interestingly, Justice Barak used the principle of “equality” as a means of justifying Israel’s discriminatory policy. Justice Barak was careful to note that it would be considered “unfair” if a different policy were applied to East Jerusalem’s Palestinian permanent residents and to other permanent residents in Israel. Self-evidently, the situations of the two groups are different. The suggestion that Palestinians, residing in their own occupied country, can be equated to the situation of migrants who have chosen to migrate to the State of Israel is patently absurd.

#### ***6.1.1.2 Revocation of Residency after Moving to Palestine or Abroad***

The *Awad* decision, later paved the way for Israel to revoke the residency of Palestinians who moved from East Jerusalem to other parts of Palestine. In December 1995, the Ministry of the Interior implemented an expanded interpretation of the term “leaves Israel” as contained in Regulation 11(c). The Israel’s 1996 State Comptroller report outlines this policy:

*In December 1995, a discussion was held in the Attorney General’s office over whether the areas of Judea and Samaria and the Gaza Strip (hereafter – the region) should be considered “outside Israel” for the purposes of expiration of a*

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<sup>149</sup> HCJ 282/88, *Awad v. Prime Minister et al*, 1988.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

*permanent residency permit under the Entry into Israel Regulations. Following the discussions, the legal advisor of the Ministry issued a directive to the East Jerusalem office, according to which “outside Israel” also includes the region and that, therefore, where persons have resided in the region for more than seven years, their permanent residency permit has expired and they should no longer be registered in the Population Registry as a resident.*<sup>152</sup>

Stated differently, even if a Palestinian resident of Jerusalem remains outside of Jerusalem for more than seven years and this person has not become a citizen or permanent resident of another country, his/her residency status may be revoked pursuant to the discretion of the Minister of the Interior. This policy is particularly harsh because it also applies retroactively and irrespective of the present residency situation of the individual in question.

Because Israeli authorities routinely apply an excessively high threshold with respect to the 'center of life' standard, more often than not Palestinian Jerusalemites are unable to prove to the Interior Minister that their center of life is in fact in Jerusalem. They are therefore, stripped of their right to remain there.

According to HaMoked and B'Tselem, and on the basis of data received through the *Freedom of Information Act*, from 1967 to 2007, Israel revoked the residency of 8,558 Palestinian Jerusalemites. The biggest jump, however, appeared to come in 2008 with a reported 4,577 Palestinians including 99 minors who had their residency revoked. Of the revocations, according to the Ministry of the Interior, the majority of cases were due to a seven-year absence from the country while 38 were revoked for “immigration to the territories”. The staggering figure for 2008 – a figure which represents more than half of the revocations for the 40 years preceding – demonstrates an increasing willingness on the part of Israeli authorities to actively seek the revocation of Jerusalemites. As of 2014, Israel revoked the residency of 14,416 Palestinians from East Jerusalem.<sup>153</sup>

In 2000, in light of a HaMoked petition filed before the Israeli High Court challenging this policy, the then Minister of the Interior, Natan Sharansky, made a declaration to the High Court. This declaration, known as the “Sharansky Declaration” slightly rectified the unjust situation caused to residents whose residency was revoked. The Sharansky Declaration states that:

*2(a) An examination on an individual basis shall be undertaken with respect to anyone who applied to the Ministry of the Interior, and for whom the question of revocation of permanent residence has arisen for one reason or another.*

*2(b) If it shall transpire from an examination that the aforesaid applicant, who is registered in the Population Registry as a permanent resident, continued to maintain a proper connection with Israel even in a period in which he lived outside of Israel, the Ministry of the Interior shall not – subject to the absence of a criminal and/or security impediment – adopt any steps to remove him from the registry.*

*Nothing in the abovementioned shall detract from the provisions of law concerning*

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<sup>152</sup>Quoted in B'Tselem and HaMoked, *The Quiet Deportation Continues: Revocation of Residency and Denial of Social Rights of East Jerusalem Residents*, September 1998, p. 9.

<sup>153</sup>HaMoked, 'Status Revocations in East Jerusalem Israel Continues its 'Quiet Deportation' Policy: in 2014, the Ministry of Interior Revoked the Residency Status of 107 Palestinians from East Jerusalem, <http://www.hamoked.org/Document.aspx?dID=Updates1483>.

*naturalization and acquisition of a permit for permanent residence outside Israel, or from the Interior Ministry's discretion concerning their authority in light of the applicant's personal circumstances and his affinities as a whole.*

Further:

*3a. Concerning persons who were deleted from the Population Registry from the year 1995 and thereafter - A person who transferred his center of life outside Israel for more than seven years, and thus, according to the law his permit for permanent residence in Israel expired, and the Interior Ministry informed him of the expiration of his permit for permanent residence, or he was deleted from the Population Registry file as a result of this, and he visited Israel during the period of validity of the exit card that was in his possession, and has lived in Israel [since his return] for at least two years, the Minister of Interior shall see him as having received a permit for permanent residence in Israel on the day of his return, this to the extent that he requests to be registered anew in the Population Registry.*

*b. Concerning a person who transferred his center of life outside Israel for more than seven years, and thus, according to the law his permit for permanent residence in Israel expired, and for whatever reason, the Interior Ministry did not inform him and/or he was not deleted from the Population Registry file up to now, the Minister of Interior will see him as possessing a valid permit for permanent residence in Israel, provided that he visited Israel during the period of validity of the exit card in his possession.*

...

*d. Concerning persons who were minors at the time their parents transferred their center of life outside Israel, in general, the question of their residency will be examined from the day of their majority [i.e. age 18], and in this matter, the period which preceded the day of their majority will not be taken into account.*

*e. This directive shall apply with the necessary modifications, also to a person who transferred his center of life, as stated, to territories in the Area of Judea and Samaria and Gaza.*

Stated differently, those individuals (subject to criminal or security provisions) who did not acquire permanent residency or citizenship outside of Israel during the period of this policy, shall not have their residency revoked provided that the individual maintains a proper connection with Israel. If a resident has lost his status only as a result of a period of residence outside Israel for more than seven years, he may have it reinstated if the criteria listed above apply. If a resident has lost his permanent residency status on account of receiving foreign citizenship or permanent residency, the resident may receive it back in **very** exceptional circumstance. On this latter point, according to the case law, while considering reinstating residency status, the Ministry of the Interior should take into account, *inter alia*, the following parameters: the period of absence, whether the individual retained connection to East Jerusalem during absence, the reasons for obtaining citizenship or residency of another country, the purpose of relocating to the foreign country (for instance, studying abroad should not – according to current policy – lead to residency revocation) and years of residence in East Jerusalem after returning. In addition, the resident may provide other reasons for reinstating his status, and the Ministry should consider this, as well.

While some Palestinians have their residency status reinstated as a result of the Sharansky Declaration, it is important to note that this is merely a *policy* change and past practice can be reinstated at a later stage.

### 6.1.2 Family Reunification

In general, Palestinian residents of East Jerusalem who are married to residents of Palestine and who want to reside together in Jerusalem are required to submit a request for family unification to the Ministry of the Interior. The Ministry's policy on approving such requests has gone through a number of changes over the past four decades. Despite these changes, the general approach taken by Israel is that it does not have the duty to grant a permanent residency permit to foreign spouses of Palestinian residents of East Jerusalem, but rather will determine the issue on a discretionary basis:

*The Minister of Interior is of the opinion that granting a permit to reside in Israel is not to be taken lightly, as it grants rights and creates a type of status, and it is known that in any case, foreigners have no inherent right to receive it, as is customary throughout the world, as this honorable Court has frequently held.<sup>154</sup>*

The Ministry of the Interior is notorious for its excessive delays in processing family reunification applications. In the past, families would routinely have to wait years before receiving an answer. As a result, Palestinian families are usually left with three alternatives: they may either (i) live separately in the unrealistic hope that their application will be accepted swiftly; (ii) live 'illegally' in Jerusalem without a permit and risk the consequences of being caught; or (iii) leave Israel to live together. If the third option is chosen, it is likely that, those family members who have permanent residency will lose their residency rights in Jerusalem by virtue of Israel's 'center of life' policy.

Until 1991, access between Palestine (including East Jerusalem) and Israel was unrestricted. Residents of the West Bank and Gaza Strip could live with their East Jerusalem spouses and children without any special permits. In February 1991, during the first Gulf War, Israel required Palestinians from the West Bank and Gaza Strip to obtain Israeli entry permits. This marked the commencement of Israel's policy of 'closure' in Palestine.

In 1995, a new family reunification procedure was introduced in which a foreign spouse would undergo a graduated procedure to receive permanent residency status in Israel, subject to security screening and criminal checks, as well as the requirement to produce numerous documents attesting to the fact that the Jerusalem spouse was residing in Jerusalem. The status of the children is determined through a separate registration process.

In general, the Ministry of the Interior was able to reject family unification applications only if the couple failed to: (i) prove the authenticity of the marriage; (ii) prove that their 'center of life' was in Israel; or (iii) obtain the necessary Israeli security or criminal clearance.

In 2002, Israel decided to freeze the processing of family unification applications in cases in which the foreign spouse was a resident of Palestine. The freeze was passed into law a year later with the *Citizenship and Entry into Israel Law (Temporary Order)*, 2003. This law, which became effective in August 2003, revoked the family unification procedure between Israeli citizens or permanent residents (*i.e.*, Jerusalemites) and their Palestinian spouses from the West Bank and Gaza Strip.

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<sup>154</sup> Paragraph 3 of the State's answer in H CJ 7930/95 *Nariman Mahfuz and thirty-nine others v. Minister of the Interior et al.* quoted in B'Tselem and HaMoked, *supra*, note 152, p. 7.

While the decision to pass this law was ostensibly for “security reasons”, the Minister of the Interior planned this change in the law as far back as 2001 in order to prevent Palestinians from living in Israel for demographic reasons.<sup>155</sup>

In 2003, human rights organizations petitioned the Israeli High Court of Justice, challenging the constitutionality of the law. The law, which was originally enacted for one year, was extended by the Knesset for a six month period on 21 July 2004, and for an additional four month period on 31 January 2005. On 27 July 2005, the Knesset voted to extend the law until 31 March 2006, with amendments, without in any way altering the discriminatory nature of the law.

The law applies to anyone Israel defines as “resident of the Area” (adults and minors alike). Under the original definition, “resident of the Area” was defined as follows:

*“Resident of the Area” – including someone who resides in the Area even if he is not registered in the Population Registry of the Area, and excluding a resident of a Jewish settlement in the Area.*

Stated differently, “Area” means Palestine (excluding Jerusalem) while “resident of the Area” means a Palestinian living in Palestine (excluding Jerusalem), irrespective of whether the individual is registered in the population registry.<sup>156</sup>

The legislation was further amended in 2007 to include those who are also residents/citizens of “enemy states” listed in the law such as Iran, Iraq, Syria or Lebanon. The Law has not been amended since and remains in force to this day. In January 2012 the High Court of Justice ruled that the Law, in its current version, is constitutional.<sup>157</sup>

#### **6.1.2.1 Temporary Permits**

The additional amendment to the law in 2007 introduced an article that enables the Minister of the Interior to approve stay permits and temporary residency in Israel for special humanitarian reasons, based on the positive recommendation of a committee established for this purpose. The amendment applies only when the person who files the application for family reunification is a “relative” – defined as spouse, parent or child. The amendment provides limited and temporary relief, as the committee cannot recommend the granting of permanent status in Israel. It is not clear what may be considered “humanitarian reasons,” but the fact that the vast majority of the applications which were submitted to the committee were denied demonstrates that the Ministry of the Interior tends to interpret this definition very narrowly.<sup>158</sup> In addition, the Minister is authorized to impose a quota on humanitarian exceptions.

With the passage of the 2005 amendment to the Law, Palestinian men over the age of 35 and Palestinian women over the age of 25 married to residents of Israel could apply to remain in Israel

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<sup>155</sup> HaMoked, *Temporary Order? Life in East Jerusalem under the Shadow of the Citizenship and Entry into Israel Law*, September 2014, pp. 16-17.

<sup>156</sup> The 2005 amendment clarified the definition of “resident of the Area,” by explicitly applying it to those individuals who are registered in the Palestinian population registry, irrespective of whether they in fact live in Palestine, and to those individuals who live in Palestine, irrespective of whether they are registered in the Palestinian population registry.

<sup>157</sup> HCJ 466/07 MK Zehava Galon et al. v. Attorney General, 11 January 2012.

<sup>158</sup> The data was given by the Israeli government during the court hearing in the petitions challenging the Law (HCJ 466/07 MK Zehava Galon et al. v. Attorney General).

legally through a 'temporary permit'. In order to obtain a temporary permit, both spouses are required to prove that their marriage is genuine; that the resident has lived in Jerusalem for at least two years and that the couple does not have an additional residence in Palestine. In addition to the 'center of life' test, the couple must be screened by Israeli security agencies and the police. Provided that the couple passes all tests, the Minister of the Interior will issue them with a temporary permit – valid for one year.<sup>159</sup> According to the Law, this permit cannot be upgraded to temporary or permanent residency. The original permit must be renewed every year through the same process – security screening and center of life tests. The temporary permits do not grant the permit holders any social benefits, and the holder is not allowed to travel through Israeli airports or ports (except the Allenby Bridge). In addition, the permit holder cannot enter Israel (including East Jerusalem) from any barriers/checkpoints. Further, the temporary permits do not grant the permit holder the right to apply for an Israeli driving license.

In the event that the original permit is not renewed within a year, the couple is forced to remain in Jerusalem illegally or move to the West Bank or abroad. In any of these situations, the possibility for obtaining a temporary permit may be diminished as an illegal presence in Jerusalem can lead to detention (and hence no clearance from the police). Conversely, moving to the West Bank or elsewhere diminishes the ability of the applicants to establish the 'center of life' in Jerusalem. This presents an impossible 'Catch 22' situation for many couples seeking to maintain a normal life in East Jerusalem.

#### **6.1.2.2 Security Provisions**

The 2005 amendments to the *Citizenship and Entry into Israel Law* also permit the rejection of an application even though the spouse does not personally pose a security risk. According to the law, the Ministry of the Interior may reject an application if the resident's parent, child, sibling, brother-in-law or sister-in-law is involved, according to the Israeli security forces, in security-related activity. According to HaMoked, the Ministry of the Interior has made frequent use of this article, and in many cases the rejection of a family reunification application for security reasons is irreversible. The amendment acts as a form of collective or familial punishment for allegations against family members that may have nothing whatsoever to do with the applicant. It is a form of guilt by association. Due to the opaque and arbitrary nature of security allegations leveled against suspects by Israeli authorities, there is often no ability for applicants to know the nature of the allegations that affect their permit applications, let alone challenge them.

According to Article 3d of the law, as amended in 2007, the Minister of the Interior:

*May determine that a resident of the region or any other applicant is liable to constitute a security risk to the State of Israel, among other things, on the basis of an opinion of the authorized security personnel according to which within the domiciled State or residential region of the resident of the region or of any other applicant, activity was carried out which is liable to endanger the security of the State of Israel or its citizens.*

Accordingly, in June 2008, Government Resolution 3598 was adopted. The decision declared that:

*The Gaza Strip is a region where activity which may endanger the security of the State of Israel and its citizens takes place, and therefore, the government instructs the Minister of the Interior or whomever appointed by him not to approve the issuance of permits for residency*

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<sup>159</sup> According to a new Ministry of Interior procedure, couples who submitted their application prior to 31 December 2006, and their application was approved, will receive from now on a permit valid for two years.

*in Israel or permits to remain in Israel as per Sections 3 and 3A(2) [regarding spouses of EJ residents and their 14-18 year old children] of the law to persons registered in the Population Registry as residents of the Gaza Strip and anyone residing in the Gaza Strip despite not being registered in the Population Registry as a resident of the Gaza Strip.*

The Israeli High Court of Justice dismissed a petition filed by HaMoked against this decision. The justices ruled that so long as a state of hostility exists between the Gaza Strip and the State of Israel, there is a great difficulty in conducting individual security checks to family unification applicants who reside in Gaza. The Court concluded that in these circumstances, family unification applications may be dismissed out of hand strictly based on the applicant's place of residence.<sup>160</sup>

### **6.1.2.3 New Temporary Permits for Jerusalem Residents**

In December 2007, Israel imposed new restrictions on the granting of residency status to those living in East Jerusalem, according to Government Decision no. 2492. The Ministry of the Interior published an advertisement in the Arabic language newspaper Al-Quds calling on residents of the West Bank who had lived in Jerusalem without a permit since the end of 1987 to submit requests for temporary permits. Up until that time, the Ministry granted residency status to individuals who were not registered in the 1967 Jerusalem census but who could prove that they had been permanent residents of the city prior to the census and who had lived there continuously since that time. The change in policy put an end to the opportunity to claim Israeli permanent residency, and mandates that individuals who have lived in Jerusalem for decades only receive 'temporary' status with no benefits conferred upon them. Following objections submitted by HaMoked, the Ministry of the Interior noted that: "this is a decision based in humanitarian considerations, intended to apply on a one-time basis for a short period of time, and in order to bring the matter [of Palestinians residing in East Jerusalem for many years without permits] to an end; conclusion of the processing requires providing an overall response to the topic addressing all aspects thereof, both in regard to those deemed eligible based on the decision, as well as those found to be ineligible".<sup>161</sup>

With this latest decision, and particularly the wording of this Ministry of Interior's response, it appears that, as with many of the steps taken in the West Bank as a result of the military order 1650, action may be taken against individuals who do not have residency permits and those who do not apply for 'temporary' permits.

### **6.1.3 Registration of Children**

Over the years, increasingly restrictive procedures have been introduced by Israeli authorities for the registration of children where only one parent is a Palestinian resident of Jerusalem. A child born to an Israeli citizen or to two parents who are permanent residents immediately receives an identity number and is registered in the Israeli population registry. At a later date, the child's name, date of birth and identity number are recorded in the parents' identity cards. This procedure is not followed when only one parent is a permanent resident. In such cases, the parents must submit a request to the Interior Ministry to register the child.

The legislation regarding the registration only addresses the situation in which the child was born in Israel or Jerusalem. According to section 12 of the *Entry Into Israel Regulations*, a child born in Israel or Jerusalem receives the same legal status as that of the parents. If the two parents have a different status, the child receives the status of the father, unless the mother objects in which case

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<sup>160</sup> HCJ 4047/13 *Hadri v. Prime Minister of Israel*, petition for Order Nisi, 14 June 2015.

<sup>161</sup> HaMoked, *Annual Report: 2007, 2008*, p. 139.

the Minister of the Interior determines the status of the child. While the language of the Regulation speaks of a resident father, it also applies in the event that the resident is the mother and not the father.

While the Regulation does not outline any additional requirements, the Ministry of the Interior added another hurdle – requiring that the resident parent’s ‘center of life’ be in Israel for at least two years prior to the registration application. This requirement was approved by the Israeli High Court.<sup>162</sup> In the case of children born abroad or children born in Palestine, there is no relevant provision of the law. In such a case, registration is governed by internal procedures of the Ministry of the Interior.

The *Citizenship and Entry into Israel Law* (Temporary Order) created stringent rules that do not differentiate between children born in Jerusalem, Palestine or abroad. As stated above, under the amendments to the *Citizenship and Entry into Israel Law*, any person listed in the Palestinian population registry is considered to be a “resident of the Area,” and accordingly, family reunification applications are not permitted. This leads to the absurd situation in which a child – born to a Jerusalem parent and a parent resident elsewhere in Palestine – who by fate may have been born in Palestine or who may have, for one reason or another, been registered in the Palestinian population registry without ever living in Palestine, is unable in some cases (see below) to be registered on their parents’ identity cards despite the fact that the child resides in Jerusalem.

Article 3A of the Law, as amended in 2005, addresses the situation of a child *under* the age of 14, who may receive permanent residency in Israel in order to prevent the child’s separation from the guardian parent who resides in Israel, while a child *over* the age of 14 may be granted, at most, a temporary permit to enter and remain in Israel. The Ministry of the Interior does not necessarily grant permanent residency to children under the age of 14 who are registered in the Palestinian population registry. Rather, they receive a *temporary residency status* for a two year period, following which they may receive permanent residency status. In the case of children over the age of 14, a permit issued by the Israeli army – akin to a tourist visa – is given. This permit must be renewed every year and does not confer any social rights or benefits.

It should be noted that the Law’s security provision is also applicable to children over the age of 14 who have been living in Palestine prior to submission of their registration application or who are only registered in the Palestinian population registry. Thus, a permit to stay in Israel will not be granted if it has been determined that these children or their family member (their parent, brother, sister or their siblings’ spouse) constitute a security risk. In other words, no security suspicion is required against the child in order for the separation of the child from his or her parents. No conviction is required; rather merely the “opinion from the competent security personnel”.

In the face of these measures, HaMoked filed a petition with the High Court of Justice, challenging the constitutionality of the law as it pertains to the application of children. The petition was dismissed alongside the other petitions challenging the Law following the 2007 amendment.<sup>163</sup>

### **6.1.3.1 Registration of Children and ‘Center of Life’**

According to the High Court, Regulation 12 of the *Entry into Israel Regulations* is not applicable in cases in which the ‘center of life’ of the resident parent is outside of East Jerusalem or Israel.<sup>164</sup>

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<sup>162</sup> Adm. Appeal 5569/05 *Awisat v. Minister of Interior*, 10 August 2008.

<sup>163</sup> HCJ 466/07 *MK Zehava Galon et al. v. Attorney General*, 11 January 2012.

<sup>164</sup> Adm. Appeal 5569/05 *Awisat v. Minister of Interior*, 10 August 2008.

Rather, according to the High Court, the Regulations are not intended to give status by virtue of birth but rather to ensure family integrity.

The problematic way in which the Ministry of the Interior implements these principles is exemplified in a case that was first heard by the Jerusalem District Court and then on appeal by the Israeli High Court.<sup>165</sup> The petitioners, twin boys aged 13, were born in Jerusalem. Their father is a permanent resident in Israel and the boys' siblings are also registered as Israeli residents. The family is from Sur Bahir within Israeli-defined Jerusalem, but the village's lands were not completely encompassed in Israeli-defined Jerusalem. The exact location where the petitioners' house is situated is a mere 250 meters from the boundary of Israeli-defined Jerusalem, in the neighborhood of Wadi Humus. In 2003, with the construction of the Wall, the residents of the village successfully petitioned to have the route of the Wall moved and in 2005, a judgment was issued to this effect. Accordingly, the Wall was rerouted, leaving the petitioners' home outside the 'Jerusalem side' of the Wall. Obviously, the petitioners' whole life revolved around Jerusalem: their school, their extended family, their social lives and places of medical treatment are all in Jerusalem. Following a series of applications to be registered in the Israeli population registry, the application of the twins was denied with the explanation that the family lives "outside the territory of the State of Israel."

Following the petition, Judge Noam Solberg ruled that the minor twins from Wadi Humus could not register in the Israeli population registry, as, "It is the nature of borders and boundary lines that they distinguish, sometimes arbitrarily, between those living on either side. But the Court is powerless to help. As Israel has not applied its sovereignty to the territory to the east of Jerusalem's municipality and its prescribed borders; as the family members live together under the same roof; as they dwell and sleep permanently in their home which is outside Israel, [the twins] do not meet the requirement of having a center of life in Israel".<sup>166</sup>

It is interesting to note that on the same day of the ruling, there was another ruling by a different judge of the Jerusalem District Court, Yehudit Zur, in a very similar case. The case pertained to an East Jerusalem resident who married a Jordanian citizen. The couple and their children lived together in Wadi Humus, and the Ministry of the Interior refused to approve the couple's family unification application arguing that their 'center of life' is outside of Israel. Contrary to Judge Solberg's decision, Judge Zur accepted the petition and ordered the Ministry of the Interior to grant the spouse status in Israel for the reason that the center of the family's life is in Jerusalem. The Court ruled that "the petitioners' neighborhood is formally outside of Israel; however, due to the unique reality which had been created it is possible to rule that the center of their lives is inside Israel".

Appeals to the High Court were filed against these two contradictory judgments – one of which was submitted by the twins (represented by HaMoked) and the other by the Ministry of the Interior. Following the hearing in the High Court, the family in which the Jerusalem resident was married to a Jordanian woman decided to move inside the Jerusalem boundaries. As a result, the Interior Ministry agreed to accept a new application for family unification which was approved in February 2011.<sup>167</sup>

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<sup>165</sup> Adm. Pet 8350/08 *Attoun v. Minister of the Interior*; Adm. Appeal 1966/09 *Attoun v. Minister of the Interior*.

<sup>166</sup> Adm. Pet 8350/08 *Attoun v. Minister of the Interior*, 26 January 2009, para. 16.

<sup>167</sup> See Family unification for a Jordanian citizen living in Wadi Hummus: the case of A.H., <http://www.hamoked.org/Case.aspx?cID=Cases26>.

However, in the other case, the twin's family could not move to the other side of the Jerusalem boundaries. As a result the High Court was forced to rule on the matter. On 22 November 2011, the High Court rejected the appeal by majority opinion, deciding to leave the children without status. In the judgment, the justices ignored the complex reality of Wadi Hummus and relied on the State's argument regarding the "broad ramifications" of granting the children status, though this argument was not substantiated<sup>168</sup>

In a minority opinion, then High Court Chief Justice Beinisch accepted the Appellants' arguments. In her judgment, she held that the Separation Wall built by Israel has entirely separated Wadi Hummus from the West Bank and created a situation where "the Appellants' center-of-life is practically inside Israel." Justice Beinisch added that "leaving the Appellants' with no status whatsoever is inconsistent with the protected values which underlie Regulation 12, including the principle of the child's best interest".

#### **6.1.4 Revocation of Residency on the Basis of Political Activity**

In addition to the revocation of residency on the basis of the lack of a 'center of life' in Israel, a relatively new measure is now in effect to revoke residency on the basis of political activity. In 2006, the Minister of the Interior decided to revoke the permanent residency status of three Palestinian parliamentarians who were elected to the Palestinian Legislative Council (PLC) as part of the Change and Reform list, affiliated with Hamas – Mr. Muhammad Abu-Teir, Mr. Ahmad Attoun and Mr. Muhammad Totah – as well as the former Palestinian Minister for Jerusalem Affairs, Mr. Khaled Abu Arafah, all permanent residents of Jerusalem. The four men had their residency revoked on the grounds that they were deemed to be residents of Israel and, therefore, obliged to be loyal to Israel whilst their actions, namely membership in the PLC and Hamas, constitute a "breach of trust." The PLC members filed a petition in 2006,<sup>169</sup> with Adalah and ACRI filing *amicus curiae* briefs.

In May 2010, the Israeli police ordered the parliamentarians to leave Jerusalem and notified them that their residency had been revoked. The Minister of the Interior gave the PLC members a choice: give up their membership in the PLC under the Change and Reform party or to have their residency rights in Jerusalem revoked.

The petitioners and *amicus curiae* argued before the High Court of Justice that the Interior Minister's decision to revoke the residency of members of the Palestinian parliament gravely violated their rights to dignity, personal liberty and property, and their right and their families' right to family life. In addition they argued that the law does not grant the Minister the authority to cancel permanent residency for "breach of trust" or due to membership in a foreign parliament. Oddly, Israel permitted them to vote and be elected in the elections for the PLC and in the selection of the Chairman of the Palestinian National Authority. It was only after the petitioners were elected that Israel decided to cancel their residency status. The petition is still pending in the High Court of Justice.

As recently as September 2015, Israeli Prime Minister Netanyahu suggested revocation of the residency status of Palestinians, living within the current municipal borders of Jerusalem, but on the West Bank side of the Wall. It was also reported that the Israeli Cabinet would discuss the

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<sup>168</sup> Adm. Appeal 1966/09 *Attoun v. Minister of the Interior*, 22 November, 2011.

<sup>169</sup> HCJ 7803/06 *Khalid Abu Arafah, et al. v. Minister of Interior*.

matter.<sup>170</sup> The estimated number of Palestinian Jerusalemites residing 'beyond the Wall' is 100,000 people, so such a development would potentially have a massive impact on the Palestinian population of East Jerusalem.<sup>171</sup> This development was related to the security situation in Jerusalem at the time, despite the fact that the attackers were not residents of the area beyond the Wall being targeted. Instead, this appeared to be an opportunistic attempt to deal with a demographic issue facing Israel. However such a mass revocation would appear to be incompatible with Israeli domestic law and constitutional principles, as well a clear violation of international law protections.<sup>172</sup>

## 6.2 The Approach of Israeli Courts

The labyrinthine and arbitrary nature of the various laws, regulations, practices and policies that are subject to frequent amendment, are matched only by the 'Kafka-esque' nature of the administrative and legal process. Claimants and lawyers alike indicated that the long and complicated procedures, as well as the burdensome documentary requirements, made proving residency (or fighting the revocation of residency) extremely difficult. Lawyers uniformly indicated that, upon filing a petition before the courts, the court system and the government were generally in favour of settling the case so as not to create a positive precedent. The situation is best summed up by the words of one claimant, JB:

*I am a Palestinian who holds a Palestinian ID. My husband is a Jerusalemite and our two children, aged 10 and 8 were both born in Jerusalem and are registered in the Israeli registry. We applied for family unification in 1998 and by 2002, when the freeze took hold, our application was still pending. Since the imposition of the freeze, I have been living with 'temporary permits'. I am unable to drive in Israel and I cannot travel through Ben Gurion airport with my kids and husband. In 2005, Israeli authorities refused to issue me another temporary permit, owing to the fact that I work in Ramallah. We paid our lawyer over \$10,000 just to be able to reinstate temporary residency permit for me. It took him a long time to do so, but eventually he got me one, but I am still living temporarily. I don't know what the lawyer did – all that I know is that I paid a lot of money for getting something that is temporary in nature. My friends have paid more – in some cases upwards of \$20,000 for a lawyer to reinstate residency. From my understanding the lawyers use their 'good offices' and contacts with the Interior Ministry to pull levers.<sup>173</sup>*

### 6.2.1 Revocation of Residency

Revocation of the East Jerusalemites' residency status is mainly based on the *Entry into Israel Law and Regulations*, and on the landmark ruling in the case of *Awad* from 1988. Up until now, the Israeli High Court has refrained from revisiting the *Awad* precedent. Rather, different Israeli courts, among them the High Court, have dealt with revocation cases on a case-by-case basis, and

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<sup>170</sup> Barak Ravid, 'Netanyahu Mulls Revoking Residency of Palestinians Beyond East Jerusalem Separation Barrier', *Haaretz*, 25 October 2015.

<sup>171</sup> Ir Amin, *Displaced in their Own City: The Impact of Israeli Policy in East Jerusalem on the Palestinian Neighborhoods of the City beyond the Separation Barrier*, 2015, p. 26.

<sup>172</sup> For further information, see NRC, *Residency Revocation of Wall-affected Communities in East Jerusalem*, legal memo, November 2015.

<sup>173</sup> Interview with JB, June 2010.

examined whether or not permanent residency may be returned to the individual based on the different criteria set by previous case law.<sup>174</sup>

As mentioned above, the first substantial challenge to the revocation of residency policy was raised in 1998, following an increase in revocation started in 1995. As a result, the Israeli Minister of the Interior at the time, Natan Sharansky, announced a change in the policy that has led to a decrease in revocation cases.<sup>175</sup>

However, during the years of 2006 and 2008, the number of revocation cases increased significantly.<sup>176</sup> Since then, several attempts were made to challenge the entire policy of revocation of residency status of Palestinians in East Jerusalem, including the precedent set in the *Awad* case. The challenges included international humanitarian law and international human rights law arguments, which were also discussed in this document.<sup>177</sup> For different reasons, all these cases have not concluded in a verdict addressing the policy of residency revocation.<sup>178</sup>

In September 2015 Israeli authorities commenced proceedings to revoke the residency of four persons suspected of committing security offences against Israel in Jerusalem, as well as their family members. Legal challenges against the procedures were filed with the Supreme Court by HaMoked which had not ruled on the cases at the time of this report.<sup>179</sup>

## 6.2.2 Family Unification and Child Registration

The *Citizenship and Entry into Israel Law* (Temporary Order), which has significantly harmed Palestinians' right to family life for the past 12 years, has been challenged twice in the High Court of Justice.

In May 2006, the High Court of Justice, with a majority of six justices versus five, rejected the petitions filed against the Law. Although the majority held that the law does harm the constitutional rights to family life and to equality of Arab citizens and residents of Israel, Justice Cheshin, leading the majority opinion, ruled that even if such an infringement did exist, it was proportional. Then President Barak, in a minority opinion, ruled that the Law infringed on the constitutional rights to family life and equality in a disproportionate manner. Barak ruled that Israeli citizens and permanent residents bear the right to actualize family life with their West Bank spouse in Israel, and this right was infringed by the Law, as well as the right of Israeli parents to live with their minor children in Israel.<sup>180</sup>

In 2007, following the second amendment to the Law, four petitions were submitted again challenging it. In January 2012, the High Court of Justice rejected the petitions against the Law. This time, the High Court deviated from the way it had previously interpreted the right to family, with at least five out of 11 Justices recognizing the constitutional right to family life, which derives from the right to dignity. However the Court held that there was no need to exercise this right

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<sup>174</sup> See, e.g. criteria mentioned in chapter 6.1.1.2.

<sup>175</sup> See chapter 6.1.1 above.

<sup>176</sup> Nir Hasson, 'Israel Stripped Thousands of Jerusalem Arabs of Residency in 2008', *Ha'aretz*, 2 December 2009.

<sup>177</sup> See, e.g., Adm. Appeal 2392/08 *Siag v. Minister of the Interior*, Application to Join as Amicus Curiae, filed on 20 November 2008; HCJ 2797/11 *Qarae'en et al. v. Minister of the Interior*, filed on 7 April 2011.

<sup>178</sup> See, e.g., petition submitted to the High Court of Justice by ACRI and HaMoked: HCJ 2797/11 *Qarae'en v. Minister of the Interior* (the petition was dismissed in 21 March 2012).

<sup>179</sup> See HaMoked, 'Revocation of Residency', Press Release, 25 November 2015.

<sup>180</sup> HCJ 7052/03 *Adalah et al. v. Minister of Interior et al.*, 14 May 2006.

specifically in Israel. The Court ruled again that even if a violation of constitutional rights, including the right to equality, did exist, it was proportionate, therefore the Law was constitutional and should not be repealed.<sup>181</sup>

One of the petitions challenging the second amendment to the Law was submitted by HaMoked and focused on the severe impact of the Law on children of permanent residents from East Jerusalem. As provided above, the Law is applied to those children defined as “residents of the Area”. The definition applies to children who are registered in the Palestinian population registry or who at some point have lived in Palestine. If they are over 14, these children can only receive military permits to stay in Israel. Only if they are under 14, can they receive permits to reside in Israel, affording them social security rights as well. By subjecting Regulation 12 of the *Entry into Israel* Regulations to the Law, the Ministry of the Interior also applies the Law’s provisions on Israeli-born children who, for whatever reason, were registered in Palestine population registry. HaMoked asserted that the Law is exceedingly harmful to children and constitutes a violation of Israel’s obligations under the Convention on the Rights of the Child.

The High Court of Justice rejected HaMoked’s petition together with the other three petitions. Justice Naor held that according to the State’s undertaking, children who remained in Israel or East Jerusalem by virtue of stay permits, would not be removed once they reach 18, provided they continue to maintain their 'center of life' in Israel. Therefore, the Court averred, there is no threat of the adult child being separated from his family and clearly disregarded the assertion that, as a result of the Law, some of these children will never be able to have civil status, social security rights, or a driver’s license. The Court also ignored the fact that while the enactment of the Law is allegedly based on security grounds, the arrangement introduced by the Law regarding children cannot be justified by security grounds.

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<sup>181</sup> HCJ 466/07 MK Zehava Galon et al. v. Attorney General et al., 11 January 2012.

## 7 Role of the Palestinian Authority's Ministry of Civil Affairs

As is the case with the issuance of permits for residents of the West Bank and the Gaza Strip, the PA's Ministry of Civil Affairs plays a limited role in the processing of family reunification requests, the listing of Palestinian children in the population registry and in dealing with residency revocation in East Jerusalem.

As concerns the latter, the PA has a clear policy that it will *not* issue identity cards to any Palestinian whose Jerusalem residency has been revoked. The PA feels that the processing of identity cards for individuals whose residency is revoked will simply serve to provide Israeli authorities with additional means and excuses to further revoke residency permits.

Regarding the processing of family reunification requests, the PA Ministry of Civil Affairs, while accepting requests for family reunification, does not often push these requests through the relevant Israeli authorities. Clearly the Ministry is in a difficult position, and the entire family re-unification process is held hostage by political considerations. Human rights organizations indicate that they do not receive regular information regarding the status of family reunification requests, making it difficult to file petitions before the High Court. For example, in one case, the Israeli authorities argued that the petitioner had not availed herself completely of the services of the Ministry of Civil Affairs, despite the fact that it was Israel's decision to place a complete freeze on family reunification requests.<sup>182</sup> The PA Ministry maintained the position that it would not accept family reunification requests owing to the freeze and, in particular, because it did not want to raise expectations or open up a Pandora's box of applications for family reunification that would remain unprocessed. In short, the PA Ministry acts as a form of mailbox with limited power to challenge decisions made by Israeli authorities.

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<sup>182</sup> Interview with HaMoked.

## 8 Conclusion

After the 1967 War, Israel was forced to confront a reality in which it wanted “the land and not the people.” Over the last 48 years, Israel has implemented a host of diverse measures to confront the “demographic problem” presented by the military occupation of the West Bank and the Gaza Strip and the annexation of East Jerusalem. This report addresses the most powerful method used for population control – Israel’s manipulation of the Palestinian and Israeli population registries. By denying residency rights and family unification through a maze of military orders, legislation, Ministry of Interior policy and simple non-action, Israel has ensured that Palestinians from Jerusalem, the West Bank and Gaza remain separated from each other and from Palestinians displaced and living abroad.

By refusing to relinquish control over the Palestinian population registry, Israel has created a reality in which Palestinians born and raised in Palestine live their days in fear of deportation and separation from their families. Whether they are Palestinians from Gaza who relocated to the West Bank or Palestinians from Jerusalem registered in Gaza, thousands find themselves living 'illegally' – without residency status, without social rights and without an ability to move freely – with Israel controlling who is a 'resident'. The overall effect is the cantonization of Palestine with the inability of individuals to move freely or live throughout the Palestine without real risk of residency revocation, forcible transfer or living 'illegally'.

In the event that a Palestinian from the West Bank or Gaza has success in 'maintaining' his or her residency, family unification with a non-resident spouse is essentially impossible and registration of a non-resident child born abroad is governed by rigid criteria. Non-residents seeking to visit their loved ones from abroad are denied entry, making the barriers to unification in Palestine – even unofficially – insurmountable.

Israel’s residency policies regarding East Jerusalem reveal several distinct trends, including: (1) increased pressure on the part of Jerusalemites to demonstrate that Israel is their 'center of life'; (2) imposition of 'loyalty' tests; (3) expanding the barriers to child registration, including the lowering of age of eligibility; (4) replacing residency with the issuance of the temporary military permits; and (5) increased bureaucracy as regards to residency.

The limiting of residency rights, through parallel but separate policies for residents of East Jerusalem, the West Bank and Gaza Strip, has developed slowly and deliberately, having become increasingly restrictive with time. Unfortunately, these policies have attracted little attention, no doubt owing to the complex nature of the issue and the various means used to limit residency. Broad legal challenges require years of litigation and are largely unsuccessful. Lawyers challenging Israeli residency restrictions are in a game of 'cat and mouse' with those who create the rules: for virtually every successful legal challenge, Israel – through legislation, policy or military order – devises a new method to close the gap, resulting in an even more draconian measure limiting residency rights. By highlighting the various weapons used by Israel to dilute the Palestinian population, this report hopes to raise public awareness and encourage advocates to fight both present and future residency restrictions.

