



Undocumented and Stateless: The Palestinian Population Registry and Access to Residency and Identity Documents in the Gaza Strip

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Executive Summary

In September 1967, three months after the start of the Israeli occupation, Israel conducted a census of the West Bank and the Gaza Strip, excluding East Jerusalem. Those registered in the census were deemed by Israel to be “non-citizens” and “foreign residents” of the occupied Palestinian territory (oPt) and their names were listed in the Palestinian Population Registry. Such designation granted legal residency and the right to remain, but did not confer any citizenship rights. An estimated 250,000 Palestinians not physically present in the oPt at the time of the census, many of whom were forced to flee during the war, were excluded from the Population Registry and were not granted residency in the territory. Further restrictions put in place by Israel regarding inclusion of foreign-born spouses and their children, registration of Palestinians born abroad and the loss of residency as a result of time spent outside the oPt, have added to the numbers of Palestinians who today are not included in the Registry.

Inclusion on the Population Registry is but the first in a series of bureaucratic hurdles imposed by Israel to control Palestinian presence in the oPt, regulating who is considered “legally resident” there and who may receive official Palestinian identification cards as well as Palestinian passports issued by the Palestinian Authority (PA) since 1995. Those not listed on the Population Registry frequently lack any valid travel or identification documents at all. Moreover, the process for applying for inclusion on the Population Registry is deliberately complicated and opaque and often subject to retroactive and contradictory conditions. Since 1967, the only ways in which such Palestinians may be added to the Population Registry are through child registration and the lengthy and arbitrary family unification process.

Despite express terms under the 1995 Interim Agreement on the West Bank and the Gaza Strip, also known as the Oslo II Agreement that were intended to transfer power and control of the Population Registry to the newly-formed PA, Israel continues to control and administer the Population Registry. The PA’s role has been reduced to a clearinghouse for processing and forwarding requests to Israeli authorities while Israel maintains that all Population Registry responsibilities have been transferred to the PA. The PA effectively bears all responsibility yet exercises no effective authority over this matter of legal identity of critical importance to its constituents.

Following the start of the second Intifada in September 2000, Israel imposed a complete freeze on the processing and approval of family unification applications and the issuance of visitor permits. Since then, the only family unifications that have been approved have been done so pursuant to “political gestures” on the part of the Israeli government. Any concessions with regard to family unification and residency matters are done in the context of political agreements under Israel’s unilateral authorisation. Family unifications that are approved are granted not as a matter of legal right, but as a “special benevolent act” on the part of the Israeli authorities.

Israel’s ongoing control of the Palestinian Population Registry directly contravenes the Interim Agreement and raises serious issues regarding the basic residency and citizenship rights of Palestinians. The precise number of Palestinians without valid identity documentation is currently unknown. In the Gaza Strip, the Ministry of the Interior has issued approximately 12,500 “temporary” Palestinian identity cards to individuals who are resident in Gaza but are not included on the Population Registry. The affected population in Gaza, however, is likely to be much higher. Among those Palestinians without identity cards interviewed by NRC in Gaza, several stated that they had never applied for this “temporary” identity card and continued to rely on expired travel documents as their only form of identification.

The level of politicisation with regard to the Population Registry has forced Palestinian families into the position of political bargaining chips. Many of those interviewed in the Gaza Strip in preparation of this report had been waiting for more than 12 years to hear any response to their family unification application. Applications may remain pending for years under a vague security rationale, though individual or specific grounds are never provided.

In the Gaza Strip, the consequences of Israel's Population Registry policy have been particularly acute. While the Jordanian government granted citizenship to Palestinians living in the West Bank and continues to issue and renew such Jordanian passports/travel documents even after relinquishing its territorial claims to the West Bank in 1988, Palestinians in the Gaza Strip primarily received Refugee Travel Documents (RTDs) from the Egyptian government. Since the creation of the PA in 1995, Egypt stopped issuing new RTDs and limits the existing RTDs which may be renewed. As a result, many Palestinians in Gaza today lack any formal citizenship or valid travel documents.

Combined with the ongoing Israeli and Egyptian blockade of the Gaza Strip, a lack of identity documents has caused thousands of Palestinians to become completely shut-off from the outside world with no possibility for travel. A large percentage of those affected include spouses and children of Palestinian residents formerly living in third countries without permanent residence or citizenship who moved to the Gaza Strip and applied for family unification. Many of these spouses entered on temporary foreign travel documents that they have been unable to renew without leaving Gaza and their status has subsequently lapsed, essentially leaving them stateless. Given the tradition in Arab culture for women to move to their husbands' homes, this has resulted in a disproportionately higher impact on women.

Another significant category of those affected are refugees suffering repeated displacement, many for the third or fourth time. Palestinians who fled to surrounding Arab States in the aftermath of the wars in 1948 and 1967 were generally not granted full citizenship rights or permanent residence within those states. Many have no formal status in any other country and, therefore, a denial of their residency rights within Gaza denotes a complete denial of status. Their lack of identification documentation leaves them particularly vulnerable to further displacement.

Furthermore, the impact of this lack of status is devastating for the individuals and families affected. Legal identity, as well as being a basic human right in itself, is key to the exercise of other basic human rights. The lack of status nullifies the right to freedom of movement, including internally within the oPt between the West Bank and Gaza. Further, the Israeli control of the Population Registry and all matters of Palestinian residency limits educational and career opportunities and restricts access to necessary and even life-saving medical treatments.

The purpose of this report is to highlight a particularly vulnerable category of person within Gaza, namely those without official Palestinian identity documentation, and to draw attention to the practical consequences of this denial of status. The report also aims to set out the labyrinthine system of laws and regulations which place them in this predicament. Critically, the issue involves an abdication of responsibility by many actors. Israeli authorities hold the PA responsible. The PA in turn lays the blame with Israel. Third-party states consider the issue an Israeli/Palestinian matter. International agencies, including UNWRA and UNHCR, refer to their limited mandate, restrictions on issuance of travel documents or the inherent responsibility of national authorities. The net result is a failure to secure a legal identity for a section of Palestinians living in Gaza.

Ultimately, the larger issues for Palestinians who lack residency relate to de-politicising the family unification and residency procedures; removing the Population Registry from Israeli control; and ensuring a long-term solution to those who have entered without visitor permits or authorisation, but have now permanently relocated to the Gaza Strip. Israel has effectively converted the Population Registry into a

tool of control and has responded to court petitions and legal actions with new administrative mechanisms that separate thousands of Palestinian families and systematically deny basic human rights.

A range of measures are required to remedy the situation. Israel must be compelled to recognise its obligations under international humanitarian law and international human rights law with regards to family unification and residency. Arguably, a key indication of the ongoing occupation of the Gaza Strip, which Israel disputes, is the fact that Israel controls who actually qualifies as a resident for official purposes. For Palestinians, the definition of their identity and who may be considered Palestinian remains in the hands of the occupying power. The PA must be challenged to take such measures as are within its control to guarantee the rights of Palestinians living in the oPt. Such responsibilities are incumbent upon it as a governing authority. This may include the issuance of external-use passports or identity documentation to Palestinians who are otherwise without proof of identity. Other actors, including third states and international organisations, must be urged to redress the protection gap. In the meantime, Palestinians without identity documents will continue to live as prisoners within the larger prison that is Gaza.

Acronyms

CAC	Palestinian Civil Affairs Committee
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of Discrimination Against Women
CLA	Israeli Coordination and Liaison Administration for Gaza
COGAT	Coordinator of Government Activities in the Territories
CRC	Convention on the Rights of the Child
DCO	Israeli District Coordination and Liaison Office
ICBS	Israeli Central Bureau of Statistics
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
MoD	Ministry of Defence
MoH	Ministry of Health
MoI	Ministry of the Interior
MRD	Medical Referrals Department
NGO	Non-governmental organisation
oPt	occupied Palestinian territory
PA	Palestinian Authority
PLC	Palestinian Legislative Council
PLO	Palestinian Liberation Organisation
RTD	Refugee Travel Document
UNHCR	United Nations High Commissioner for Refugees
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East

Map of the Gaza Strip



Historical Timeline

19 January 1869	The Ottoman Empire enacts the Nationality Law, whereby all inhabitants of the Ottoman Empire, including the entirety of present-day Israel and the occupied Palestinian territory (oPt), are considered Ottoman citizens.
9 December 1917	The British army enters Jerusalem and begins British control of Palestine.
24 July 1922	The Council of the League of Nations establishes the British Mandate for Palestine.
24 July 1923	The Treaty of Lausanne ends World War I and formally dismantles the Ottoman Empire.
1925	The British Mandate enacts the Palestinian Citizenship Order that defines Palestinian citizenship as “Turkish subjects habitually resident in the territory of Palestine upon the 1st day of August, 1925”.
14 May 1948	The British Mandate officially ends at midnight and future Israeli Prime Minister David Ben-Gurion declares the independence of the State of Israel. Armed conflict immediately begins between Israel and surrounding Arab states.
July 1949	A series of armistice agreements divides British Mandate Palestine into three regions: the newly-established State of Israel, the Jordanian-held West Bank, and the Egyptian-administered Gaza Strip. Residents of Gaza continue to be recognised as Palestinian citizens pursuant to 1925 Citizenship Order and are issued Egyptian <i>laissez-passer</i> travel documents.
23 December 1958	Israel ratifies the 1954 Convention relating to the Status of Stateless Persons.
June 1967	Following the war in 1967 between Israel and neighbouring states Egypt, Jordan, and Syria, Israel occupies territory, including the West Bank Gaza Strip, where it establishes a military administration over the area.
September 1967	Israel carries out a census in the West Bank and the Gaza Strip and all persons counted are listed as permanent residents in the Palestinian Population Registry. Palestinians not physically present during the census are denied residency rights to live in the oPt. Thereafter, family unification applications are initially accepted for first-degree relatives, excluding men aged 16-60. Until 1973, of 140,000 Palestinian family unification applications submitted, 45,000 refugees are allowed to return. All Palestinian men over the age of 16 listed in the Population Registry are eligible for, and ultimately required to carry, Israeli-issued identification cards.
1967 – 1994	Palestinians exiting the oPt are required to leave their identification cards at the crossing and received an “exit card”. Those who remained abroad for more than three years risked having their names removed from the Population Registry and losing their Palestinian residency. Approximately 140,000 Palestinian residents

of the West Bank lose residency under these procedures, 10,000 of whom were able to subsequently recover active residency.¹

- 1972** The Israeli military approves a “general exit permit” which allows for free movement of Palestinians between Israel, the Gaza Strip, and the West Bank. On the eve of the Gulf War in 1991, these permits are cancelled and travel thereafter requires individual Israeli-issued permits.
- 1973-1983** Israel imposes strict and confidential criteria for any family unification applications, sharply curtailing the number of approved requests. An estimated 1,000 family unifications are approved annually between 1973 and 1983 under the new criteria and, by 1980, 150,000 Palestinian family unification applications remain pending.
- 1983-1992** A limited number of family unification applications by Palestinians in the oPt who are married to foreign nationals start to be approved under a policy primarily intended to reward Palestinian collaborators with Israel.
- Beginning in 1985, Palestinians seeking family unification must remain abroad pending consideration of their application. Israeli authorities approve only a few hundred family unifications annually.
- 9 December 1987** The first Intifada begins in Jabalia Refugee Camp in the Gaza Strip.
- 13 September 1987** Israeli Military Order No. 1208 prohibits inclusion in the Population Registry for Palestinian children born in the oPt where the mother is a non-resident and for Palestinian children over the age of 5 who were born abroad. This order remains in effect until its cancellation in January 1995.
- July 1989** Israel introduces “magnetic cards” in the oPt as an additional form of identity card required in order to leave the Gaza Strip and enter Israel.
- 2 August 1990** Following start of the Gulf War, roughly 40,000 Palestinians flee or are expelled from Kuwait and Gulf states.
- 3 October 1991** Israel ratifies five major UN human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child.
- 17 March 1992** The Israeli Knesset passes the Basic Law on Human Dignity and Liberty, guaranteeing, among other provisions, that “[a]ll persons are entitled to protection of their life, body and dignity” and “[a]ll persons have the right to privacy and intimacy”.

¹ Statistics on the number of Gaza Strip residents who similarly lost residency are not currently available.

August 1993	A quota of 2,000 Palestinian family unifications per year is set by Israel. Precise figures for the number of applications approved annually thereafter are currently unavailable.
13 September 1993	The Declaration of Principles on Interim Self-Government Arrangements, also known as the Oslo Accords, is signed by the Government of Israel and the Palestinian Liberation Organisation (PLO) in Washington D.C., USA.
24 September 1995	The Interim Agreement on the West Bank the Gaza Strip, also known as the Oslo II Agreement, is signed in Washington, D.C., USA, by PLO Chairman Yasser Arafat and Israeli Prime Minister Yitzhak. The Agreement creates the Palestinian Authority (PA), and provides that administration of Palestinian Population Registry is to be transferred to the PA. Marriage is officially recognised as grounds for family unification and it is agreed that the PA has sole power to register children under 16 years old.
September 1995	In protest to the signing of the Oslo II Agreement, Libyan leader Muammar Gaddafi orders the deportation of an estimated 30,000 Palestinians living in Libya. Most are ultimately allowed to return.
1995-2000	Visitor permits issued by the PA and conditioned on the prior approval of Israel allow thousands of Palestinians to return to the oPt for three month visits. Israel sets the annual quota for family unifications at 2,000. In protest to the inadequacy of this quota to meet the existing demand, the PA refused to submit family unification applications in 1996 and 1997.
1998	Israel raises the annual quota for family unifications to 3,000 per annum.
2000	Israel again raises the annual quota for family unifications to 4,000 per annum. In 2000, the only year in which this quota was in effect, 3,600 unification applications were approved.
29 September 2000	Outbreak of the second Intifada. Israel freezes processing of all Palestinian applications for visitor permits and family unification.
12 September 2005	Israel withdraws military personnel and dismantles all settlements in the Gaza Strip, and thereafter maintains that this partial disengagement ended all Israeli control over and responsibility for the Gaza Strip. Israel continues to maintain control over the Population Registry for the Gaza Strip.
15 November 2005	The Agreement on Movement and Access is signed by the Government of Israel and the PA, providing for the operation of the Rafah Crossing by PA officials under the supervision of monitors from the European Union.
25 June 2006	An Israeli soldier, Gilad Shalit, is kidnapped by armed Palestinian groups via underground tunnels into Israel near the Kerem Shalom Crossing. Shalit is ultimately released pursuant to a Hamas-Israeli prisoner swap on 18 October 2011.
January 2006	Hamas wins civil parliamentary elections in the PA and forms a majority government within the Palestinian Legislative Council (PLC). Israel announces a

complete severing of relations with the PA, including on Population Registry matters.

- 14 June 2007** Following the Hamas military takeover of the Gaza Strip, Israel and Egypt impose a blockade on all crossings in and out of the Gaza Strip for both people and goods.
- 10 April 2007** Israeli human rights organization HaMoked submits dozens of petitions before the Israeli High Court of Justice on behalf of Palestinians with family unification applications pending since 2000.
- 29 January 2008** In response to the HaMoked petitions and as “political gesture” to PA President Mahmoud Abbas, Israel announces its decision to approve 50,000 pending Palestinian family unification applications. This “gesture” applies only to spouses already present in the oPt who arrived on visitor permits prior to 2000. Of some 50,000 family unification applications, around 32,000 are approved. To date, more than 5,000 applications from the Gaza Strip remain pending.
- 27 December 2008** Israel launches a 23-day military campaign against the Gaza Strip codenamed Operation “Cast Lead”, which results in at least 1,400 Palestinian deaths and significant damage to infrastructure and homes.
- April 2010** Israeli Military Order No. 1650 comes into effect, defining “anyone who enters the West Bank illegally as an infiltrator, as well as ‘a person who is present in the area and does not lawfully hold a permit’”. Tens of thousands of Palestinians living in the West Bank and carrying identity cards registered in the Gaza Strip automatically become criminal offenders under this order, potentially at risk of forced transfer to Gaza.
- 18 December 2010** The Arab Spring movement begins, with protests and demonstrations across the Middle East and North Africa. On 11 February 2011, after nearly 30 years in power, Egyptian President Hosni Mubarak resigns, ushering in a new government led by the Egyptian military. Thousands of Palestinians living in Libya are forced to flee the conflict there; at least 2,000 return to the Gaza Strip after being stranded at the Egyptian-Libyan border. On 15 August 2011, the Syrian army attacked the port city of Latakia, causing 5,000 Palestinian refugees to flee the refugee camp located there.
- February 2011** The Quartet on the Middle East announces a package under which Israel will approve 5,000 address changes for Palestinians living in West Bank with registered addresses in Gaza.
- September 2011** Palestinian President Mahmoud Abbas formally submits a proposal to the United Nations Security Council seeking UN membership for Palestine.

Development of the ICLA Programme in Gaza

The Norwegian Refugee Council (NRC) re-established its presence in the oPt in January 2009 and has established programme activities in the sectors of Shelter, Education, and the provision of Information, Counselling and Legal Assistance (ICLA). The long-term objective of the country programme is to contribute to improved protection and living conditions for refugees, internally displaced persons and persons at risk of displacement in the oPt.

In late 2009, NRC commenced a legal assistance programme in the Gaza Strip and established a Legal Aid Centre staffed by qualified lawyers who provide free legal assistance on housing, land and property (HLP) rights. In connection with its programme activities and in consultations with actors and stakeholders in Gaza, NRC undertook a comprehensive review of the current situation and obstacles for Palestinians who lack residency and identity documents in the Gaza Strip.

Purpose of this Research

This assessment aims to provide a detailed study on the administrative, legal, and political impediments to accessing identity documents for Palestinians living in Gaza. In particular, the primary objectives for this evaluation were identified as follows:

- Review of the historical context of identity documents in the Gaza Strip;
- Legal analysis of current legislation and procedures for accessing identity documents;
- Review of the travel and identity documents available to Palestinians in Gaza as well as from neighbouring countries and their benefits and limitations;
- Identification of how many people in Gaza currently lack any type of identity documents and which populations are most acutely affected;
- Description of the current obstacles to obtaining identity documents and the various actors involved in the process;
- Analysis of the challenges faced by Palestinians from Gaza who lack identity documents and, in particular, any issues related to statelessness and citizenship rights;
- Recommendations on possible NRC interventions in the areas of advocacy and individual legal assistance.

Methodology

This report is based primarily on interviews conducted in the Gaza Strip in August and September 2011 as well as a review of existing primary and secondary source materials related to residency and family unification in Gaza. In particular, relevant Israeli military and civil legislation as well as case law from the Israeli High Court of Justice provided background and historical context on the policies regarding residency rights in the Gaza Strip.

This report attempts to identify both the normative and positive policies regarding residency status and identity documents in the Gaza Strip. While reference is made to practices throughout the oPt, the focus of this research has been exclusively on the Gaza Strip.

To better understand the current situation regarding residency in the Gaza Strip, NRC conducted individual interviews with more than 42 representatives from Palestinian and Israeli non-governmental organisations (NGOs), government ministries, the United Nations, international organisations, journalists, and researchers, and Palestinians currently living in Gaza who lack identity documents and were willing to share their stories and experiences.² Phone calls and written requests for information and interviews were submitted to the Israeli authorities; as of the date of publication, no response has been received. NRC would like to thank all those who agreed to be interviewed in the preparation of this report.

² A full list of interviews conducted is on file with NRC.

1. Background on the Gaza Strip

The Gaza Strip, with a population of approximately 1.6 million people in an area of only 360 square kilometres, represents one of the most densely populated areas in the world. More than 75 percent of the population in Gaza is registered as refugees with the United Nations Relief Works Agency for Palestine Refugees in the Near East (UNRWA). Administratively, the Gaza Strip is divided into five governorates: North Gaza, Gaza, Middle Area, Khan Younis, and Rafah.

Since the period of the British Mandate over Palestine, identity documents have played a central role in Palestinian life and in the determination of residency and citizenship rights. Palestinians are frequently able to outline the region's political changes through the changing documentation they have been required at various times to carry. For Palestinians in the Gaza Strip, these documents represent the various administrations to which they have been subjected, including the British Mandate authorities, the Egyptian Governor General, the Israeli military government, the PA, and the current local authorities in the Gaza Strip.

1.1 Ottoman Empire and British Mandate (1516–1948)

For nearly 400 years, the Gaza Strip was governed by Ottoman rule. Pursuant to the Ottoman Nationality Law of 19 January 1869, inhabitants of the territories comprising the Ottoman Empire, which included, *inter alia*, the entirety of present-day Israel and the oPt, were considered Ottoman citizens.³

The nationality and citizenship of Gaza Strip residents, like those in other former Ottoman territories at that time, became uncertain when the British took control over Palestine on 9 December 1917.⁴ On 24 July 1922, the Council of the League of Nations formally recognized the British military and civil administration of Palestine and established the British Mandate for Palestine. Article 7 of the British Mandate stated:

The Administration of Palestine shall be responsible for enacting a nationality law. There shall be included in this law provisions framed so as to facilitate the acquisition of Palestinian citizenship by Jews who take up their permanent residence in Palestine.⁵

The Treaty of Lausanne, signed on 24 July 1923, formally ended World War I and dismantled the Ottoman Empire. Under the Treaty of Lausanne, “Turkish subjects habitually resident in territory which in accordance with the provisions of the present Treaty is detached from Turkey will become *ipso facto*, in the conditions laid down by the local law, nationals of the State to which such territory is transferred.”⁶ No such local nationality law existed for Palestine until the enactment of the Palestine Citizenship Order of 1925.

³ Richard W. Flournoy, Jr. and Manley O. Hudson (eds.), *A Collection of Nationality Laws of Various Countries as Contained in Constitutions, Statutes and Treaties* (New York/London/Toronto/Melbourne/Bombay: Oxford University Press, 1929), p. 568.

⁴ Mutaz M. Qafisheh, “Genesis of Citizenship in Palestine and Israel: Palestinian Nationality in the 1917 – 1925 Period”, *Bulletin du Centre de recherche français à Jérusalem* n°21, année 2010, p. 5.

⁵ Article 7, British Mandate for Palestine, quoted in *ibid.*, p.10.

⁶ Treaty of Lausanne, quoted in *ibid.*, pp. 14-15.



Front cover and biographical pages from a British Mandate Palestinian passport. Photo: Wikimedia Commons

Article 1, Paragraph 1 of the Palestinian Citizenship Order of 1925 stipulated that “Turkish subjects habitually resident in the territory of Palestine upon the 1st day of August, 1925 shall become Palestinian citizens.”⁷ Thus, for the first time, the status of Palestinian citizenship was officially defined. British passports were issued that referred to the holders as “Palestinian citizens”.⁸ The territorial criteria for citizenship under this 1925 Order was intended to grant citizenship to the large number of recent Jewish immigrants, though an additional effect was the denationalization of thousands of Palestinians who were not resident in Palestine in 1925.⁹

The Gaza Strip remained under British Mandate control until the war in 1948 between the newly-created state of Israel and five Arab states, including Egypt, Jordan, Lebanon, Syria and Iraq.¹⁰

1.2 Egyptian Governor General (1948–1967)

Following the war in 1948, which formally ended with a series of armistice agreements culminating in July 1949, Palestine was essentially divided into three regions: the newly-established State of Israel, the Jordanian-held West Bank, and the Egyptian-administered Gaza Strip. The demographics of the Gaza Strip were dramatically altered as the native population of approximately 80,000 was suddenly forced to absorb nearly 200,000 refugees who had been displaced from throughout Palestine.¹¹ In addition, 500,000

⁷ Palestine Citizenship Order of 1925, quoted in *ibid.*, p. 17.

⁸ *Ibid.*, p. 7: “The inhabitants of Palestine were thus regarded by other states as both Palestinian citizens (subjects) and British protected persons.”

⁹ BADIL Resource Center for Palestinian Residency and Refugee Rights, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, August 2005, p. 2. For example, of 9,000 applications submitted to British officials from Palestinians outside the country in 1925, only 100 were approved and an estimated 50,000 Palestinians may have been denationalized as a consequence.

¹⁰ Anis F. Kassim Shaw, “The Right to Unite: The Family Unification Question in the Occupied Territories: Law and Practice”, *The Palestine Yearbook of International Law* 1990 – 1991, Vol. VI, p. 249.

¹¹ International Crisis Group, *Inside Gaza: The Challenge of Clans and Families*, Middle East Report No. 71, 20 December 2007, p. 1. Following the 1948 War, approximately 165,000 Palestinians remained in the territory that became Israel, and were frequently referred to as “Arab-Israelis” or “1948 Palestinians”. Beginning in 1949, this population became the first category of Palestinians required to carry Israeli-issued ID cards. The complicated residency and citizenship rules that have governed this

Palestinians were internally displaced to the West Bank, leaving only 165,000 Palestinians in what is now Israel.¹²

While the West Bank was formally annexed by Jordan in this period and was regulated by Jordanian law, the Gaza Strip fell under Egyptian administrative authority, but was never fully incorporated into the Egyptian national legal system. Instead, the Gaza Strip was supervised and administered by the Egyptian Governor General. Palestinians residing in East Jerusalem and the West Bank were issued temporary Jordanian passports.¹³ By comparison, Palestinians resident in Gaza during this period were issued Egyptian *laissez-passer* travel documents.¹⁴

The Egyptian administration continued to recognise the residents of the Gaza Strip as Palestinian citizens and held that the 1925 Citizenship Order remained in effect. On 11 May 1955, Egyptian Basic Law No. 255 likewise recognised the continuing effect of the 1922 Palestine Order-in-Council, which stated that no administrative authority could deny entry to a Palestinian returning to Gaza. Therefore, “in 1967, any Palestinian who left the Gaza Strip to work or study abroad, or for any other reason, had the right to return freely”.¹⁵ During this period, Palestinians in Gaza were granted rights to permanent residency as well as freedom to travel. In 1962, Egypt passed a Constitutional Order expressly “stating that the Gaza Strip was part of Palestine, and Palestinians living there constituted part of the Palestinian national entity”.¹⁶

1.3 Israeli Occupation (1967–present)

Following the war in 1967 between Israel and neighbouring states Egypt, Jordan and Syria, Israel occupied the Gaza Strip and established a military administration in the area. Israeli policy in the oPt was regulated through military orders, which would typically be issued in duplicate, identical form for both the West Bank and the Gaza Strip, each signed by the respective military Area Commanders.¹⁷

The first such military orders issued in June 1967 declared the West Bank and the Gaza Strip to be closed military areas.¹⁸ Entry to and exit from the areas was subject to permission by the respective Israeli military commanders.¹⁹ In 1972, the Israeli military approved a “general exit permit”, which allowed for

group of Palestinians are outside the scope of this research. For more information, see Helga Tawil-Souri, “Colored Identity: The Politics and Materiality of ID Cards in Palestine/Israel”, *Social Text* 107, Vol. 29, No. 2, Duke University Press, Summer 2011, p. 71.

¹² Of the estimated 950,000 Palestinians who lived in the territory that became Israel, approximately 165,000 remained after the war in 1948. These Palestinians were granted Israeli citizenship, though were subjected to martial law, administrative detentions, and curfews. The citizenship and residency rights of this Arab Israeli population, which comprises roughly 20 percent of the present-day population of Israel, is outside the scope of the present report. For more information, on citizenship and family unification policies for Arab Israelis and East Jerusalemites, see Amnesty International, *Israel and the Occupied Territories – Torn Apart: Families split by discriminatory policies*, July 2004, MDE 15/063/2004.

¹³ Tawil-Souri, “Colored Identity: The Politics and Materiality of ID Cards in Palestine/Israel,” *supra* note 11, p. 71.

¹⁴ *Ibid.*

¹⁵ Shaw, “The Right to Unite: The Family Unification Question in the Occupied Territories: Law and Practice,” *supra* note 10, p. 250. For the West Bank, including East Jerusalem, the relevant legislation included the 1928 Jordanian Law Relating to Nationality (as amended) and the 1954 Law on Nationality, under which “all children born to a Jordanian father are granted Jordanian nationality, as are all children born in Jordan to a Jordanian mother, where the father is of unknown nationality or has no nationality.”

¹⁶ *Ibid.*

¹⁷ Asem Khalil, “Which Constitution for the Palestinian Legal System?” Pontificia Università Laternanense, Roma, 2003, p. 27. Proclamation Number 2 stated: “The law in existence in the region on June 7, 1967 shall remain in force, insofar as it does not in any way conflict with the provisions of this Proclamation or any other proclamation or Order which may be issued by me, and subject to modifications resulting from the establishment of government by the Israeli Defense Forces in the Region.”

¹⁸ Order Closing Area (Gaza Strip and Northern Sinai) (No. 1), 5727-1967.

¹⁹ Shaw, “The Right to Unite: The Family Unification Question in the Occupied Territories: Law and Practice,” *supra* note 10, p. 238; Military Order No. 144, Order Concerning Closure of the Areas – Gaza Strip, Northern Sinai, issued in June 1967.

free movement of Palestinians between Israel, the Gaza Strip, and the West Bank. However, on the eve of the Gulf War in 1991, this permit regime was cancelled and travel required individual permits.²⁰

1967 Israeli Census and Palestinian Population Registry

In September 1967, Israel carried out a census of all Palestinians in the West Bank (not including East Jerusalem) and the Gaza Strip. Those present at this time were recorded in the Israeli-administered Palestinian Population Registry. Inclusion in the Population Registry provided legal residency and the right to remain in the oPt, though it conferred neither citizenship rights nor entitlement to civil and political rights. Palestinians living in the oPt at this time were considered by Israel to be “non-citizens and foreign residents”.²¹ For any Palestinians who were abroad at the time of the census, including many Palestinian refugees who were forced to flee the fighting, their names were excluded from the Population Registry. As a result, an estimated 250,000 Palestinians became “illegal” overnight and “lost any entitlement to residency and today have no official [Palestinian] identity”.²²

Those listed in the Population Registry were eligible, and ultimately required, to apply for an Israeli-issued identity card. Israeli military orders regulated all aspects of the Population Registry and outlined the actual details to be included on the physical identity card as well as the requirement that such cards must be carried at all times by males over the age of 16.²³ Females over the age of 16 were permitted to request an identity card, but were not required to do so. Identity cards issued to Palestinians in the oPt “list[ed] ‘undefined’ under the category of ‘Nationality’”.²⁴ From 1989 to 1993, Palestinians from the Gaza Strip with security clearance to work in Israel were additionally required to carry a magnetic identification card.²⁵

Palestinians included in the Population Registry were issued an identity card bearing an Israeli-issued identification number. It is through this identification number that Israeli officials at checkpoints and borders are able to immediately access all information regarding an individual’s name, age, date and place of birth and security records from a central computer database. Initially, this identification number was issued when a Palestinian applied for an identity card at age 16. Under Military Order No. 1206 issued on 12 August 1987, this identification number was to be issued at birth, or, more precisely, when new births were recorded in the Population Registry.²⁶

²⁰ Amira Hass, “Otherwise Occupied/Access denied”, *Ha’aretz*, 22 April 2010. See General Exit Permit (No. 5) (Judea and Samaria), 5732-1972; Order Regarding Suspension of the General Exit Permit (No. 5) (Temporary Order) (Judea and Samaria), 5751-1991.

²¹ By contrast, following the annexation of East Jerusalem by Israel in 1967, Palestinians living in East Jerusalem are considered by Israel to be “permanent residents” but not citizens of Israel.

²² Jennifer Loewenstein, “Identity and movement control in the OPT”, *Forced Migration Review* 26, University of Oxford, 4 September 2006, p. 24.

²³ Order Concerning the General Census Law (Judea and Samaria) (No. 68) 1967; Order Regarding Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5729 – 1969, Section 11A, as amended by Order No. 1206, of 13 September 1987 (requiring all adults to apply for an identity card and carry it at all times and to provide it whenever required to do so by a soldier or authorised personnel).

²⁴ Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness*, Columbia University Press, 1997, p. 2. See also Asem Khalil, “Converting Palestinians into ‘Infiltrators’ in their own Home Country: A New Military Order and Same Old Policy”, April 2010, p. 7 (noting that the term “resident” in Israeli military orders is “used to indicate those who are ‘legally’ present in the ‘Area’ and have their permanent residence therein. Legal presence, however, depends on the fact of being counted in the census realised by Israeli military government in the West Bank, as soon as September 1967”).

²⁵ Amira Hass, “Otherwise Occupied/Access denied”, *Ha’aretz*, 22 April 2010.

²⁶ Khalil, “Converting Palestinians into ‘Infiltrators’ in their own Home Country: A New Military Order and Same Old Policy,” *supra* note 24, p. 8.

Child Registration

Palestinian children with at least one parent listed in the Population Registry could also be added to the Registry at birth. Israeli Military Order No. 297 required such new births to be reported within ten days for those in the oPt and within 30 days for those outside.²⁷ This window of registration was eventually expanded to 16 years for births within the oPt and five years for those outside.

In 1987, Israel changed its policy and began linking child registration to the residency status of the child's mother. Therefore, children born to a mother who was not included in the Palestinian Population Registry but whose fathers were listed were nonetheless systematically denied entry into the Registry – and, by extension, legal resident status in the oPt – as well.²⁸ This policy was ultimately repealed in 1995 under Israeli Military Order 1421, which also extended child registration until 18 years of age, but only after hundreds of Palestinian children had been affected and excluded from the Population Registry.

Family Unification

For those not listed in the Population Registry, and with the exception of registration for children, the only way in which Palestinians could enter their names into the Population Registry and acquire legal residency status in the oPt was through the family unification process. The family unification process is a procedure by which Palestinians included in the Population Registry may apply for permanent residency in the oPt on behalf of their first-degree family members (including a spouse, children, parents and siblings).

In 1967, Israel began approving requests for family unifications, excluding men aged 16 to 60, though these unifications were intended to benefit families separated as a result of the 1967 War.²⁹ Preference in family unification was often reserved in practice for Palestinian collaborators with Israel and their families.³⁰ Between 1967 and 1973, a total of 140,000 applications for family unification were submitted by Palestinians, of which 45,000 were approved by Israeli authorities.³¹

Beginning in 1973, Israel began to restrict family unification claims to “exceptional cases”, while refusing to define the precise criteria for determining whether an application falls within this category.³² Israel maintained that there is no legal right to family unification for Palestinians within the oPt and any approved requests merely reflected a “special benevolent act of the Israeli authorities”.³³ Since Israel recognised no binding obligation with regard to family unification, the policy could be, and frequently was, changed arbitrarily and retroactively without notice.

The number of approved family unification approvals from 1973 to 1983 fell to only 1,000 applications per year. By one estimate, 150,000 family unification requests remained pending as of 1979.³⁴ In 1983, the Israeli authorities imposed additional limitations on family unification requests from oPt residents

²⁷ *Ibid.*, p. 8.

²⁸ *Ibid.*, p. 8. See Military Order No. 1206 of 1987 (12 August 1987).

²⁹ B'Tselem, *Perpetual Limbo: Israel's Freeze on Unification of Palestinian Families in the Occupied Territories*, July 2006, p. 8.

³⁰ HaMoked, *Family Unification in the Occupied Palestinian Territories: Timeline*, available at <http://www.hamoked.org/timeline.aspx?pageID=timelineeachmashgada> [last accessed 8 January 2012].

³¹ *Ibid.*

³² B'Tselem, *Perpetual Limbo*, *supra* note 29, pp. 15-16.

³³ *Ibid.*, p. 8 (quoting HCJ 4494/91, *Sarhan et al. v. Commander of IDF Forces in Judea and Samaria et al.*, Response of the State Attorney's Office of 18 November 1992, Section 7); HCJ 209/86, *Al-Atrash v. the Head of the Civil Administration* (unpublished): “Family reunification is not a granted right. Granting such a request is, as stated, a special act of compassion on the part of the authorities, supported by humanitarian considerations”.

³⁴ HaMoked, *Family Unification in the Occupied Palestinian Territories: Timeline*, *supra* note 30.

married to foreign spouses, claiming that “over the years, the type of requests for family unification changed significantly, and deviated from the original objectives of said policy, dealing instead with families that had been created after the war.”³⁵

Between May and December 1989, Israel deported more than 200 “foreign spouses” and their children who had entered the oPt on visitor permits and were waiting approval of their pending family unification applications.³⁶ After a series of campaigns and legal cases brought on behalf of these families, Israel eventually granted certain rights to these spouses.³⁷ However, rather than full residency status, some spouses were granted “long-term visitor” status, which provided the right to work and legally remain, but excluded formal inclusion on the Population Registry.³⁸

On 22 August 1993, Israeli authorities announced the implementation of an annual quota to approve 2,000 Palestinian family unification applications per year, though this quota was still inadequate to address the needs of the Palestinian population or the backlog of pending applications.³⁹

1.4 Oslo Accords and the Creation of the Palestinian Authority (1993–2000)

On 28 September 1995, Israeli Prime Minister Yitzhak Rabin and Palestine Liberation Organisation (PLO) Chairman Yasser Arafat signed the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (also known as the “Interim Agreement” or “Oslo II”).⁴⁰ The PA was established in the Interim Agreement, giving Palestinians a limited measure of self-government in the West Bank and the Gaza Strip.

Article 28 of Annex III to the Interim Agreement addressed matters related to the Palestinian Population Registry. The Interim Agreement clearly states that the “[p]owers 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”.⁴¹ Further, the Interim Agreement recognised marriage as legitimate grounds for the granting of permanent residency in the oPt.⁴² All previous Israeli-issued identity cards were also to be substituted with new cards that “shall be issued by the Palestinian side and shall bear its symbols”.⁴³

Under the Interim Agreement, there is no distinction made between the Gaza Strip and the West Bank for the purposes of the Population Registry; there is referenced a single Palestinian Population Registry for the entire oPt and all parties to the Interim Agreement “view the West Bank and the Gaza Strip as a single

³⁵ B’Tselem, *Perpetual Limbo*, *supra* note 29, pp. 8-9 (quoting *Sarhan et al. v. Commander of IDF Forces in Judea and Samaria et al.*, Response of the State Attorney’s Office of 18 November 1992, Section 6). See also HCJ 3170/07, *Dwikat, et al. v. State of Israel, Response on Behalf of the Respondents*, 18 September 2007, para. 18 (quoting HCJ 13/86 *Shahin v. Commander of the IDF Forces in the Judea and Samaria Region, Piskei Din* 41(1) 197: “[A]lready the phenomenon of family unification and of applications for family unification have changed from their original character. It originated in policy that was meant to solve problems that had created the Six Day War and the resultant situation; it was continued out of a will to assist, out of humanitarian considerations that went beyond the letter of the law, in cases that harshly affected the local population in the Judea and Samaria regions and in the Gaza Strip – but eventually it became a very confusing and problematic question – with its political and security facets – of a way of immigrating into the regions.”).

³⁶ B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 10.

³⁷ NRC interview with Yossi Wolfson, Israeli human rights lawyer and former HaMoked advocate, Jerusalem, 31 August 2011.

³⁸ For more on these cases and the resulting agreements, see B’Tselem, *Perpetual Limbo*, *supra* note 29, pp. 10-12.

³⁹ HaMoked, *Family Unification in the Occupied Palestinian Territories: Timeline*, *supra* note 30.

⁴⁰ See also Agreement on the Gaza Strip and the Jericho Area, 4 May 1994.

⁴¹ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Washington D.C., 28 September 1995, Annex III, Article 28, para. 1 (Interim Agreement).

⁴² *Ibid.*, para. 11.

⁴³ *Ibid.*, para. 4.

territorial unit, the integrity and status of which will be preserved during the interim period”.⁴⁴ Likewise, “[n]either side shall initiate or take any step that will change the status of the West Bank and the Gaza Strip pending the outcome of the permanent status negotiations”.⁴⁵

Legally speaking, the version of the Population Registry that Israel has maintained following the signing of the Interim Agreement is merely a *copy* of the official Population Registry, which is maintained by the PA. In practice, however, Israel has continued to maintain effective control over the registration and addition or deletion of names to the official Registry. Where there is any discrepancy between the PA and Israeli versions of the Population Registry, Israel will only defer to its own version and has “instructed military officials in the West Bank (at checkpoints, border crossings, etc.) to rely only on the [Israeli] copy of the registry”.⁴⁶

While the PA began issuing Palestinian identity cards following the signing of the Interim Agreement, Israel retained control of nearly all access and entry points to the oPt. For Palestinians whose PA-issued identity cards contained information that did not match the Israeli database records, the cardholders “found themselves being detained again and again at checkpoints, detained and interrogated at border crossings and more. The result was that such severe difficulties were caused to individuals whose addresses had been updated by the Palestinian interior ministry but not in the Israeli held copy of the registry, that the Palestinian side halted all updates to the original registry it administers”.⁴⁷

Prior to the 1996 Palestinian Legislative Council (PLC) elections, the PA enacted an Election Law that granted voting rights to all Palestinians and defined a “Palestinian” as “a person who:

- a. Was born in Palestine, as defined by the territory covered by the British Mandate, or had the right to the Palestinian citizenship according to the laws in force during that period.
- b. Was born in Gaza or in the West Bank, including Jerusalem.
- c. Irrespective of place of birth, has one or more direct ancestors that meet the requirements of paragraph a) above.
- d. Is the spouse of a Palestinian who meet [sic] the mentioned requirements.
- e. Has not the [sic] Israeli citizenship.”⁴⁸

This PA definition grants Palestinian status to all persons born in the oPt (including East Jerusalem) as well as to all direct descendents of Palestinians, irrespective of inclusion in the Population Registry. However, despite the legal right of the PA to determine who qualifies as a Palestinian, in practice, the Israeli control of the Population Registry permits Israel to make such status determination for purposes of identity documents, legal residency, and freedom of movement.

⁴⁴ *Ibid.*, Article XXXI, Final Clauses, para. 8.

⁴⁵ *Ibid.*, para. 7.

⁴⁶ HCJ 4019/10, *HaMoked: Center for the Defence of the Individual et al v. Military Commander of the West Bank*, Petition for Order Nisi, 25 May 2010 para. 23 (emphasis in original).

⁴⁷ *Ibid.* (emphasis in original).

⁴⁸ Election Law, Palestinian National Authority, Law No. 15 of 1995, Article 7(2), available at <http://www.palestinianbasiclaw.org/downloads/1995-elections-law.pdf> [last accessed 10 January 2012]. See also Palestinian Basic Law (Amended) (2003), Article 7, available at <http://www.palestinianbasiclaw.org/2003-amended-basic-law> [last accessed 10 January 2012]: “Palestinian citizenship shall be regulated by law”.

*Family Unification and Permanent Residency***Interim Agreement, Annex III: Article 28 – Population Registry and Documentation**

Paragraph 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.

The Interim Agreement recognised three categories of eligibility for residency, the most significant of which is family unification for “spouses and children of Palestinian residents”. The Interim Agreement did not, however, specifically detail the procedures for applying for family unification. For purposes of obtaining “prior approval of Israel”, as specified in Annex III, article 28, paragraph 11, the Interim Agreement does not expressly prohibit an individual from requesting Israeli approval first and then submitting the application to the PA; in practice, however, Israel has refused to accept any direct residency applications.⁴⁹ To the contrary, the residency application procedures vis-à-vis Israel as they have developed remain unclear and subject to change without notice.

Between 1995 and 2000, Palestinian “residency status was granted to a large group of functionaries and their families who arrived in the Territories with the establishment of the PA. Residency status was also given to family members of individuals expelled from the Territories in the early years of the occupation and whose return was approved at that time.”⁵⁰

At this time, Israel had agreed to an annual quota of 2,000 family unification applications, with 1,200 allocated to the West Bank and 800 for the Gaza Strip.⁵¹ This quota was subsequently increased to 3,000 annually (1,800 for West Bank and 1,200 for the Gaza Strip), although even this number remained inadequate to match the demand. In 1995, the PA requested that this quota be increased. When Israel refused, the PA protested by refusing to forward family unification requests for Israel approval. The PA resumed its processing and forwarding of family unification requests in 1998, by which time there was a backlog of more than 17,500 requests.⁵²

*Child Registration***Interim Agreement, Annex III: Article 28 – Population Registry and Documentation**

Paragraph 12 – The Palestinian side shall have the right to register in the population registry all persons who were born abroad or in the Gaza Strip and West Bank, if under the age of sixteen years and either of their parents is a resident of the Gaza Strip and West Bank.

Under the Interim Agreement, the registration of Palestinian children to the Palestinian Population Registry is exclusively within the authority and “right” of the PA and, unlike family unifications, there is no requirement of “prior approval” from Israel.

For the registration of children born abroad who wish to be added to the Population Registry, Israeli authorities have, in practice, imposed a physical presence requirement to do so, despite the absence of

⁴⁹ B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 17: “Most requests by HaMoked to the Civil Administration to approve specific family unification requests were rejected outright”.

⁵⁰ HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 45.

⁵¹ NRC Interview with Riad Al Zaytunyah, General Director, Directorate of Civil Status-Gaza, Ministry of Interior, the Gaza Strip, 11 September 2011.

⁵² B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 13 (citing Amira Hass, “Families by Quota”, *Ha’aretz*, 15 June 1998).

such language or prerequisite under the Interim Agreement or under any current or prior military order.⁵³ At the same time, Israel has continued to exercise complete control over access to the oPt and the issuance of visitor permits to the area, critical factors affecting a Palestinian child's ability to satisfy this *de facto* requirement. In October 2000, all such permits were suspended following the beginning of the second Intifada. The result was, in effect, a prohibition on the registration of Palestinian children born outside the oPt.⁵⁴

In response to a series of petitions filed before the High Court of Justice by HaMoked, Israel did begin issuing visitor permits in 2006 to children solely for the purpose of entering the oPt and registering with the Population Registry.⁵⁵ For Palestinian children who had turned 16 during the 2000-2006 freeze in issuing visitor permits, many were deemed no longer eligible for child registration. In response to one case where a child had turned 16 during this freeze period, "[t]he legal advisor for the West Bank informed HaMoked that they were no longer entitled to be registered in the population registry through the normal procedure and to obtain a Palestinian identity card."⁵⁶ Once Palestinian children reach the age of 16, they are no longer eligible for inclusion in the Population Registry through child registration and must apply for addition to the Registry through the much more onerous family unification procedures.

Visitor Permits

The family unification process is closely connected to another bureaucratic procedure – the visitor permit. As mentioned, in order to apply for inclusion in the Palestinian Population Registry and consequently for an identity card, an individual must typically be physically present in the oPt and must have entered legally. Therefore, the first step in the lengthy family unification process is legally entering the oPt.⁵⁷ In the period following the signing of the Interim Agreement, an estimated 54,000 Palestinians returned to the oPt on temporary visitor permits and applied for inclusion in the Population Registry through the family unification process.⁵⁸ It is unknown precisely how many of these returnees remained in the oPt after 2000, how many are currently in the Gaza Strip, and whether their former travel documents have since expired.

Visitor permits, issued by the PA but subject to Israeli approval, were valid for three month periods and could sometimes be renewed for longer. Because the family unification application process typically takes years, if not decades, spouses needed to reapply for visitor permits on a regular basis and many did so for years until Israeli stopped issuing visitor permits following the outbreak of the second Intifada in September 2000.

1.5 The Second Intifada (2000-2005)

With the eruption of the second Intifada on 29 September 2000, Israel froze all pending family unification applications and has since refused to receive any new applications. This freeze has included not only applications for residency under the family unification procedures, but also requests for address changes

⁵³ *Ibid.*, p. 29.

⁵⁴ HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 48. For children under five years old, this did not generally prove to be an impediment since they could travel with a Palestinian identity-cardholder parent into the oPt. However, children aged between five and 16 would only be allowed to enter the oPt on their own visitor permit.

⁵⁵ NRC interview with Ido Blum, Advocate, HaMoked – Center for the Defence of the Individual, Jerusalem, 31 August 2011; See, e.g., HCJ 7425/05 *Shweiki et al. v. Military Commander of the West Bank*.

⁵⁶ B'Tselem, *Perpetual Limbo*, *supra* note 29, pp. 29-30 (citing Letter of 29 January 2006 from the Office of the Legal Advisor for the West Bank).

⁵⁷ *Ibid.*, p. 4.

⁵⁸ Amira Hass, "Gaza after the pullout/Israeli control over the population registry means continued control over Gaza Strip", *Ha'aretz*, 26 November 2005.

and the issuance or renewal of all visitor permits.⁵⁹ Pending applications at this time were never rejected. They were simply not considered or processed.⁶⁰

The effect of the freeze has been devastating for those affected. For spouses who had been renewing their three-month visitor permits for years, many chose to stay in the oPt beyond the expiration of their visitor permits, forced to accept that “[i]f caught at an army checkpoint, they are liable to be deported, even if they have a spouse and children in the territories. Nor can they go abroad, even for emergencies, because, since they stayed here illegally after their visas expired, Israel would not allow them to return if they left.”⁶¹ For many who entered on Jordanian passports or Egyptian refugee travel documents (RTDs), they have been unable to renew these documents without leaving Gaza and their status has now lapsed; they are essentially stateless.

Israel contended that the freeze on family unifications was in direct response to the escalating security risks following the second Intifada, though individual grounds or substantive justifications for the purported security grounds were never provided. Israeli authorities simply asserted that “because of recent incidents, the handling of requests for family unification in Judea and Samaria has stopped.”⁶² The sweeping nature of the freeze itself suggests “that it is intended to collectively punish the residents for their struggle against Israel in the intifada.”⁶³ Israeli officials have even admitted that “so long as the situation [referring to the second Intifada] does not change radically, the Israeli side will not approve family unification in the area.”⁶⁴

1.6 Israeli Partial Disengagement from the Gaza Strip (2005)

On 12 September 2005, Israel withdrew its military personnel and dismantled all Israeli settlements within the Gaza Strip. While Israel designated Gaza’s boundaries with Israel as international crossings as of this date, Israel continued to maintain complete control of Gaza’s airspace, maritime access, and all non-Egyptian land crossings into the Gaza Strip.⁶⁵ Three days after the dismantlement of the Gaza settlements, then Israeli Prime Minister Ariel Sharon announced that the disengagement marked “the end of Israeli control over and responsibility for the Gaza Strip.”⁶⁶ In submissions before the Israeli High Court of Justice, the state contended that “the Government of Israel has taken the position that it no longer holds Gaza through belligerent occupation and that international humanitarian law governing occupied territory therefore no longer applied to its actions vis-à-vis Gaza residents.”⁶⁷

The former UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, John Dugard, has rejected this position, citing Israel’s maintenance of effective

⁵⁹ HaMoked, *Family Unification in the Occupied Palestinian Territories: Timeline*, *supra* note 30.

⁶⁰ HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 47.

⁶¹ Hass, “Gaza after the pullout”, *supra* note 58.

⁶² B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 3 (citing Letter of 24 April 2001 to HaMoked: Center for the Defence of the Individual from the Office of the Legal Advisor for the West Bank).

⁶³ *Ibid.*, p. 58.

⁶⁴ B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 58 (citing HCJ 8834/02, *Nadal Abed al Fatah Abdallah Nazal v. IDF West Bank Military Commander*, Response of the Respondents, Sections 2, 5, 7).

⁶⁵ Gisha – Legal Center for Freedom of Movement, *Disengaged Occupiers: The Legal Status of Gaza*, January 2007, p. 25: “Israel has made changes in its domestic law treating Gaza as a foreign territory, separated from the West Bank and subject neither to Israeli control nor Israeli duties. The State of Israel has issued administrative orders defining the Erez, Kerem Shalom, Sufa, and Karni crossings between Gaza and Israel as international border crossings. It has compared Gaza to Syria, claiming that it bears no obligation to permit the provision of humanitarian aid in Gaza and no obligation to permit people and goods to cross between Gaza and the West Bank” (internal citations omitted).

⁶⁶ *Ibid.*, p. 8; Kanaga Raja, “Root Cause of Palestinian Violence is Israeli Occupation”, *South-North Development Monitor (SUNS)*, No. 6425, 29 February 2008.

⁶⁷ Gisha, *Disengaged Occupiers*, *supra* note 65, p. 23 (citing HCJ 11120/05, *Hamdan v. Southern Military Commander*, State’s Response of 19 January 2006).

control over the Gaza Strip through land crossings, military incursions, control of air and water space, and even the continued control over the Population Register – which defines who is a “Palestinian” or resident of Gaza.⁶⁸

There does not appear to be a clear consensus as to which Israeli laws and military orders remain applicable in relation to the Gaza Strip following Israel’s 2005 partial disengagement. As part of its partial disengagement from the Gaza Strip, the Israeli military issued a military order cancelling all previous Israeli military orders effective in Gaza. Although Israeli military authorities continue to issue military orders governing the West Bank, in the Gaza Strip, Israel no longer issues any direct military orders or regulations to govern its policies.⁶⁹ Instead, Israel has created its own *ad hoc* and frequently contradictory legal construction in addressing this area.

As the Interim Agreement and the Oslo Accords have no legal standing on their own, and only became legally enforceable through military proclamations, there is also some question as to the continuing legal effect of the Interim Agreement with regard to the Gaza Strip.⁷⁰ Many of the procedures for the control and management of the Population Registry were also based on now-cancelled military orders.

With regard to residency and family unification matters, there has been no substantive change in the processing or handing of the Population Registry. In fact, at the time of the Israeli disengagement, “Israel’s liaison office with the PA informed the Palestinian Interior Ministry that its relocation to new offices outside the Gaza Strip would result in a 10-day hiatus in updating the Population Registry data. Once the office resumes work – assuming the security situation permits – a Palestinian clerk will cart boxes full of reports on recent births, deaths and marriages to the liaison office, which will use them to update Israel’s computer files”.⁷¹

For Palestinians, there has never been any demand “that Gaza’s population registry be disconnected from Israeli’s computers following the disengagement, since in their view, Gaza and the West Bank are two parts of the same whole, so disconnecting only Gaza would be meaningless. But as long as Israel retains control over the Palestinian population registry, this is a sign – in Palestinian eyes, and probably in those of the world as well – that Israel’s occupation of Gaza continues even after the disengagement”.⁷²

1.7 Palestinian Parliamentary Elections and Hamas Takeover of Gaza (2006–present)

In January 2006, Hamas won the Palestinian civil parliamentary elections and formed a majority government within the PLC. Following Hamas’ election victory, Israel “announce[d] a complete severing of relations with the PA, including on population registry issues”.⁷³ Tensions erupted between Hamas and Fatah and, despite an attempt to establish a unified government in March 2007, culminated in the Hamas

⁶⁸ Raja, “Root Cause of Palestinian Violence is Israeli Occupation”, *supra* note 66; *Human Rights Situation in Palestine and Other Occupied Arab Territories: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967*, John Dugard, Human Rights Council, Seventh session, A/HRC/7/17, 21 January 2008. For more on the continuing applicability of international humanitarian law to the Gaza Strip, see HaMoked, *One Big Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan*, March 2005.

⁶⁹ NRC interview with Adv. Yossi Wolfson, Jerusalem, 31 August 2011.

⁷⁰ Military Proclamation regarding Implementation of the Interim Agreement (Judea and Samaria) (No. 7) 5756-1995, Section 5: “Transfer of powers and responsibilities in accordance with Annex III of the Interim Agreement includes transference of all rights, duties and undertakings relevant thereto and the provision of the Interim Agreement shall apply in this matter.”; See also HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 44: “The provisions of the Interim Agreements were incorporated into the Region’s legislation in Minshar Zeva’ I [military proclamation] (No. 7), issued by the Military Commander on November 23, 1995”.

⁷¹ Hass, “Gaza after the pullout,” *supra* note 58; NRC interview with Khalil Faraj, Deputy Director of Palestinian Authority Civil Affairs Committee, Gaza Strip, 5 September 2011.

⁷² Hass, “Gaza after the pullout,” *supra* note 58.

⁷³ HaMoked, *Family Unification in the Occupied Palestinian Territories: Timeline*, *supra* note 30.

military takeover of the Gaza Strip on 14 June 2007. Since then, Hamas has exercised control over and administration of Gaza.

Following the Hamas takeover of Gaza, Israel and Egypt imposed a full blockade on the Gaza Strip, largely preventing the export of any goods, crippling the local economy, and restricting imports to a limited amount of basic humanitarian aid. The blockade also severely restricted freedom of movement into and out of Gaza, disrupting, among other things, family life for residents with relatives in the West Bank and Israel.

In addition, as a consequence of the ongoing split between Fatah and Hamas, the processing of requests for Palestinian passports and identity cards has been hampered. For example, until 2007, the Population Registry for the entire oPt “was concentrated in the Interior Ministry in Gaza, where the passports were printed (including those of West Bank residents). But after the Hamas takeover of the Strip in June of that year, Ramallah managed to transfer the population registry to its jurisdiction. It also made sure that no blank passports would reach Gaza.”⁷⁴ Subsequently, all printing of Palestinian passports has been transferred to Ramallah and it is no longer possible for a Palestinian passport to be printed in Gaza.⁷⁵ All applications for identity cards and passports for Gaza residents likewise must be processed through Ramallah. The Ministry of the Interior (MoI) within Gaza can physically print an identity card, but confirmation of registration and inclusion on the Population Registry must still be coordinated with Israeli and PA authorities.

1.8 Israeli “Gesture” Approving 50,000 Family Unification Applications (2007–2008)

According to Riad Al Zaytunyah, General Director of the Directorate of Civil Status with the Ministry of Interior in Gaza, there were roughly 23,000 family unification applications from the Gaza Strip filed on behalf of spouses who had entered on visitor permits between 1995 and 2000 that remained pending as of 2007.⁷⁶ In response to a series of Israeli High Court of Justice petitions filed by Israeli NGO HaMoked and as part of a “political gesture” by then-Israeli Prime Minister Ehud Olmert, Israel initially approved a number of these pending applications. On 29 January 2008, Israel officially announced its decision to approve 50,000 pending family unification applications for the West Bank and the Gaza Strip.⁷⁷ This marked the first approval for family unifications requests in more than seven years and was limited to applications submitted prior to the second Intifada where the applicant had entered the oPt legally on a visitor permit; the quota did not include couples where one or both spouses were living outside the oPt.⁷⁸ Israel “has refused to approve applications which do not appear on the lists sent in preparation for the gesture – including of those who would have been entitled to be registered under other arrangements”.⁷⁹ According to Israeli records, approximately 60,000 people had entered the oPt on visitor permits prior to 2000 and had not left.

⁷⁴ Hass, Amira, “Passports are the latest weapon in the struggle between Fatah and Hamas”, *Ha'aretz*, 25 July 2010.

⁷⁵ *Ibid.*: “In November 2007, there were still about 10,000 blank passports in Gaza. At the time, the two halves of the Palestinian Interior Ministry—in Ramallah and in Gaza—worked in some coordination. With a shortage of blank passports in Ramallah, Gaza sent over 5,000. But when over 300,000 blank passports arrived in the West Bank from France, Ramallah sent only 2,000 to Gaza, in two batches. The last 1,000 arrived in the summer of 2008, and since then Ramallah has refused to include Gaza in its quota of blank passports.”

⁷⁶ NRC interview with Riad Al Zaytunyah, General Director, Directorate of Civil Status-Gaza, Ministry of Interior, Gaza Strip, 11 September 2011.

⁷⁷ HaMoked, *Family Unification in the Occupied Palestinian Territories: Timeline*, *supra* note 30.

⁷⁸ There have been some cases in which the family unification application of a spouse outside the oPt have inadvertently been approved, though in those situations there have often been problems in obtaining a visitor permit for the ‘absentee’ spouse. In one such case, Israel denied the visitor permit on the ground that the wife’s centre of life had been relocated to Jordan, without acknowledging that she had spent three years in Jordan away from husband due to Israel’s refusal to allow her to return. NRC interview with Ido Blum, Advocate, HaMoked – Center for the Defence of the Individual, Jerusalem, 31 August 2011.

⁷⁹ HaMoked, *Family Unification in the Occupied Palestinian Territories: Timeline*, *supra* note 30.

Table 1: Palestinian Family Unifications Approved by Israel for Gaza Residents, 2007-2009⁸⁰

Date Approved	Number Approved
9 December 2007	1,500
17 February 2008	2,489
6 May 2008	3,487
24 July 2008	4,706
28 August 2008	126
Total	12,308

Table 2: Palestinian Family Unifications Approved by Israel for West Bank Residents, 2007-2009

Date Approved	Number Approved
10 November 2007	3,468
19 February 2008	4,495
6 May 2008	6,518
28 July 2008	2,830
14 August 2008	144
2 March 2009	3,142
Total	20,597

Table 3: Total Number of Palestinian Family Unifications Approved for Gaza and the West Bank, 2007-2009

Gaza Strip	12,308
West Bank	20,597
Total	32,905

Of the 50,000 family unifications pledged by Israeli authorities, 32,905 applications were ultimately approved, with 12,308 approvals provided for Gaza Strip residents. The change in government in Israel and the election of Binyamin Netanyahu of the Likud Party as Prime Minister in 2009 brought “about a complete stop of family-unification application approval, including those encompassed by the ‘gesture’, and the complete freeze policy is thoroughly entrenched”.⁸¹

Approximately 5,300 family unification applications from the Gaza Strip included in the “gesture” were never approved and remain pending at present. No official reason has been provided for the delay in processing this final batch of applications, though several interviewees speculated that the policy was discontinued when the new government of Prime Minister Binyamin Netanyahu came to power and in the wake of the Israeli military campaign in the Gaza Strip, codenamed Operation “Cast Lead”, in December 2008–January 2009.

Aside from the applications approved pursuant to this “political gesture”, Israeli authorities have not regularly processed or approved requests for family unification for more than a decade and the “freeze” remains firmly entrenched⁸². Among interviewees in Gaza, many have been waiting for more than 12

⁸⁰ NRC interview with Khalil Faraj, Deputy Director of PA Civil Affairs Committee, Gaza, 5 September 2011.

⁸¹ HaMoked, *Family Unification in the Occupied Palestinian Territories: Timeline*, *supra* note 30.

⁸² In May 2010, a group of 16 Israeli and Palestinian human rights organizations filed a petition with the High Court of Justice seeking to compel Israel to update its copy of the Palestinian Population Registry, on the grounds that failure to do so violates the 1995 Interim Agreement, the military order that incorporated its provisions into military legislation and other related legislation. The petition also sought to halt the forcible transfer of West Bank residents to the Gaza Strip based on their registered addresses in Israel’s frozen copy of the registry. An English translation of the petition is available at http://hamoked.org/files/2011/112450_eng.pdf [last accessed 12 January 2012]. In a related challenge, the Palestinian Supreme Court rendered a judgment in October 2010 instructing the Palestinian Civil Affairs Committee to accept Palestinians’ requests to

years to hear any response to their family unification application and have been unable to leave the Gaza Strip.

change their registered address from Gaza to the West Bank, in exercise of its authority under the Interim Agreement. A short English summary of the decision is available at <http://hamoked.org/Document.aspx?dID=Updates1060> [last accessed 12 January 2012].

2. Legal Framework

2.1 Israeli Law and Jurisprudence

Both the Israeli Knesset and the High Court of Justice have recognised the constitutional rights to the protection of human dignity, freedom of movement, and family life.⁸³ On 17 March 1992, the Knesset passed the Basic Law on Human Dignity and Liberty, guaranteeing among other provisions that “[a]ll persons are entitled to protection of their life, body and dignity” and “[a]ll persons have the right to privacy and intimacy”.

In challenging the Israeli “freeze” on Palestinian family unifications, the Israeli NGO HaMoked filed a series of petitions before the High Court in 2007 (the *HaMoked* petitions). The organisation submitted 47 petitions, of which the High Court agreed to hear the first four. Following the first court hearing, the High Court issued a preliminary decision ordering the State to consider changing its policy regarding the processing of family unification requests and to inform the court within 60 days. Before the High Court of Justice had the opportunity to rule on the merits of the *HaMoked* petitions and the response of the Israel government, Israeli authorities announced the “political gesture” accepting and eventually approving 50,000 Palestinian family unifications and the Court dismissed all of the pending *HaMoked* petitions as moot.⁸⁴

In its response to the *HaMoked* petitions, the Israeli government had initially maintained the position that family unification was a political issue best resolved through peace negotiations and therefore non-justiciable before the High Court.⁸⁵ HaMoked, however, asserted that the refusal to process family unifications for political reasons and without individual review was itself impermissible under Israeli law. Quoting the High Court of Justice judgment in HCY 796/02 *The Public Committee Against Torture in Israel v. The Government of Israel*, HaMoked noted that “[t]here is no basis to the doctrine of institutional non-justiciability, where recognising such would likely avoid an examination into a violation of a human right”.⁸⁶ By conceding the freeze was based on political considerations, the Government of Israel seemingly undermined both its contention that the PA was the ultimate arbiter on matters related to the Population Registry as well as its security justification based on the second Intifada.

The *HaMoked* petitions relied heavily on the 2003 High Court decision in *Adalah, et. al. v. Minister of Interior, et. al* (the *Adalah* case), contending that “it is no longer disputed that the right to family unification is a fundamental right, that it is an essential element of human dignity, and that it is not a courtesy”.⁸⁷ In the *Adalah* case, the petitioners contested the Nationality and Entry into Israel (Temporary Order) Law, (5763-2003), which prevented Palestinians living in the oPt who are married to Israeli citizens from receiving Israeli residency or citizenship, adversely affecting thousands of Arab-Israeli

⁸³ While Israel currently lacks a formal written constitution, the Basic Laws as enacted by the Knesset represent a piecemeal drafting of what will ultimately serve as the constitution for the State of Israel. In 1950, the first Knesset adopted the Harari proposal, which provided that these Basic Laws represent part of the constitutional drafting process and the Basic Laws, when completed, will represent the Israeli constitution. Where there is a contradiction between one of the Basic Laws and ordinary Knesset legislation, the High Court of Justice has voided the inconsistent ordinary law. See Israeli Knesset, *Basic Laws – Introduction*, available at http://www.knesset.gov.il/description/eng/eng_mimshal_yesod.htm [last accessed 5 December 2011].

⁸⁴ NRC interview with Ido Blum, Advocate, HaMoked – Center for the Defence of the Individual, Jerusalem, 31 August 2011.

⁸⁵ HCY 3170/07, *Dwikat, et al. v. State of Israel*, Response on Behalf of the Respondents, 18 September 2007, para. 3 (claiming that “the petition is not rooted in the legal arena but rather in the political arena which deals primarily with the issue of implementing the interim agreements, and therefore it should by law be dismissed.”).

⁸⁶ HCY 3170/07, *Dwikat, et al. v. State of Israel*, Application on behalf of the petitioners to respond to the response on behalf of the respondents, 20 September 2007, para. 13 (quoting HCY 796/02 *The Public Committee Against Torture in Israel v. The Government of Israel*, Judgment, 14 December 2006, para. 50 of Chief Justice Barak’s judgment).

⁸⁷ HCY 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 35.

citizens married to Palestinians from the West Bank and Gaza.⁸⁸ While the HCJ ultimately dismissed the *Adalah* case in May 2006 in a narrow 6-5 decision, the Court's ruling contained strong language recognising a constitutional right to family life that may only be limited for security grounds and on the basis of Knesset legislation. The Population Registry freeze has never been outlined under formal Knesset legislation nor have the security justifications ever been enumerated.⁸⁹

Jurisprudence from the Israeli High Court of Justice

A person's fundamental right to choose his spouse and establish a family unit with him in his country is part and parcel to his dignity and the essence of his personality.

Justice Beinisch, HCJ 7052/03, *Adalah v. Minister of the Interior*, paragraph 7 (minority opinion)

The right to realize family life is a fundamental right. Its denial violates human dignity. Its denial impairs the individual's autonomy to marry according to his wishes and to establish a family – in any case, it impairs freedom. This violation of freedom is no less severe than the violation of human dignity.

Justice Rivlin, HCJ 7052/03, *Adalah v. Minister of the Interior*, paragraph 8

Israel is committed to protect the family unit in accordance with international conventions... and although these conventions do not stipulate one policy or another with regard to family reunifications, Israel has recognized — and continues to recognize — its duty to provide protection to the family unit also by giving permits for family reunifications.

Justice Cheshin, HCJ 3648/97, *Stamka v. Minister of Interior* [1999] 53(2) 728, 787

The life of the population, as the life of the individual, does not remain still, but is in constant movement development, growth and change. A military government cannot ignore all this. It is not permitted to freeze life.

Justice Barak, HCJ 393/82 *Jamait Ascan Almaalamon v. IDF Commander in the West Bank* (4) 785, 804

HaMoked further asserted that, with regard to Israeli treatment of family unification cases, “requests are not examined on a case-by-case basis, or in regard to the degree of danger inherent in the particular person who seeks to enter the area” and “the prohibition on the entry of spouses and children of Palestinian residents, either by means of visitor permits or by family unification, is sweeping and indiscriminate”.⁹⁰

⁸⁸ HCJ 7052/03, *Adalah – The Legal Center for Arab Minority Rights in Israel v. Minister of the Interior*. The controversial Citizenship and Entry into Israel (Temporary Order) Law 5763-2003, which banned the granting of Israeli citizenship and status to oPt residents who were married to Israeli citizens, initially only applied to oPt residents and did not apply to Jordanian or other foreign citizens. Therefore, under this legislation, Jordanian spouses could attain Israeli citizenship through marriage to an Arab-Israeli yet would be ineligible for Palestinian residency through marriage to a Palestinian resident. The security grounds for this legislation only applied to Palestinian residents and did not cover Jordanians. The *HaMoked* petitions specifically addressed this inconsistency, stating that “[i]n this case – the same people Israeli is prepared to admit into its own territory and to whom it is even willing to award citizenship, if they are married to Israelis, are absolutely barred from entering the Territories!” See HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 62(a) (emphasis omitted). On 11 January 2012, the Israeli Supreme Court again upheld the Citizenship and Entry into Israel Law – 2003 (as amended in 2007) in a 6-5 decision. This decision addressed the 2007 amendment to the law, which expanded the scope to include not only oPt residents, but also citizens of Syria, Lebanon, Iraq, Iran and other designated “enemy states”. The Court recognised the constitutional right to family life under Israeli law, but concluded that the law was proportional and did not violate the Basic Law. The majority justices further held that the constitutional right to family life did not extend to exercising this right within Israel. See HCJ 466/07, *MK Zahava Galon v. The Attorney General, et al.* (petition dismissed 11 January 2012). For more information, see <http://www.adalah.org/newsletter/eng/jan12/docs/Summary%20Citizenship%20Law.pdf> (last accessed 5 January 2012).

⁸⁹ HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 62(c).

⁹⁰ B'Tselem, *Perpetual Limbo*, *supra* note 29, pp. 55-56.

According to the Israeli High Court of Justice, such a flat ban on family unification without individual examination of the merits of the application is invalid and in violation of Israeli law.⁹¹ In its 1986 ruling in HCJ 13/86, *Shahin v. IDF Commander in the Judea and Samaria Region, Piskei Din* (the *Shahin* case), the High Court of Justice held that it “is our understanding, and this is our guiding principle, that the respondent’s policies and modus operandi entails a consideration of each and every case according to the individual circumstances and in each case they will also re-examine to see if there are exceptional humanitarian considerations”.⁹² High Court President Barak echoed this tenet, holding that “[a] blank prohibition of a right, which is not based on an individual check, is a measure that raises a suspicion of being disproportionate. This is the case in our law. It is also the case in comparative law”.⁹³

2.2 International Human Rights Law

On 3 October 1991, Israel ratified five major United Nations human rights treaties, including:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Convention on the Rights of the Child (CRC)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)⁹⁴

While Israel does not recognise the extraterritorial application of its human rights treaty obligations in the oPt and contends that it no longer has any legal obligations as an occupying power with regard to the Gaza Strip, prevailing international consensus holds otherwise. In the landmark 2004 judgment considering the legality of the Wall built by Israel in the West Bank, including East Jerusalem, the International Court of Justice (ICJ) has unanimously held that Israel is bound to comply with both the Fourth Geneva Convention and its international human rights obligations.⁹⁵ In the Reports of the Working Group on the Universal Periodic Review of Israel, the UN Human Rights Council similarly rejected Israel’s contention that there is no extraterritorial application of its human rights obligations in the oPt.⁹⁶

Further, in all Concluding Observations on the Reports of Israel, the respective committees for the UN human rights treaty bodies continually stress Israeli’s continuing human rights obligations with regard to the Gaza Strip. The UN Human Rights Committee, which considers reports submitted in compliance with the ICCPR, recently “reiterate[d] and underscore[d] that, contrary to the State party’s position, in the current circumstances, the provisions of the Covenant apply to the benefit of the population of the

⁹¹ HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 64.

⁹² HCJ 13/86, *Shahin v. IDF Commander in the Judea and Samaria Region, Piskei Din* 41(1) (quoted in HCJ 3170/07, *Dwikat, et al. v. State of Israel*, Response on Behalf of the Respondents, 18 September 2007, para. 18). In *Shahin*, the HCJ considered, and ultimately rejected, a petition challenging the military commander’s policy aimed at minimizing the number of immigrations to the oPt due to marriage.

⁹³ HCJ 7052/03, *Adalah – The Legal Center for Arab Minority Rights in Israel v. Minister of the Interior*, Judgment, J. Barak, para. 70.

⁹⁴ Israel had previously ratified the Convention on the Prevention and Punishment of the Crime of Genocide and the International Convention on the Elimination of All Forms of Racial Discrimination on 9 March 1950 and 1 January 1979, respectively.

⁹⁵ International Court of Justice (ICJ), *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004, paras. 90-121. In this case, the ICJ did not expressly consider the application of Israel’s human rights obligations to the Gaza Strip and limited its decision to the legal impact of the Wall in the West Bank, including East Jerusalem. Moreover, this ICJ decision was delivered prior to the Israeli partial military disengagement from the Gaza Strip.

⁹⁶ Report of the Working Group on the Universal Period Review: Israel, Human Rights Council, Tenth session, A/HRC/10/76, 8 January 2009.

occupied territories, including in the Gaza Strip, for all conduct by the State party's authorities or agents in those territories affecting the enjoyment of rights enshrined in the Covenant (arts. 2 and 40)".⁹⁷

Similarly, the Committee on the Elimination of Discrimination against Women affirmed:

The Committee reiterates that the State party's view that the Convention is not applicable in the Occupied Territories is contrary to the views of the Committee and of other treaty bodies, including the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee against Torture and also of the International Court of Justice in its Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, which have all noted that obligations under international human rights conventions as well as humanitarian law apply to all persons brought under the jurisdiction or effective control of a State party and have stressed the applicability of the State party's obligations under international human rights conventions to the Occupied Territories.⁹⁸

The strongest language recognising a right to family unification is contained in the CRC, which promotes positive obligations on State Parties to ensure family unification for children. Article 10 of the CRC states that family unification applications on behalf of children "shall be dealt with by States Parties in a *positive, humane and expeditious manner*" (emphasis added).⁹⁹

Aside from the right to family life, the Israeli control of the Palestinian Population Registry both directly and indirectly impacts key human rights, including, *inter alia*, the right to employment, the right to education, the right to health, the right to freedom of movement, the right to freedom of religion, and the right to life. For example, Palestinians in Gaza who lack identity documents may be denied access to life-saving medical treatments outside Gaza, cannot travel freely within the oPt for employment or educational opportunities, and are denied the right to travel for purposes of religious worship, including to Mecca to perform *Hajj*.

Even for human rights for which derogations are permissible on the basis of public emergency, such exceptions cannot justify Israeli's policies in regard to the Population Registry.¹⁰⁰ Israel has never provided a security rationale for its sweeping freeze of family unifications and instead has conceded that such policy is motivated by political considerations. Additionally, "[t]he extreme lack of transparency regarding the motives for the policy raises a strong suspicion that there is no real connection between the infringement of the right and the security objective that the infringement ostensibly seeks to archive. Without such a connection, the human rights infringement cannot be considered proportionate."¹⁰¹

International Covenant on Civil and Political Rights

Entry into force 23 March 1976, ratified by Israel 3 October 1991

Article 12(1) – Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

⁹⁷ Concluding Observations of the Human Rights Committee: Israel, Ninety-ninth session, CCPA/C/ISR/CO/3, 29 July 2010, para. 5.

⁹⁸ Concluding Observations: Israel, Committee on the Elimination of Discrimination Against Women, Forty-eighth session, CEDAW/C/ISR/CO/5, 4 February 2011, para. 12.

⁹⁹ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, Article 10(1).

¹⁰⁰ See, e.g., *International Covenant on Civil and Political Rights*, 999 UNTS 171 and 1057 UNTS 407 / [1980] ATS 23 / 6 ILM 368 (1967) (ICCPR), Article 4(1): "In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation..."; Article 4(3): "Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated."

¹⁰¹ B'Tselem, *Perpetual Limbo*, *supra* note 29, p. 54.

Article 12(2) – Everyone shall be free to leave any country, including his own.

Article 23(1) – The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

International Covenant on Economic, Social, and Cultural Rights

Entry into force 3 January 1976, ratified by Israel 3 October 1991

Article 10(1) – The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children....

Convention on the Rights of the Child

Entry into force 2 September 1990, ratified by Israel 3 October 1991

Article 7 -- The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

Article 10(1) – [A]pplications 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 States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2.3 International Humanitarian Law

As discussed, Israel officially contends that its 2005 partial disengagement from the Gaza Strip “serve[d] to dispel claims regarding Israel’s responsibility for the Palestinians in the Gaza Strip”.¹⁰² However, as with Israel’s assertion that its international human rights obligations are inapplicable in the oPt, international consensus rejects this position. In the Universal Periodic Review of Israel, members of the Human Rights Council stated that “[t]he blockade of the Gaza Strip is a major concern and Israel should conform to the international humanitarian law” and must “[a]bide by its international obligations, including those under the Fourth Geneva Convention”.¹⁰³ Moreover, Israeli NGO Gisha has argued that it should be noted that “[s]ince the transfer of some competencies to the Palestinian Authority in the mid-1990s, the relevant legal actors: the ICJ, Israel’s High Court, the International Committee of the Red Cross – have eschewed rigid, binary approaches to the question of who is responsible for the Palestinian territories. Rather they have imposed responsibility commensurate with control”.¹⁰⁴

On 30 January 2008, the Israeli High Court of Justice rendered its decision in HCJ 9132/07, *Jaber Al-Bassiouni v. Prime Minister*, which involved cuts of electricity and fuel supplies to the Gaza Strip. In paragraph 12 of the decision, the Court found that Israel “no longer has effective control over the events in the Gaza Strip” and is no longer the occupying power. Nonetheless, the Court did acknowledge that there are continuing legal obligations towards Gaza. According to the HCJ:

[T]he main duties of the State of Israel relating to the residents of the Gaza Strip are derived from the situation of armed conflict that exists between it and the Hamas organization controlling the Gaza Strip; these duties stem from the extent of the State of Israel’s control over the border crossings between it and the Gaza Strip, as well as from the relations which has been created between Israel and the territory of the Gaza Strip after the years of Israeli military rule in the area, as a result of which the Gaza Strip has now become almost completely dependent upon supply of electricity by Israel.¹⁰⁵

¹⁰² Israeli Prime Minister’s Office, “The Cabinet Resolution Regarding the Disengagement Plan”, 6 June 2004, available at <http://www.mfa.org.il/MFA/Peace+Process/Reference+Documents/Revised+Disengagement+Plan+6-June-2004.htm> [last accessed 5 December 2011].

¹⁰³ Report of the Working Group on the Universal Period Review: Israel, Human Rights Council, Tenth session, A/HRC/10/76, 8 January 2009, paras. 24, 33.

¹⁰⁴ Gisha, *Disengaged Occupiers*, *supra* note 65, p. 99.

¹⁰⁵ HCJ 9132/07 *Jaber Al-Bassiouni v. Prime Minister*, Judgment of January 30, 2008, para. 12.

Additionally, Israel has only claimed that its legal obligations as an occupying force in Gaza terminated with the disengagement in 2005. For the thousands of family unification petitions filed prior to 2000, Israel, by its own position, still could be held liable for the injury caused and for which there has, to date, been no effective remedy.

Under both customary international humanitarian law and the Fourth Geneva Convention of 1949, all civilians in the Gaza Strip should be considered protected persons. Article 4 of the Fourth Geneva Convention defines protected persons as “those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals”.¹⁰⁶ The ICRC Commentary to Article 4 is even more explicit, stating:

The definition has been put in a negative form; as it is intended to cover anyone who is “not a national of the Party to the conflict or Occupying Power in whose hands he is”. The words “at a given moment and in any manner whatsoever” were intended to ensure that all situations and cases were covered. The Article refers both to people who were in the territory before the outbreak of war (or the beginning of the occupation) and to those who go or are taken there as a result of circumstances: travellers, tourists, people who have been shipwrecked and even, it may be, spies or saboteurs.¹⁰⁷

Regardless of whether they carry Israeli-issued identity documents, all Palestinians in the Gaza Strip must be considered “protected persons” under the Fourth Geneva Convention. As such, they are “entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs”.¹⁰⁸

Further, under Article 43 of the Regulations concerning the Laws and Customs of War on Land of 1907 (also known as the Hague Regulations), an occupying power “shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety”.¹⁰⁹ As Israeli NGO B’Tselem has noted, Israel as the occupying power is “only allowed to consider the benefit of the local population and security needs, and is forbidden to consider its national interests, certainly when the interest is infected by racial discrimination”.¹¹⁰ In the context of an occupation spanning nearly 45 years, Israel’s own High Court of Justice has stated that the state has an obligation to ensure the public order of the occupied area and “may not freeze life”.¹¹¹

¹⁰⁶ *Convention (IV) relative to the Protection of Civilian Persons in Time of War*, Geneva, 12 August 1949 [Fourth Geneva Convention], Article 4.

¹⁰⁷ International Committee of the Red Cross, Commentary to Fourth Geneva Convention, Article 4.

¹⁰⁸ Fourth Geneva Convention, Article 27; *Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land*, The Hague, 18 October 1907 [Hague Regulations], Article 46 (stipulating that, “family honor and rights...must be respected”). See also Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, Article 74 (requiring State Parties to “facilitate in every possible way the reunion of families dispersed as a result of armed conflicts”, though Israel is not a signatory to this protocol.)

¹⁰⁹ Hague Regulations, Article 43.

¹¹⁰ B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 59.

¹¹¹ HCJ 393/82 *Jam’iat Iscan Al-Mascalmoun v. Commander of the IDF Forces in the Area of Judea and Samaria*, IsrSC 37(4) 785, 804 (1983) (quoted in HCJ 4019/10, *HaMoked: Center for the Defence of the Individual et al v. Military Commander of the West Bank*, Petition for Order Nisi, 25 May 2010, para. 131).

3. Issues Related to Statelessness and Lack of an Effective Citizenship

3.1 UNHCR Legal Framework on Statelessness

The rights and legal framework for stateless persons are outlined in the 1954 Convention relating to the Status of Stateless Persons (1954 Statelessness Convention) as well as the 1961 Convention on the Reduction of Statelessness (1961 Statelessness Convention). The 1954 Statelessness Convention defines a “stateless person” as “a person who is not considered as a national by any State under the operations of its law”.¹¹² The 1954 Statelessness Convention contains similar protection language to the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention), though the former is much less widely ratified. There are currently 68 State Parties to the 1954 Statelessness Convention, including Israel, which ratified the Convention as an original signatory on 23 December 1958.

Israel likewise became a signatory to the 1961 Statelessness Convention on 30 August 1961, though it has yet to ratify that treaty. According to the United Nations High Commissioner for Refugees (UNHCR), the definition of who is stateless “is usually considered to describe a particular type of statelessness, characterised by the formal, legal lack of a nationality and also known as *de jure* statelessness. The problem of statelessness is broader in scope and also extends to persons who *formally* hold a nationality but are nonetheless in a situation similar to statelessness because that nationality is ineffective. Such individuals are commonly referred to as *de facto* stateless”.¹¹³

Whether Palestinians without identity documents or residency in the Gaza Strip would be deemed *de jure* or *de facto* stateless may be complicated to answer. The PA lacks legal authority to grant formal citizenship to Palestinians, though given the current political climate and Palestinian statehood application currently before the United Nations Security Council, this may potentially be subject to change. Moreover, the distinction between *de facto* and *de jure* statelessness may be irrelevant to some extent since, under the Final Act to the 1961 Statelessness Convention, “[t]he Conference recommends that persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality”.¹¹⁴ Under the ExCom Conclusion No. 106, the Office of UNHCR does not distinguish between *de jure* and *de facto* statelessness and “UNHCR has therefore tended to assume that it has a mandate for *de facto* stateless persons who are not refugees just as much as it has a mandate for *de jure* stateless persons who are not refugees.”¹¹⁵ UNHCR has never adequately defined *de facto* statelessness nor outlined what the protection and legal responses should be. Since the fall of the Soviet Union in 1991, an expanded concept of *de facto* statelessness has emerged that “tends to suggest that *de facto* stateless persons may include certain persons who are inside the State of their nationality, not just those who are outside it”.¹¹⁶

There is an additional risk of protection gaps as Palestinians within UNRWA’s area of operations are expressly excluded from the UNHCR protection mandate under the 1951 Refugee Convention.¹¹⁷ Article

¹¹² General Assembly, *Convention Relating to the Status of Stateless Persons*, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117 [1954 Statelessness Convention], Article 1.

¹¹³ UNHCR, *Statelessness: An Analytical Framework for Prevention, Reduction and Protection*, 2008, p. iv (emphasis omitted); see also UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), Article 15 (defining a person’s right to nationality).

¹¹⁴ For discussion on distinction between *de jure* and *de facto* statelessness as well as the different rights attached to each status, see UNHCR, *UNHCR and De Facto Statelessness*, Legal and Protection Policy Research Series, Division of International Protection, LLPR/2010/01 (April 2010).

¹¹⁵ *Ibid.*, p. ii.

¹¹⁶ *Ibid.*

¹¹⁷ UNHCR, *Text of the 1951 Convention Relating to the Status of Refugees, Introductory Note*: “The Convention also does not apply to those refugees who benefit from the protection or assistance of a United Nations agency other than UNHCR, such as

1D of the 1951 Refugee Convention provides the following limitation:

This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance.

To the extent that UNHCR does provide assistance to Palestinian refugees, it is primarily limited to those living outside UNRWA's area of operations (Gaza Strip, Jordan, Lebanon, Syria and the West Bank) and those who do not fall within the cessation clause of Article 1C or the exclusion clause of Articles 1E or 1F of the 1951 Refugee Convention.¹¹⁸ In circumstances of humanitarian emergency, UNHCR will provide necessary aid and transport and make necessary travel arrangements for the purpose of protecting refugees, including obtaining temporary authorisation to travel. For example, in the context of the recent conflict in Libya seeking to end the leadership of Col. Muammar Gaddafi, thousands of Palestinians were stranded at the Egyptian-Libyan border with no state willing to accept them; UNHCR, in cooperation with the Palestinian consulate in Alexandria and the Palestinian embassy in Cairo, helped arrange transport for these Palestinians to return to Gaza.¹¹⁹ However, if these returnees from Libya do not meet the UNRWA Palestine refugee criteria, they could potentially fall outside of UNRWA's mandate.¹²⁰

Ultimately, UNRWA holds an assistance mandate rather than a specific protection mandate and also does not have authority to issue or facilitate travel documents. Issuance of travel documents is *prima facie* the responsibility of the country of nationality. There is also currently no UNHCR presence in Gaza and UNHCR does not consider Palestinians living within UNRWA's area of operations to be persons of concern, resulting in a protection gap for many Palestinians in Gaza who lack citizenship and, consequently, access to travel documents.¹²¹ Hence neither UNRWA nor UNHCR will issue travel documents for Palestinians resident in Gaza. For Palestinian 'refugees' from Gaza outside the territory of Gaza, pursuant to section 28 of the Refugee Convention, the obligation lies upon Contracting States (i.e., host countries) to issue Convention Travel Documents.

3.2 Travel Documents for Stateless Persons

International conventions relating to refugees and statelessness impose positive duties on State Parties to arrange valid travel documentation for those who qualify as *de jure* or even *de facto* stateless persons.¹²² Under Article 28 of the 1954 Statelessness Convention:

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in

refugees from Palestine who fall under the auspices of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA)".

¹¹⁸ BADIL, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, *supra* note 9, p. 61. UNRWA's mandate covers Palestinian refugees, defined as any person whose "normal place of residence was Palestine during the period 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 conflict" as well as descendants of fathers fulfilling the definition.

¹¹⁹ NRC interview with a UN humanitarian worker, Gaza Strip, 18 August 2011.

¹²⁰ See, UNRWA, *Background on Palestine Refugees*, available at <http://www.unrwa.org/etemplate.php?id=86> [last accessed 7 December 2011].

¹²¹ BADIL, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, *supra* note 9, pp. 61-62.

¹²² Executive Committee Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons (No. 106 (LVII) - 2006) (ExCom Conclusion No. 106), para. 1: "Encourages States to seek appropriate solutions for persons who have no genuine travel or other identity documents, including migrants and those who have been smuggled or trafficked, and where necessary and as appropriate, for the relevant States to cooperate with each other in verifying their nationality status, while fully respecting the international human rights of these individuals as well as relevant national laws".

particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

Likewise, Article 27 requires all State Parties to “issue identity papers to any stateless person in their territory who does not possess a valid travel document”.¹²³

3.3 Status of Palestinians in Neighbouring Arab States

During the 1948 War and its aftermath, more than 725,000 Palestinians fled Palestine for neighbouring states, including Jordan, Egypt, Syria, Lebanon, and Iraq. More than 250,000 Palestinians also fled during the 1967 War, mainly from the West Bank into Jordan, and were subsequently absent during the 1967 Israeli census of the oPt.¹²⁴ Many Palestinians who were forced to flee to neighbouring states continue to lack effective citizenship, particularly since the majority of Arab countries with large Palestinian refugees do not grant citizenship *jus soli*.

In 1965, the Protocol on the Treatment of Palestinians in the Arab States (Casablanca Protocol) granted certain rights to Palestinians in Arab States, but not citizenship. The Casablanca Protocol was intended to create a unified system for travel documents for Palestinians and demonstrated “willingness, at least in theory, of the Arab governments to give the Palestinians residency, though not political rights on the same footing as their own citizens”.¹²⁵ Article 4 of the Casablanca Protocol outlined the provision of travel documents, though the responsibility for providing travel documents remains ultimately with the country of first refuge.

Table 4: Estimated Distribution of Palestinian Refugees by Country, 2003¹²⁶

Country	Palestinian Refugee Population
West Bank	703,512
Gaza Strip	922,674
Jordan	2,797,674
Lebanon	415,066
Syria	436,157
Egypt	61,917
Iraq & Libya	115,542
Saudi Arabia	309,582
Kuwait	39,402
Other Gulf Countries	124,230
United States	236,357
Other	300,977

The Casablanca Protocol was never fully implemented in Lebanon, Egypt, Libya, and the Gulf States. Moreover, “[i]n the absence of binding and enforceable regional standards for the treatment of Palestinian refugees in Arab host states, their legal status is regulated by national legislation of each countr[y].”¹²⁷

¹²³ 1954 Statelessness Convention, Article 27. Cf. UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, Schedule, para. 4 (containing nearly identical language to the 1954 Statelessness Convention and stating that travel documents “shall be made valid for the largest possible number of countries” and “Contracting States shall recognize the validity of the documents issued in accordance with the provisions of article 28 of this Convention.”).

¹²⁴ See, *Guide to UNRWA*, Vienna, April 1992, p. 6.

¹²⁵ Abbas Shibliak, “Residency Status and Civil Rights of Palestinian Refugees in Arab Countries”, *Journal of Palestine Studies*, Vol. 25, No. 3 (Spring 1996), p. 38.

¹²⁶ BADIL, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, *supra* note 9, p. 10.

¹²⁷ *Ibid.*, p. 13.

Palestinians may face discrimination and be denied equal rights on par with citizens. For example, NRC interviewed M.K., who had emigrated with her family to Gaza from Saudi Arabia, stated that a main motivation in doing so was because she and her siblings were not Saudi and her parents believed that, as Palestinians, they would face discrimination and possibly restrictions in attending university there.¹²⁸

The following provides a brief summary of the status of Palestinian refugees in the main Arab countries of resettlement:

- **Jordan** – For Palestinian refugees who fled in 1948, Jordan was the only Arab state to grant full citizenship, which it did to both Palestinians in Jordan as well as those Palestinians resident in the West Bank, including East Jerusalem.¹²⁹ However, in 1988, King Hussein renounced any Jordanian claims to sovereignty over the West Bank, resulting in the loss of citizenship for most Palestinians living in the West Bank. Today, West Bank Palestinians are still eligible for Jordanian passports, valid for two or five years, which serve primarily as travel documents and no longer confer citizenship rights.¹³⁰ For Palestinians from the Gaza Strip who fled to Jordan in 1967, many of whom were “second time refugees”, Jordan refused to grant full nationality. Approximately 80,000 Palestinians from the Gaza Strip who carried Egyptian travel documents “fled to Jordan, where they remain stateless, mostly in the ‘Jerash Camp’; unlike the refugees that went to Jordan in 1948, they have never been given full residency rights”.¹³¹ Palestinians who arrived from Gaza in 1967 typically received two-year temporary passports, which provide only limited rights and access to services in Jordan.¹³²
- **Egypt** – Until the 1978 assassination of Egyptian writer Yousef Al-Sibai, a close friend of then-President Anwar Sadat, by a Palestinian, Palestinians enjoyed most fundamental rights and protections in Egypt. Following this assassination, rights previously granted were revoked and few Palestinian refugees acquired or retained Egyptian citizenship. Instead, Palestinians who had lived in the Egyptian-administered Gaza Strip between 1948 and 1967 as well as those Palestinians who fled to Egypt may receive Egyptian-issued Refugee Travel Documents (RTDs) that are valid for one to three years and do not automatically grant residency status. For example, RTD holders “who were born in Egypt or who have lived there most of their lives have no automatic right to leave or re-enter the country, but must renew their visas every six months to three years, depending on the category”.¹³³ Previously, Palestinians carrying valid Egyptian RTDs could also face detention at the Cairo airport for more than 48 hours upon arrival and many were still denied entry into Egypt due to lack of a separate entry visa, being blacklisted as a security threat, or unspecified grounds.¹³⁴
- **Gulf States** – Many Palestinians moved to the Gulf States for work opportunities, but never attained citizenship or residency rights in these states. Most are considered to be migrant workers. In many areas, Palestinians face systematic discrimination and nearly 30,000 were either expelled

¹²⁸ NRC interview with M.K., Gaza Strip, 4 September 2011. Cf. BADIL, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, supra note 9, p. 19 (noting that, in Kuwait, “[t]here are quotas for the admission of foreigners to public schools and universities”).

¹²⁹ The primary difference between Jordanian citizens of Palestinian origin and Palestinians living in the West Bank and East Jerusalem was that the latter category received passports without Jordanian national identity numbers. See Immigration and Refugee Board of Canada, *Jordan, Palestine and Israel: Passports issued to stateless Palestinians; procedures; entitlements; differences between Jordanian passports issued to Jordanian nationals and those issued to stateless Palestinians*, ZZZ103109, 8 July 2009.

¹³⁰ BADIL, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, supra note 9, pp. 20-21.

¹³¹ Shiblak, “Residency Status and Civil Rights of Palestinian Refugees in Arab Countries”, supra note 125, p. 40.

¹³² Immigration and Refugee Board of Canada, *Jordan, Palestine and Israel: Passports issued to stateless Palestinians*, supra note 129.

¹³³ Shiblak, “Residency Status and Civil Rights of Palestinian Refugees in Arab Countries,” supra note 125, pp. 39-40.

¹³⁴ NRC interview with a UN development worker, Gaza, 28 August 2011.

or refused renewal of their residency permits in Kuwait in retaliations for the PLO's support of Saddam Hussein during the Gulf War in 1991. Most of these displaced Palestinians came from the Gaza Strip and carried Egyptian RTDs and, without new Kuwaiti residency permits, "found themselves in a legal limbo because they had lost both their residency rights in the Gaza Strip (due to their absence during Israel's 1967 census) and in Egypt (because their temporary residency in Egypt had expired)."¹³⁵

- **Syria and Lebanon** – Syria and Lebanon, both within UNRWA's areas of operation, recognise Palestinian refugees as "stateless". In both Syria and Lebanon, the vast majority of Palestinian refugees are registered with UNRWA and, in Lebanon, more than half live in 12 refugee camps.¹³⁶ Palestinians registered with either UNRWA or the League of Red Crescent Societies are eligible for a one-year travel document that may be renewed three times; those Palestinians not registered with UNRWA or the League may only receive a three-month travel document.¹³⁷ Palestinians in Lebanon face certain employment and education restrictions and are barred from owning land. Minor employment reforms were implemented in Lebanon in August 2010. By contrast, Palestinian refugees in Syria are granted full access to employment and social services and their living conditions are comparable to other Syrians. The Syrian government issued six-year travel documents and identity cards to Palestinian refugees similar to Syrian passports.¹³⁸ Only one quarter of Palestinians in Syria live in refugee camps.

¹³⁵ BADIL, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, *supra* note 9, p. 18.

¹³⁶ *Ibid.*, p. 11. As of 2003, 399,152 of the 415,066 Palestinian refugees in Lebanon and 421,737 of the 436,157 Palestinian refugees in Syria were registered with UNRWA.

¹³⁷ *Ibid.*, p. 15.

¹³⁸ *Ibid.*, p. 17.

4. Identification Documents held by Palestinians in Gaza

4.1 Israeli Identity Cards (1967–1994)

From the beginning of the Israeli occupation of Palestinian territory in 1967 until 1994, “the Israeli government—through the military occupation bureaucracy known as the Civil Administration—issued identity cards to the residents of territory occupied in 1967. Those living in the West Bank had orange cards, those in the Gaza Strip had maroon ones and East Jerusalemites carried blue cards indicating Israeli residency but not citizenship”.¹³⁹ Each of these Israeli identity cards was embossed with Israeli military insignia and printed in Hebrew and Arabic.



ard, issued in 1989.

In 1988, after the start of the first Intifada, the Israeli army began issuing new identity cards to Palestinians in the Gaza Strip. At the time, Israeli authorities stated that “the new cards are being issued because many of the old ones are torn and worn”, though Palestinians feared that the measure was “aimed at increasing military control over the Arab population and breaking a tax boycott, one of the chief tactics of the uprising”.¹⁴⁰ Before receiving the new identity cards, Palestinians were required to pay back taxes. Israel subsequently refused to recognise the pre-1988 Israeli-issued identity cards for Palestinians resident in Gaza. Many of those who refused to update their identity cards at that time today lack status or proper identification.¹⁴¹

4.2 Official Palestinian Passports and Identity Cards

PA-Issued Identification Cards

Following the signing of the Interim Agreement in 1995, Israel transferred responsibility for issuing Palestinian identity cards to the PA. The new Palestinian identity cards are green and printed in Arabic and Hebrew with the PA insignia.¹⁴² All Palestinians listed in the Population Registry and over the age of 16 are eligible to receive a Palestinian identity card. The PA-affiliated Civil Affairs Committee (CAC), also referred to as the Ministry of Civil Affairs, in Gaza continues to print and issue ID cards to Gaza residents. These PA-issued identity cards are a prerequisite in attaining a Palestinian passport or foreign

¹³⁹ Loewenstein, “Identity and movement control in the OPT”, *supra* note 22, p. 24. Palestinian Jerusalemites were not granted Israeli citizenship, but instead received “temporary residency”. They were “issued blue ID cards that look identical on the outside to those mandated to Israeli citizens”, but do not grant citizenship or a right to travel; these cards also follow a different number series and do not list nationality. Tawil-Souri, “Colored Identity: The Politics and Materiality of ID Cards in Palestine/Israel,” *supra* note 11, p. 71.

¹⁴⁰ “Israelis Order New ID Cards; Arabs See Bid for More Control”, *The Los Angeles Times*, 10 May 1988.

¹⁴¹ NRC interview with Riad Al Zaytunyah, General Director, Directorate of Civil Status-Gaza, Ministry of Interior, Gaza Strip, 11 September 2011.

¹⁴² The cards themselves, as under the previous Israeli system, are actually off-white and the coloured terminology refers to the plastic sleeve in which they are required to be carried. Tawil-Souri, “Colored Identity: The Politics and Materiality of ID Cards in Palestine/Israel”, *supra* note 11, p. 72.

visa necessary to leave the Gaza Strip. When the possibility to work in Israel still existed for Palestinians from the Gaza Strip, they were additionally required to carry Israeli magnetic ID cards.¹⁴³



A. Photo: NRC.

In practice, Israel continues to exercise sole discretion in assigning identification numbers to Palestinians.¹⁴⁴ Without an Israeli-issued identification number, the PA will not generally issue an identity card as it would be useless for travel outside the oPt. If the information on a PA-issued identity card does not match the information on the Israeli database, the holder could be questioned at any Israeli military checkpoint and potentially detained or denied exit from the West Bank or Gaza, or entry into Israel despite carrying an otherwise valid travel document. Because of Israeli internal checkpoints within the West Bank and Israel's complete control over all external crossings from the West Bank and the Gaza

Strip, with the partial exception of the Rafah crossing into Egypt, the PA therefore does not issue identity cards that do not match the Israeli copy of the Population Registry.

Palestinian Passports/Travel Documents

Beginning in 1995, the PA began issuing Palestinian passports to oPt residents listed in the Israeli-controlled Palestinian Population Registry. These passports are issued in the name of the “Palestinian Authority” and not the “State of Palestine”. The Palestinian passport “functions as a travel document and replaces the earlier Israeli travel document (*laissez-passer*). The Palestinian passport/travel document is issued by the PA after clearance by Israel...While it does not convey citizenship of a state (in the absence of a Palestinian state), it entitles its holder to leave and re-enter the West Bank/Gaza Strip without the need for additional travel and re-entry permits (unless Israeli authorities raise specific ‘security reasons’).¹⁴⁵ The United States, the European Union, Egypt, Jordan, and the United Arab Emirates (UAE), *inter alia*, have indicated that the Palestinian passports may be used for international travel to their countries as long as it is accompanied by valid entry visas.



Palestinian passport.
ommons.

Until 2007, all Palestinian passports were printed by the MoI in the Gaza Strip, including for West Bank residents. However, since the division between Fatah and Hamas and the Hamas takeover of the Gaza Strip in 2007, all Palestinian passports must now be issued by the passport office in Ramallah. The PA government in Ramallah “managed to transfer the population registry to its jurisdiction....[and] also made sure that no blank passports, which are produced in France,

¹⁴³ Dareen Khattab, “How a Document Determines Which Palestinian You Are”, March 2008, available at http://beyondintractability.colorado.edu/case_studies/document_palestinian.jsp?nid=6818 [last accessed 14 December 2012].

¹⁴⁴ For Palestinian Jerusalemites, the PA is not permitted to issue any PA passports or identity cards “[s]ince the status of Jerusalem was postponed pending final status negotiations.” Tawil-Souri, “Colored Identity: The Politics and Materiality of ID Cards in Palestine/Israel,” *supra* note 11, p. 72.

¹⁴⁵ BADIL, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, *supra* note 9, p. xxviii.

would reach Gaza”.¹⁴⁶ In April 2009, the PA “changed the color of its passport from green to black, began using a different kind of paper and changed the document’s validity from three to five years”.¹⁴⁷ Because the local authorities in Gaza cannot issue new passports, in certain cases, they will simply renew and extend the previous green Palestinian passports that would have since expired otherwise.¹⁴⁸

Currently, Palestinians in Gaza may utilise passport services or express mail services within Gaza to send their passport applications to the West Bank. The MoI charges 210 ILS to apply for a passport and most passport agencies charge between 300 and 1,000 ILS in processing fees. The local authorities in the Gaza Strip request that Palestinians register any new passports with the MoI in Gaza City.¹⁴⁹ In an interview with NRC, Mohammed Azaiza, Gaza Field Researcher for Israeli human rights NGO Gisha – Legal Center for Freedom of Movement, confirmed this registration process, having documented its occurrence in Gaza. He noted a recent case of one Palestinian individual who entered Gaza on a new Palestinian passport.



The Hamas officials at the “Arba-Arba” checkpoint at the Beit Hanoun/Erez crossing with Israel took his passport and instructed him to pick it up from the MoI office in Gaza City.¹⁵⁰

However, applications from Gaza residents for passports “have been declined after the intervention of the general intelligence apparatus in the West Bank. The reasons behind depriving people of their rights to obtain a passport were ‘security reasons’”.¹⁵¹ The number of Gaza passport applications that have been denied is unknown, though it appears to be politically-motivated and many of those affected are allegedly associated with the local authorities.¹⁵²

4.3 Temporary Palestinian Identity Cards and External-Use Only Passports

Temporary Palestinian Identity Cards

In January 2007, the Palestinian government began “issuing papers to thousands of Gaza residents caught in a legal limbo with no residence permits”.¹⁵³ This programme for issuing “temporary” Palestinian identity cards was initiated under the previous PA government and prior to the split between Fatah and

¹⁴⁶ Hass, “Passports are the latest weapon in the struggle between Fatah and Hamas”, *supra* note 74: “In November 2007, there were still about 10,000 blank passports in Gaza. At the time, the two halves of the Palestinian Interior Ministry—in Ramallah and in Gaza—worked in some coordination. With a shortage of blank passports in Ramallah, Gaza sent over 5,000. But when over 300,000 blank passports arrived in the West Bank from France, Ramallah sent only 2,000 to Gaza, in two batches. The last 1,000 arrived in the summer of 2008, and since then Ramallah has refused to include Gaza in its quota of blank passports.”

¹⁴⁷ *Ibid.*

¹⁴⁸ NRC interview with N.A., Gaza Strip, 12 September 2011.

¹⁴⁹ Hass, “Passports are the latest weapon in the struggle between Fatah and Hamas,” *supra* note 74.

¹⁵⁰ NRC interview with Mohammed Azaiza, Gaza Field Researcher, Gisha – Legal Center for Freedom of Movement, Gaza Strip, 25 August 2011.

¹⁵¹ Al Dameer Association for Human Rights, *After Signing the National Reconciliation Agreement Al Dameer Calls for Tracking Procedures to Ensure that Palestinians in Gaza Obtain their Passports*, 22 May 2011.

¹⁵² Hass, “Passports are the latest weapon in the struggle between Fatah and Hamas,” *supra* note 74.

¹⁵³ “Palestinian Interior Ministry gives IDs to ‘stateless’ Palestinians”, *Ha’aretz*, 26 January 2007.

Hamas.¹⁵⁴ The idea was to provide Palestinians in Gaza with “local IDs for use inside the territories only, allowing residents with expired visit permits or travel documents to deal with banks, register in schools, and deal with government authorities.”¹⁵⁵ For many whose families had fled Gaza nearly four decades earlier and were absent during the 1967 census, this represented the first identity document to expressly identify them as Palestinian. Between 30,000 and 50,000 Gaza residents are unrecorded in the Population Registry, though Riad Al Zaytunyah, General Director for the Directorate of Civil Status with the Ministry of the Interior in Gaza, stressed that “[w]e can’t specify the exact number. Those who entered legally we know”.¹⁵⁶ There had been initial plans to issue comparable identity cards to Palestinians in the West Bank, but these plans were halted, as according to Israeli human rights activist Sari Bashi, “Israel still control[s] the territory. Registering illegal residents could be used as a pretext for arresting them”.¹⁵⁷

There are currently 12,500 Gaza residents who have been issued with these temporary identity cards.¹⁵⁸

While the official Palestinian identity cards are laminated and carried in a green plastic case, the temporary cards are printed on paper forms and carried in blue plastic cases. The official identity cards are also printed in Arabic and Hebrew whereas the temporary cards contain only Arabic and English. All temporary identity cards begin with the number 7, while official Palestinian cards typically begin in 9 or 8 for those born in Gaza or sometimes in 4 for those who attained residency post-Oslo. The numbers listed on the temporary identity cards cannot be found in Israeli records and are not added to the Palestinian Population Registry.



Identification Card
in the Gaza Strip.

Table 5: Comparison of Official and Temporary Palestinian ID Cards

	Official Palestinian Identity Card	Temporary Identity Card
Recipients	Only West Bank & Gaza Strip residents listed in the Population Registry	Any Palestinian living in the Gaza Strip
Israeli-Issued ID Number	Yes	No
Carrying Case Colour	Green	Blue
Description of Card	Laminated plastic	Paper
Languages Printed	Arabic and Hebrew	Arabic and English
ID Number Sequence	Most begin with 8 or 9	All begin with 7

The temporary cards are intended for internal-use only and would not be recognized outside the Gaza Strip. Any Palestinian in Gaza is eligible for these temporary identity cards, regardless of whether they entered illegally or on a valid visitor permit. These temporary identity cards have primarily been issued to

¹⁵⁴ During interviews in Gaza, this form of identification was typically referred to as a “temporary” identity card, though the term is somewhat of a misnomer. For those who entered Gaza illegally and even for those with pending family unification applications, there is nothing necessarily temporary about these identity cards and this is the only form of Palestinian identification for which they qualify. NRC interview with Riad Al Zaytunyah, General Director, Directorate of Civil Status-Gaza, Ministry of Interior, Gaza, 11 September 2011.

¹⁵⁵ “Palestinian Interior Ministry gives IDs to ‘stateless’ Palestinians”, *Ha’aretz*, *supra* note 153.

¹⁵⁶ *Ibid.*

¹⁵⁷ “Palestinian Interior Ministry gives IDs to ‘stateless’ Palestinians”, *Ha’aretz*, *supra* note 153.

¹⁵⁸ NRC interview with Riad Al Zaytunyah, General Director, Directorate of Civil Status-Gaza, PA Ministry of the Interior, Gaza Strip, 11 September 2011.

those with pending family unification applications and those who entered illegally.¹⁵⁹ According to the UNRWA Emergency Assistance Programme, approximately 3,600 registered UNRWA refugees are receiving emergency assistance and registered for services using a temporary Palestinian identification card.¹⁶⁰

To apply for a temporary ID card, the MoI in Gaza requires two witnesses and some form of reliable travel documentation and proof of identity (including, e.g., Egyptian RTDs, visitor permits or birth certificates). Those without reliable documentation may alternatively produce confirmation from their local *mukhtar*, or a police background check evidencing their identity. An applicant must complete the necessary forms, including details regarding dates of entry to Gaza, and, after this process, the card is officially printed and issued.

Table 6: Number of Temporary ID Card Holders in the Gaza Strip¹⁶¹

Gender	Under 16	Over 16	Total
Male	950	4,993	5,943
Female	930	5,621	6,551
Total	1,880	10,614	12,494

Practically speaking, several Palestinians interviewed in the Gaza Strip felt that even in Gaza these temporary identity cards are essentially “useless” and do not provide access to anything beyond what is already accessible with expired travel documents. One interviewee stated that when she is asked for identification, she presents either her expired visitor permit from 2000 or her expired Jordanian passport and that is sufficient.¹⁶² Another woman stated that she relies on her expired Egyptian RTD and believes this is more reliable when opening a bank account or even voting.¹⁶³ All interviewees who lack inclusion in the Palestinian Population Registry, and thus legal residency in the Gaza Strip, still possessed some form of expired identification or travel documents. It is not currently known how many Palestinians in Gaza absolutely lack any alternative form of identification whatsoever.

External-Use Only Palestinian Passports

The PA government in Ramallah does, at times, issue Palestinian passports without an Israeli-issued identification number, frequently referred to as “external-use only” or “zero number” passports. These passports look identical to the official Palestinian passports but lack an Israeli-issued identification number. Such passports are rarely issued for Palestinians within the oPt and generally are provided to Palestinians living in the diaspora to evidence their Palestinian identity or to facilitate travel of Palestinian refugees from one country to another (e.g., Palestinian refugees in Iraq fleeing after 2003). This passport is most often issued to children born abroad, either those in Arab states where they have no citizenship or those born in Western countries to provide evidence of their Palestinian heritage. Palestinians can apply for this form of passport through Palestinian embassies and consulates abroad. There are relatively few cases in which an external-use only passport would be issued to a Palestinian living in Gaza, namely because a passport without a corresponding Israeli-issued ID number could not be used to travel outside the Gaza Strip or the West Bank; Israeli authorities would not allow the bearer to exit via the northern Erez/Beit Hanoun crossing into Israel; further, Egyptian authorities continue to restrict Palestinians’ access to the southern Rafah crossing to persons with ID numbers. According to Khalil Faraj, Deputy

¹⁵⁹ NRC interview with Khalil Faraj, Deputy Director of PA Civil Affairs Committee, Gaza Strip, 5 September 2011.

¹⁶⁰ NRC interview with a UN emergency worker, Gaza Strip, 14 September 2011.

¹⁶¹ NRC interview with Riad Al Zaytunyah, General Director, Directorate of Civil Status-Gaza, PA Ministry of the Interior, Gaza Strip, 11 September 2011.

¹⁶² NRC interview with R.S., Gaza Strip, 6 September 2011.

¹⁶³ NRC interview with R.H., Gaza Strip, 6 September 2011.

Director of the PA CAC in Gaza, because a passport without a corresponding Israeli-issued ID number could not be used to travel outside the Gaza Strip or the West Bank, the CAC generally will not print an external-use only passport for Palestinians currently living in the oPt.¹⁶⁴

It is highly unlikely that an individual would be permitted to cross into Egypt via the Rafah Crossing with an external-use Palestinian passport. For example, if a Gaza resident attempted to do so, Egyptian authorities could readily identify such an external-use passport as invalid due to its lack of an Israeli-issued ID number.¹⁶⁵ Moreover, Egyptian authorities have recently begun requesting both a Palestinian passport and valid Palestinian identity card to further confirm whether a Palestinian is registered on the Population Registry.¹⁶⁶

Despite these practical reasons for why the PA generally will not issue “external-use only” or “zero number” passports to Palestinians living in the oPt, the result for many Palestinians is the complete lack of any official identity or travel documentation. The PA has the authority to issue passport/travel documents for Palestinians within the oPt and does so for those included in the Population Registry. As the governing authority, the PA also has a responsibility to issue proper identity and travel documents for Palestinians not registered in the Israeli-controlled Population Registry.

4.4 Visitor Permits (Issued 1995–2000)

Beginning in 1995 and until the start of the second Intifada in 2000, the PA issued tens of thousands of visitor permits, subject to Israeli approval, to enable Palestinians to visit the oPt.¹⁶⁷ Permits were mainly issued during the summer months, even referred to by many as “summer permits”, and sometimes required the applicant to deposit “monetary guarantees of large sums to ensure the person left”.¹⁶⁸

The image displays two pages of a Palestinian Authority (PA)-issued visitor permit from 2000. The left page is the front, featuring the PA emblem and title in Arabic and English. It includes fields for the permit holder's name, date of birth, and sponsor information. A table at the bottom lists monetary guarantees in US dollars, with columns for the guarantor's name, amount, and date. The right page is the back, containing a list of conditions for the permit in Arabic and English, followed by another table for monetary guarantees with similar columns.

Front and back of PA-issued visitor permit, issued in 2000. Photo: NRC.

The visitor permits themselves were printed on PA forms in Arabic and English and stamped by the PA MoI. Of several permit forms observed during interviews, most of the personal information entered on the form, such as the place of birth, relation to sponsor, family name, nationality, and address during visit, was actually typed in Hebrew. The visitor permits themselves were actually printed at the Israeli Civil Administration headquarters at Bet El, demonstrating continued involvement of the Israeli authorities in the visitor permit

¹⁶⁴ NRC interview with Khalil Faraj, Deputy Director of PA Civil Affairs Committee, Gaza Strip, 5 September 2011.

¹⁶⁵ NRC interview with a UN development worker, Gaza Strip, 28 August 2011.

¹⁶⁶ NRC interview with Khalil Faraj, Deputy Director of PA Civil Affairs Committee, Gaza Strip, 5 September 2011.

¹⁶⁷ HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 50.

¹⁶⁸ B'Tselem, *Perpetual Limbo*, *supra* note 29, p. 10.

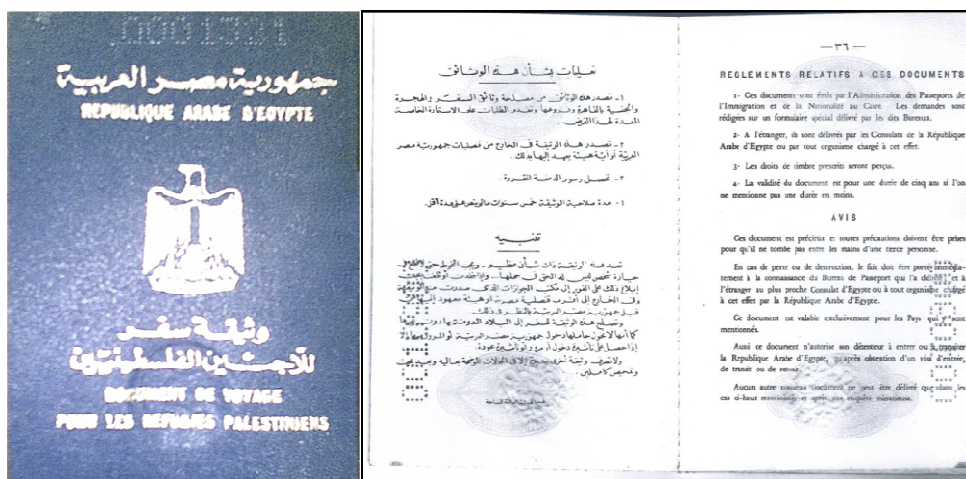
procedures.¹⁶⁹ The Israeli side was not merely approving visitor permits submitted by the PA, but actively completing the information, with the permits then printed on PA letterhead.

With the outbreak of the second Intifada in September 2000, however, Israel placed a freeze on the authorization of any visitor permits to the oPt, and almost no such permits have been issued since then. Even prior to this freeze, the approval policy for visitor permits was restrictive. For example, Israeli restrictions placed on the PA's issuance of permits limited them to issuing "no more than 120 permits per month to each district, no visit permits to persons below the age of 35, no permits – for security reasons – to any person born in Iraq, Libya, and Syria. People who enter the country on a visit permit and overstay the permitted period (maximum 7 months) are fined and not permitted re-entry for three to four years".¹⁷⁰

In 1998, a total of 66,239 visitor permits were issued, with 46,887 Palestinians visiting the West Bank and 19,352 visitors to the Gaza Strip. For the first 11 months of 1999, the PA issued an additional 64,000 visitor permits for the oPt. By sharp contrast, between November 2000 and September 2001, only 192 visitor permits were approved. Likewise, from October 2001 to October 2002, 255 visitors were allowed to enter the oPt.¹⁷¹ Nearly all visitor permits expired in 2000, though they continue to be used as the primary form of identification for many Palestinians in Gaza with no alternative identity documents.

4.5 Refugee Travel Documents (RTDs)

Refugee Travel Documents (RTDs) are issued in line with obligations under the 1951 Refugee Convention for eligible Palestinian refugees. These travel documents are issued not by UNHCR itself, but by the host governments, including Egypt, Syria, Lebanon, Iraq, Yemen, and other Arab countries.¹⁷² For



Palestinians. Photo:

Palestinians from the Gaza Strip, most RTDs were issued by the Egyptian government.

Between 1948 and 1967, all Palestinians in the Gaza Strip were eligible for RTDs issued by the Egyptian administration, valid for five year periods and renewable. In 1995, Egypt stopped issuing new RTDs for Palestinians on the grounds that residency and identity documents would subsequently be handled by the PA. Many older Egyptian-issued RTDs may still be renewed. Because Egyptian RTDs were so prevalent

¹⁶⁹ NRC interview with Ido Blum, Adv., HaMoked – Center for the Defence of the Individual, Jerusalem, 31 August 2011; NRC interview with R.S., Gaza Strip, 6 September 2011.

¹⁷⁰ BADIL, *Palestinian Residency in the PA Areas in the Seventh Years of Partial Self-Rule*, published in *Al Majdal Quarterly Magazine*, "Palestinian Refugees and the Final Status Negotiations," Autumn 1999, available at <http://www.badil.org/en/al-majdal/item/510-palestinian-residency-in-the-pa-areas-in-the-seventh-year-of-partial-self-rule> [last accessed 9 January 2012].

¹⁷¹ HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 76.

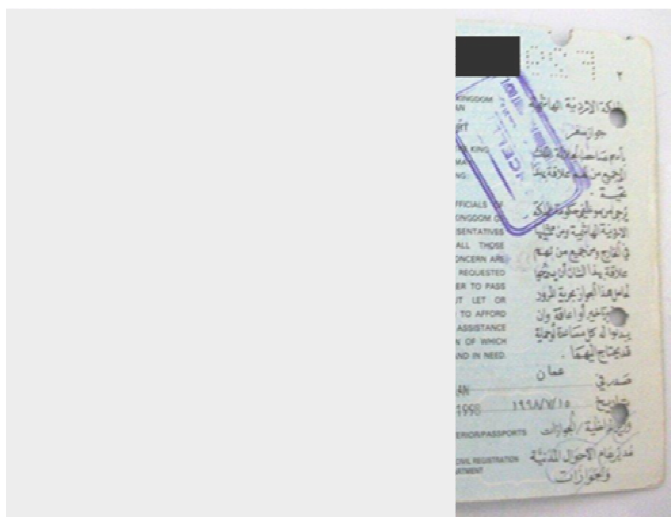
¹⁷² Even countries which are not signatories to the 1951 Refugee Convention, such as Lebanon, Syria, and Iraq, have issued Refugee Travel Documents to Palestinians in their territories to enable movement and residency.

in the past, they are a widely-accepted and familiar form of identification within Gaza, despite the fact that the majority of RTDs held by Gaza residents have now expired.¹⁷³

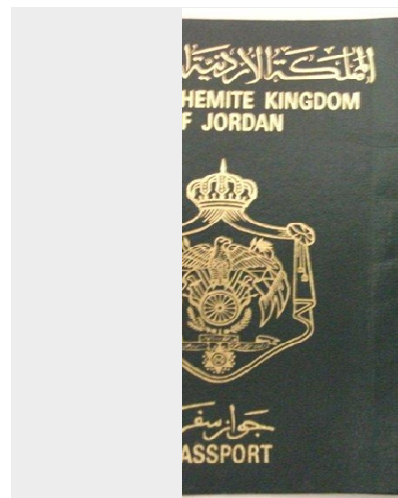
4.6 Temporary Jordanian Passports

From 1948 until 1988, when Jordan formally relinquished its territorial claims to the West Bank, Palestinians in the West Bank, including East Jerusalem, were eligible for Jordanian passports which conferred rights and citizenship identical to those of Jordanian nationals. These passports were “colour-coded: yellow passports were issued to Palestinians living in the West Bank and East Jerusalem and green to those residing in Jordan”.¹⁷⁴ Palestinians living in the Gaza Strip who arrived in the West Bank or Jordan after 1967 received only two-year blue cards which functioned largely as a travel document and temporary residency document and did not confer Jordanian citizenship.¹⁷⁵ These Palestinians from Gaza were also required to obtain “no-objection certificates” from Jordanian authorities in order to be allowed to exit the West Bank via Allenby Bridge.¹⁷⁶

Today, all Jordanian passports are green, though after 1988, Jordan withdrew citizenship from Palestinians living in the West Bank and has increasingly been cancelling the Jordanian citizenship for Palestinians living inside Jordan.¹⁷⁷ Starting in 1988, “the passports of Palestinian residents of the West Bank were made ‘temporary’ and were henceforth considered by the Jordanian authorities to be travel documents rather than proof of citizenship. The new ‘temporary’ passports were valid for two years (changed recently to five years), and visas became required to remain in Jordan”.¹⁷⁸ These temporary Jordanian passports do not guarantee freedom of movement nor do they guarantee access to education, health, social security, or property.¹⁷⁹ The creation of the PA additionally complicated the process for obtaining a Jordanian passport and Jordan will not issue a Jordanian passport if an individual already possesses a Palestinian identity number and PA-issued identity card.¹⁸⁰



Biographical pages and front cover of a Jordanian passport. Photo: NRC.



¹⁷³ NRC interview with a UN humanitarian worker, Gaza Strip, 18 August 2011.

¹⁷⁴ Tawil-Souri, “Colored Identity: The Politics and Materiality of ID Cards in Palestine/Israel”, *supra* note 11, p. 92, n. 12.

¹⁷⁵ Immigration and Refugee Board of Canada, *Jordan, Palestine and Israel: Passports issued to stateless Palestinians*, *supra* note 129.

¹⁷⁶ See, e.g., Al-Haq, *Affidavit 5159/2009*, available at <http://www.alhaq.org/documentation/fieldworkers-affidavits/item/454-affidavit-no-5159/2009> [last accessed 9 January 2012].

¹⁷⁷ Human Rights Watch, *Stateless Again: Palestinian-Origin Jordanians Deprived of their Nationality*, February 2010, pp. 2-3.

¹⁷⁸ Shiblak, “Residency Status and Civil Rights of Palestinian Refugees in Arab Countries”, *supra* note 125, p. 41.

¹⁷⁹ Human Rights Watch, *Stateless Again*, *supra* note 177, pp. 47-54.

¹⁸⁰ *Ibid.*, p. 2: “[Jordanian] Officials base withdrawal of nationality on the 1988 severance of ties with the West Bank. They also claim that League of Arab States decisions prohibit dual Arab nationality and that Palestinians may thus not hold Jordanian nationality too. In 1988 the Arab League adopted a decision prohibiting dual Arab nationality, but Palestine has not been recognized as a state under international law, and the Arab League decision is not binding law in Jordan.”

Today, large numbers of Palestinians in Gaza continue to carry Jordanian passports or travel documents. This includes a significant number of Palestinian women from Jordan who live with their husbands from Gaza.¹⁸¹ In many cases, Jordanian passports must be renewed in person. One Palestinian woman interviewed by NRC was born in Jordan and moved to Gaza in July 2000. She travelled to Gaza on a temporary Jordanian passport and successfully renewed the passport for two years in 2002. Upon that passport's expiration, she mailed it to Jordan for further renewal, but never received it back. Today, she remains with her husband and children in Gaza, but is unable to leave Gaza and has not seen her family in Jordan in nearly 12 years. To date, her application with the Jordanian Ministry of the Interior remains pending. Because the Jordanian government has not returned her passport, for identification she must primarily rely on her PA visitor permit, which expired on 13 August 2000.¹⁸²

For many Palestinians who rely on expired travel documents as their primary form of identification, there is a constant fear of losing these documents and having these documents confiscated since it would not be possible to replace them.

4.7 UNRWA Refugee Registration Cards and Ration Cards

Three-quarters of Palestinians resident in Gaza are UNRWA-registered refugees. For purposes of UNRWA assistance, it is irrelevant whether a refugee entered the Gaza Strip on a valid visitor permit or whether they entered illegally; if an UNRWA-registered refugee is within the Gaza Strip, they can receive full benefits.¹⁸³

UNRWA services are restricted to eligible “Palestine refugees”, defined under UNRWA’s mandate as “people whose normal place of residence was Palestine between June 1946 and May 1948, who lost both their homes and means of livelihood as a result of the 1948 Arab-Israeli conflict”.¹⁸⁴ This definition excludes Palestinians who fled prior to 1946 or who suffered displacement as a result of the 1967 War.

om) UNRWA

For eligible Palestine refugees, UNRWA issues registration and ration cards. The UNRWA registration cards are “issued based on family units and indicate that the persons listed are considered Palestinian refugees under the UNRWA definition” whereas the rations cards are “only issued to persons enrolled in the UNRWA Special Hardship Programme for food rations and other goods”.¹⁸⁵

¹⁸¹ B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 3.

¹⁸² NRC interview with R.S., Gaza Strip, 6 September 2011.

¹⁸³ NRC interview with a UN emergency worker, Gaza Strip, 14 September 2011.

¹⁸⁴ UNRWA, *Background on Palestine Refugees*, available at <http://www.unrwa.org/etemplate.php?id=86> [last accessed 7 December 2011].

¹⁸⁵ Immigration and Refugee Board of Canada, *Lebanon/Jordan: Cards issued by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA); movement allowed between camps and countries with a card issued by the UNRWA; whether a UNRWA card is used only for food rations; whether this card is valid in all camps (2002-December 2004)*, 6

These UNRWA documents are intended solely for the receipt of services and cannot be used for any travel or other identification purposes.

5. Categories of Undocumented Palestinians in the Gaza Strip

At present, there are no comprehensive statistics as to the total population of Palestinians in Gaza who lack identity documents, though it has been estimated in the range of 30,000 to 50,000.¹⁸⁶ The primary categories of individuals in Gaza most impacted by the Israeli freeze on the Palestinian Population Registry and related family unification and residency matters include, but are not limited to, the following:

- Palestinians absent during the 1967 Census conducted by Israel
- Revocations of residency for extended periods abroad
- Post-Oslo returnees and foreign spouses seeking family unification
- 5,000 pending family unifications included in 2007 “political gesture”
- Refugees and those fleeing conflict or persecution
- Unregistered Palestinians who entered Gaza without Israeli-approved visitor permits
- Unreported children or mistakes on the Population Registry
- Palestinians Living in the West Bank with identity cards registered in Gaza

5.1 Palestinians Absent During the 1967 Census Conducted by Israel

Shortly after the 1967 War, the Israeli Central Bureau of Statistics (ICBS) conducted a census of all newly-occupied territories, which ultimately became the basis for the Palestinian Population Registry and continues to determine residency and legal status for all Palestinians living in the oPt. Any Palestinian not present for any reason during this census was systematically excluded from the Population Registry and deprived of legal status in the oPt. UNRWA estimated that more than 250,000 Palestinians were abroad during the 1967 census and lost their access to inclusion in the Population Registry, and legal residency in the oPt, as a direct result.¹⁸⁷

For example, NRC interviewed S.B., a 70 year old Palestinian man born in the Gaza Strip, who was completing his third year of university in Egypt at the time war broke out in 1967. For the next 27 years, he was only able to visit twice and each time it was following multiple applications submitted by family members and long waiting periods. He is the only member of his family who was excluded from the Population Registry and therefore lacks Palestinian residency. He was unable to return to visit either of his parents in Gaza before their deaths and could not attend either of their funerals. In 1999, he received a PA-issued visitor permit and stayed in the Gaza Strip after the permit expired. He has since not been able to leave Gaza nor has he seen his three children in Egypt for the past 12 years.

¹⁸⁶ “Palestinian Interior Ministry gives IDs to ‘stateless’ Palestinians”, *supra* note 153.

¹⁸⁷ See, *Guide to UNRWA*, Vienna, April 1992, p. 6. Figures vary significantly, even within UNRWA sources, as to the precise number of Palestinians displaced in 1967 and 250,000 represents a conservative estimate of those affected. See, e.g., UNRWA, *Guide to UNRWA*, June 1995, p. 9, available at http://repository.forcedmigration.org/show_metadata.jsp?pid=fmo:3193 [last accessed 10 January 2012] (estimating that 390,000 Palestinians from the oPt fled to Jordan following the 1967 War, including 140,000 registered refugees who had been displaced for a second time and 240,000 Palestinians from the West Bank and Gaza displaced for the first time); Yehuda Lukacs, *Israel, Jordan and the Peace Process*, Syracuse, 1997, p. 218 (stating that at least 270,000 Palestinians were displaced from the West Bank and Gaza following the 1967 War).

Recent research conducted by the Levy Economics Institute of Bard College has analysed the seven volumes of reports produced by the ICBS based on the 1967 Israeli census.¹⁸⁸ It suggests that the 1967 Israeli census not only failed to count all Palestinians who fled the violence and sought safety during the war, but may have additionally underestimated the number of Palestinians actually present at the time. Thus, the 1967 census results that continue to impact matters of Palestinian residency and citizenship nearly 45 years later may have been inaccurate from the start.

The 1967 census, directed by the ICBS and carried out by the Israeli military, found the total population of the Gaza Strip to be 356,261.¹⁸⁹ This figure represents a more than 20 percent decrease from the Egyptian population estimate for Gaza done in 1966 of 454,960. A partial explanation for the disparity between the 1966 Egyptian estimates and the 1967 Israeli census results is the sizable number of Palestinians who fled the Gaza Strip in the course and aftermath of the war.

Table 7: Population of the Gaza Strip According to the 1967 Israeli Census And the 1966 Egyptian Estimate¹⁹⁰

Locality	1967 Israeli Census	1966 Egyptian Estimate
Rafah	49,812	66,181
Deir el Balah	18,118	15,002
Khan Younis	52,997	75,100
Gaza City	118,272	152,776
Jabaliya	43,604	49,009
Nuseirat Camp	17,638	20,416
Bureig Camp	12,786	14,204
TOTAL	356,261	454,960

There is also a discrepancy between the 1967 Israeli figures, which seem to underrepresent the total refugee population of the Gaza Strip when compared to the UNRWA refugee statistics from 31 July 1967, though a direct comparison between the two studies is difficult given the difference in data collected. The UNRWA statistics focused exclusively on the population of Palestine refugees, which was not included in the Israeli census questionnaire. The Israeli census did crucially ask whether the individual had lived prior to 1948 in the area that became the State of Israel, of which it found 207,250 such persons in the Gaza Strip. This figure is 35 percent less than the total refugee population according to the UNRWA report. Likewise, the UNRWA figures determined the population of Palestine refugees living in refugee camps in the Gaza Strip to be 201,416, while the Israeli census found a total refugee camp population of 172,521.

Table 8: Refugee Population of the Gaza Strip According to the 1967 Israeli Census Data and UNRWA 1967 Report¹⁹¹

	1967 Israeli Census	UNRWA Report from 31 July 67
Gaza Total		
Persons in households whose heads were born in Israel	207,250	
Refugee population		316,776

¹⁸⁸ Joel Perlmann, *The 1967 Census of the West Bank and Gaza Strip: A Digitized Version*, Annandale-on-Hudson, NY: Levy Economics Institute of Bard College, November 2011, available at http://www.levyinstitute.org/palestinian_census/ [last accessed 14 December 2011].

¹⁸⁹ *Ibid* at Volume 1, Table J.

¹⁹⁰ *Ibid*. Note that the excess in the Israeli census figures for the Deir Al-Balah area are likely due to differences in the area attributed to that locality.

¹⁹¹ *Ibid*. at Volume 1, Table H.

Gaza Refugee Camps		
All persons	172,521	
Persons in households whose heads were born in Israel	149,396	
Refugee population		201,416

Additionally, during the early years of the Israeli occupation over Palestinian territory, recorded testimonials of Palestinians physically deported by Israel from the West Bank to the Jordanian border suggest that there was an Israeli policy in place to actively encourage Palestinians to leave the oPt. While it is unclear how many people were affected by this policy, HaMoked confirmed that there are enough consistent stories from the late 1960s and early 1970s to suggest an established practice in which Palestinian detainees who were members of the PLO were taken out of prison, given a small amount of money and vegetables and instructed to walk towards the Jordanian border while soldiers pointed guns in their direction.¹⁹²

5.2 Revocations of Residency for Extended Periods Abroad

Prior to 1994, any Palestinian resident who left the oPt and remained abroad for more than three years risked revocation of residency and status. In March 2011, the Office of the Legal Advisor for the Civil Administration in the West Bank confirmed this practice, which it termed “ceased residency”. Any Palestinian leaving the oPt between 1967 and 1994 was first required to leave his identity card at the crossing and was provided with an “exit card”.

Upon his return to the Area he was given back his identity card. The “exit card” was valid for three years and could be extended three times for a period of one year each time. Six months after the expiry of the “exit card”, a border crossing controller would send the documents of a resident who was late to return to the interior division officer (the title of the person in charge of the population registry at the time) or the director of the local registry office. A resident who did not return was registered as having “ceased residency” status since he was viewed as a person who had transferred his center of life abroad.¹⁹³

This entire process was regulated by a military order laying out the procedures for “exit cards”. The Civil Administration has recently stated that “[a]t the present time, there is no procedure relating to registration of Palestinian residents as having ‘ceased residency’ status and that the only process by which an individual could switch to active status would be through family unification or as part of the “political gesture” granted in 2007”.¹⁹⁴ Since the Oslo Accords, these “ceased residency” procedures have stopped and “[t]he only two measures taken by the military commander over these years has been the cancellation of the orders on this issue and the establishment of the joint committee in 2000”.¹⁹⁵

Between 1967 and 1994, approximately 140,000 Palestinian residents of the West Bank lost their residency due to these procedures, 10,000 of whom were able to subsequently recover active residency. According to the Israeli Population Registry Department, for the 130,000 individuals who never regained residency, “it would seem that many of them are no longer alive as deaths are not recorded with respect to individuals who ceased their residency (so, for example, some 30,000 of the individuals recorded as having ceased residency are over 100 years old)”.¹⁹⁶ However, even for those individuals with “ceased residency” status who may have since died, there are likely living family members still affected and who may have been denied residency during the nearly thirty years in which this policy was in place.

¹⁹² NRC interview with Ido Blum, Adv., HaMoked – Center for the Defence of the Individual, Jerusalem, 31 August 2011.

¹⁹³ Letter from Lt. Omer Knobler, Population Registry Department, Office of the Legal Advisor, Civil Administration, Judea and Samaria Area, to Adv. Ido Blum, 30 March 2011, para. 4.

¹⁹⁴ *Ibid.*, para. 5-6.

¹⁹⁵ *Ibid.*, para. 7.

¹⁹⁶ *Ibid.*, para. 13.

These 140,000 revocations of residency apply only to the West Bank; the numbers of Palestinians from the Gaza Strip who may have lost residency under similar procedures has not been released. Following the reply from the Legal Advisor for the Civil Administration for the West Bank, HaMoked submitted a follow-up request pursuant to the Freedom of Information Law to attain the statistics on Palestinian residents of the Gaza Strip who may have been affected or assigned “ceased residency” status between 1967 and 1994.¹⁹⁷ As of the date of this writing, HaMoked has received no response to its request.

5.3 Post-Oslo Returnees and Foreign Spouses Seeking Family Unification

Between 1995 and 2000, Israel readily granted visitor permits for the oPt and thousands of Palestinians returned to the Gaza Strip with the intention of applying for family unification and attaining Palestinian citizenship and residency. Family unification, a process expressly recognised under the Oslo Accords, provides that “a first-degree relative who is a resident of the area may submit the request” and the largest number of applications are on behalf of spouses.¹⁹⁸ The Israeli-imposed “freeze” on the Population Registry imposed in 2000 created a considerable backlog of pending family unification applications and, according to an estimate provided by the PA Ministry for Civil Affairs, “the Palestinian Authority had received more than 120,000 requests for family unification submitted by West Bank and Gaza residents that Israel has refused to process. If Israel would begin again to handle family unification requests and apply the quota set in 2000 (4,000 a year), it would take at least thirty years to process all the requests that have accumulated”.¹⁹⁹

A survey conducted by B’Tselem and the Palestinian Center for Policy and Survey Research (PCPSR) in October 2005 of 1,300 persons Palestinians in the oPt over the age of 18 found that 16.4 percent of Palestinians in the Gaza Strip had at least one immediate family member who was excluded from the Population Registry and who lack an identity card. Of these, 76 percent of the families had submitted a family unification request.²⁰⁰

Table 9: Palestinian Families with at Least One Immediate Family Member Not Included in the Population Registry and Lacking an ID Card²⁰¹

Region	Percentage
West Bank	17.6 %
Gaza Strip	16.4 %
Total	17.2 %

Table 10: Of the Above Palestinian Families, the Percentage Who Have Submitted a Family Unification Request

Region	Percentage
West Bank	79.6 %
Gaza Strip	76.0 %
Total	78.4 %

¹⁹⁷ NRC interview with Ido Blum, Adv., HaMoked – Center for the Defence of the Individual, Jerusalem, 31 August 2011. While the Israeli Freedom of Information Law stipulates that an authority must provide a response within 30 days with possible extension to 60 days, the request for information filed with regard to West Bank “ceased residency” cases was answered after more than seven months and only after HaMoked submitted an administrative petition to the court to compel the military to comply.

¹⁹⁸ B’Tselem, *Perpetual Limbo*, supra note 29, p. 3.

¹⁹⁹ B’Tselem, *Residency & Family Separation: The Prohibition on Family Unification in the Occupied Territories*; see also B’Tselem, *Perpetual Limbo*, supra note 29, p. 20 (citing information provided to B’Tselem by M’aruf Zahran, director-general, and Ayman Qandil, head of the statistics department in the PA’s Civil Affairs Ministry of 14 August 2005).

²⁰⁰ B’Tselem, *Perpetual Limbo*, supra note 29, p. 20.

²⁰¹ *Ibid.*, p. 21.

According to these figures and based on the 2005 Palestinian population statistics, there were “more than 72,000 nuclear families [in the oPt] in which at least one family member had a family unification request filed on his or her behalf”.²⁰² Moreover, the actual number affected is likely higher since many Palestinians, well aware of the entrenched “freeze”, have simply abandoned the family unification process as fruitless and decided to forego the application and avoid paying the fees.

For family unifications submitted on behalf of foreign spouses, there may be a heightened gender element and it is far more common for the wife to lack status and identity documents since “[i]n the Arab culture, the woman traditionally moves to her spouse’s country”.²⁰³ For example, NRC interviewed A.S., a Polish national, met her husband while he was studying in Poland. They married in 1987, and travelled to Gaza and she applied for family unification in 1996. At that time, she entered on a visitor permit that was initially valid for four months and was renewed for an additional three months. When she was unable to renew the permit again, she chose to overstay her permit rather than return to Poland without her husband and children. Her family unification application remained pending until 2008, when she was finally granted residency and an identity card under the Israeli “political gesture”.²⁰⁴

5.4 Five Thousand Pending Family Unifications Included in 2007 Israeli “Political Gesture”

Approximately 5,000 family unification applications from the Gaza Strip that were to be approved pursuant to the Israeli “political gesture” in 2007 remain pending at present. According to Khalil Faraj, Deputy Director of the PA CAC in Gaza, these applications were completed and submitted by the PA to the Israeli authorities for final approval. However, when a Palestinian member of the Israeli Knesset recently called on the Israeli government “to remove all obstacles in the issuance” of these Palestinian identity cards and residency rights, the Israeli Deputy Defense Minister responded that “the Palestinian Authority was ultimately responsible for deciding which applicants would go through to the final stages of the process” and urged the PA to finalise any incomplete or un-submitted applications.²⁰⁵

Riad Al Zaytunyah, the General Director for Civil Status with the MoI in the Gaza Strip, rejected the Israeli contention that the PA had not submitted full applications. As evidence, Mr. Zaytunyah provided NRC with a complete database of the family unification applications submitted to the Israeli authorities for approval.

Table 11: Pending Family Unification Applications in the Gaza Strip by Gender²⁰⁶

	Number of Applications	Percentage
<i>Female</i>	2,933	58%
<i>Male</i>	2,141	42%
Total	5,079	100%

²⁰² B’Tselem, *Perpetual Limbo*, *supra* note 29, pp. 20-21. This calculation is based on figures from the Palestinian Bureau of Statistics, which estimates the Palestinian population for the oPt at 3,762,500 and average family size of seven.

²⁰³ *Ibid.*, p. 9. For example, in an oPt field study conducted by Al-Haq, “over 74% (907 out of 1215) of the cases where a husband and wife are separated, unable to obtain family unification, are cases where husbands are applying for the entry of their wives, rather than the other way around.” Shaw, “The Right to Unite: The Family Unification Question in the Occupied Territories: Law and Practice,” *supra* note 10, p. 250.

²⁰⁴ NRC interview with A.S., Gaza Strip, 6 September 2011.

²⁰⁵ “Palestinian MK: 6,000 in Gaza without ID cards”, *Ma’an News Agency*, 8 July 2010.

²⁰⁶ NRC interview with Riad Al Zaytunyah, General Director, Directorate of Civil Status-Gaza, PA Ministry of the Interior, Gaza Strip, 11 September 2011.

Table 12: Pending Family Unification Applications in the Gaza Strip by Date of Birth

Year of Birth	Number of Applications	Percentage
– 1929	27	0.5 %
1930 – 1939	167	3.3 %
1940 – 1949	524	10.3 %
1950 – 1959	304	6.0 %
1960 – 1969	514	10.1 %
1970 – 1979	1859	36.6 %
1980 – 1989	1269	25.0 %
1990 –	415	8.2 %
Total	5,079	100.0 %

Table 13: Pending Family Unification Applications in the Gaza Strip by Date of Entry into Gaza

Year of Entry to Gaza	Number of Applications	Percentage
1993 or earlier	26	0.5 %
1994	96	1.9 %
1995	285	5.6 %
1996	438	8.6 %
1997	306	6.0 %
1998	329	6.5 %
1999	1541	30.4 %
2000	1331	26.2 %
2001	30	0.6 %
2002	11	0.2 %
2003	10	0.2 %
2004	7	0.1 %
2005	382	7.5 %
2006	236	4.7 %
2007 or later	46	1.0 %
Total	5,079	100.0 %

This MoI database consisted of an initial 4,941 applications with an annex of an additional 133 names. Of these 5,079 applicants, nearly 58 percent were women and the vast majority were between the ages of 20 and 40. The overwhelming majority had entered the Gaza Strip in 1999 and 2000. The primary travel documents utilized to enter Gaza at this time were Jordanian temporary passports and Egyptian RTDs, though a minority also entered on foreign passports, the most common of which were Ukrainian and Russian.

In preparing this research report, NRC conducted a focus group discussion in Gaza City on 7 September 2011 with 12 Palestinians, including seven men and five women, all of whom were initially slated to receive residency and identity cards under the Israeli “political gesture” and who have, to date, not received any response.

Among the participants, six were more than 60 years of age and all but one had arrived in Gaza between January 1994 and October 2000. Give of the focus group participants were born in the Gaza Strip, two had been born in Ashkelon in what is now Israel, three in Kuwait, one in Jordan, and one in Egypt. All had entered the Gaza Strip through the Rafah Crossing on either Egyptians RTDs or Jordanian temporary passports.

Four of the participants, all aged 60 or over, spoke of their need for medical treatments that are unavailable in the Gaza Strip as well as their desires to perform the *Hajj* and *Umrah* religious pilgrimages

to Mecca before they die. One elderly participant who suffers serious and chronic medical problems and, even though he has a son who works as an engineer in Jordan and would be able to care for him there, he is unable to leave Gaza.

5.5 Refugees and Those Fleeing Conflict or Persecution

Thousands of Palestinian refugees and persons fleeing armed conflict or persecution in third countries have returned to the Gaza Strip, many of whom lack residency or identity documents. For Palestinian refugees, this has produced a physical and legal limbo in which they cannot return to their country of habitual residence nor is any country willing to accept them.

In addition, many Palestinians resident abroad who are forced by armed conflict or persecution to return to the Gaza Strip have by then faced repeated displacements. For example, NRC interviewed R.M., a 70-year-old Palestinian man who was born in Ashkelon in what is now Israel. He fled to the Gaza Strip during the war in 1948 and was forcibly displaced again during the war in 1967, at which time he fled first to the Sinai Peninsula in Egypt and then to Kuwait. He worked and raised his family in Kuwait until they were expelled during the first Gulf War in 1990 and relocated to Iraq. After receiving visitor permits in October 2000, he returned to the Gaza Strip with his wife and one son. They have three other children, two of whom live in Saudi Arabia and one in the UAE, whom they have not seen since 2000. Their son in Saudi Arabia has since married and had children whom R.M. and his wife and son have never met. Their son-in-law in the UAE recently passed away and they were unable to travel there to support their daughter.

The persecution of Palestinian refugees in their countries of refuge began as early as the mid-1950s, when Palestinians working in the oil industry in the Gulf States faced systematic expulsion.²⁰⁷ Other examples of Palestinian third-country displacement, though by no means an exhaustive list, include;

- **Jordan, September 1970** – In September 1970, after several failed assassination attempts and hijackings, King Hussein of Jordan declared martial law and ordered a ruthless three-week war against the violent breakaway PLO faction colloquially known as “Black September”. A ceasefire was signed in late-September 1970 and the PLO and Yasser Arafat were expelled to Lebanon in 1971, but only after an estimated 15,000 Palestinians had been killed and thousands more families affiliated with the PLO were expelled from or fled Jordan.²⁰⁸ The Black September movement later assassinated the Jordanian Prime Minister Wasfi al-Tel in Cairo on 28 November 1971, but is perhaps most notoriously known for the murder of 11 Israeli athletes during the 1972 Munich Olympics.
- **Lebanon, 1976–1991** – An estimated 100,000 Palestinians fled Lebanon during the 15 year civil war between 1976 and 1991 and particularly in the aftermath of the massacres in the Sabra and Shatila refugee camps from 16 – 18 September 1982.
- **Kuwait, 1991** – Roughly 40,000 Palestinians were expelled from Kuwait in response to the PLO’s support for Saddam Hussein during the Gulf War, most of whom had come from the Gaza Strip and carried Egyptian RTDs. The Egyptian government made it clear that they would not accept these returnees into Egypt. According to one account, “[i]n September 1991, Gaza Strip Palestinians carrying Egyptian travel papers who were expelled from Kuwait spent twelve days sleeping in Cairo Airport because they did not have the proper documents to enter Egypt or the

²⁰⁷ BADIL, *Closing Protection Gaps: Handbook on Protection of Palestinian Refugees in States Signatories to the 1951 Refugee Convention*, *supra* note 9, p. 4.

²⁰⁸ *Ibid.*

Israeli-occupied Gaza Strip, to go back to Kuwait, or to go anywhere else”.²⁰⁹

- **Libya, 1995** – In September 1995, Libyan leader Muammar Gaddafi ordered the deportation of all Palestinians living in Libya, a population estimated at 30,000, “reportedly in retaliation for the Palestinian Liberation Organization making peace with Israel”.²¹⁰ Many “Palestinians were put on ships without a destination. Lebanon and Syria accepted a fraction that had lived there previously. Egypt allowed Palestinian expellees with valid travel documents to pass through its land, but none were allowed to stay for more than 24 hours”.²¹¹ Dozens of Palestinians were left stranded at the Rafah crossing into the Gaza Strip, waiting for Israeli permission to enter and most had nowhere else to go. Eventually, Gaddafi allowed most of the expelled Palestinians to return.²¹²
- **Iraq, 2003** – Many Palestinians who fled from Kuwait and the Gulf War in 1991 relocated to Iraq. Following the U.S.-led invasion of Iraq in 2003, many of these Palestinians were forced to flee again and some returned to the Gaza Strip.²¹³ For example, NRC interviewed N.G. who was born in Kuwait in 1974 and was forced to flee to Iraq in 1992 after the first Gulf War. After the war began in Iraq in 2003, it became difficult for Palestinians to find work and the divisions between *Sunni* and *Shia* Muslim communities worsened. According to N.G., it was like a “bad dream” and he ultimately moved to the UAE in 2004, after his sister was able to get him a visa. The high cost of living and the difficulty finding work in the UAE ultimately led him to relocate to Gaza in 2005 to try to build a new life.²¹⁴
- **Libya, 2011** – Many of the same Palestinians who had been expelled from Libya in 1995 were again forced to flee earlier this year with the outbreak of civil war in Libya. Many fled with no country willing to accept them and were stranded at the Libyan-Egyptian border. Israel refused “to allow many to enter [Gaza] because they cannot prove they are permanent residents of the Gaza Strip”.²¹⁵ The Palestinian consulate in Alexandria estimates that approximately 2,000 Palestinian were eventually able to return to the Gaza Strip from Libya.²¹⁶ Transport for those trapped at the Libyan border was ultimately arranged through the Palestinian consulate in Alexandria, the Palestinian embassy in Cairo, and UNHCR. Most of those who have returned from Libya have been able to attain temporary Palestinian identity cards from the Ministry of the Interior in Gaza and while there was also an initial offer of \$5,000 in assistance that would be provided by the local authorities in Gaza, it appears this never fully materialised.²¹⁷

In addition to the large-scale displacement outlined above, there have been innumerable situations where individuals or small populations of Palestinians have been targeted and forced to flee. Moreover, the current civil unrest in several Arab countries again places Palestinian refugees at risk for persecution and scapegoating, as demonstrated by the recent Syrian bombing of the Palestinian refugee camp in Latakia in August 2011.

5.6 Unregistered Palestinians who Entered Gaza without Israeli-Approved Visitor Permits

Because Israel stopped authorising visitor permits for the oPt in 2000, any returnees to the Gaza Strip in the past decade have done so without Israeli permission and, as such, are not recognised by Israel as actually being present or having any official status in Gaza. Most undocumented returnees have been able

²⁰⁹ Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness*, supra note 24.

²¹⁰ “Libya Expels Guest Workers”, *Migration News*, October 1995, Volume 2, Number 10.

²¹¹ Franklin Lamb, “Libya’s Palestinian Refugees and the Current Crisis (Part I of II)”, *The Intel Hub*, 18 July 2011.

²¹² *Ibid.*

²¹³ NRC interview with R.H., Gaza Strip, 6 September 2011.

²¹⁴ NRC interview with N.G., Gaza Strip, 12 September 2011.

²¹⁵ “Libya Expels Guest Workers”, supra note 210.

²¹⁶ NRC interview with a UN humanitarian worker, Gaza Strip, 18 August 2011.

²¹⁷ NRC interview with Khalil Faraj, Deputy Director of PA Civil Affairs Committee, Gaza Strip, 5 September 2011.

to enter the Gaza Strip via Rafah, either through the official crossing, which at various times has been unmonitored or poorly regulated, or through the tunnels at the Egyptian border.

There are no available estimates as to how many unregistered Palestinians may have entered the Gaza Strip without valid visitor permits nor are there statistics regarding how many currently remain.

Case Study: Return to the Gaza Strip

N.G. decided to come to Gaza from the United Arab Emirates with his father in 2005 at the time of the partial Israeli disengagement from the Gaza Strip. Friends of his in Gaza had told him to come because the Israelis were leaving and the Rafah crossing between Gaza and Egypt was chaotic and unorganised. Upon their arrival at the airport in Cairo, N.G. estimated there were as many as 1,000 to 2,000 Palestinians who were attempting to enter Gaza. Many of these Palestinians were detained at the airport and refused entry, but he possessed a valid Egyptian visa and was allowed through. N.G. and his father stayed for approximately one week in a mosque in Egypt near Rafah while they waited for the appropriate moment to cross; in this time, N.G. counted about 500 people crossing or attempting to cross into Gaza, though he is unsure how many ultimately entered Gaza during this period.

N.G. and his father eventually decided to approach the Rafah crossing with two identity documents – an Egyptian RTD and a Palestinian “external-use only” passport that lacks an Israeli-issued identification number. At the Egyptian side of the crossing, N. provided only his Palestinian passport to the border guards, who did not recognise that it lacked a valid identification number. He did not show the guards his Egyptian RTD as he feared it might be confiscated. His sense was that the Egyptian officials were unprepared for the large number of Palestinians seeking entry to Gaza in the aftermath of the limited disengagement and were therefore unaware of the problems with his passport.

While he was collecting their baggage, an Egyptian police officer approached N.G. and asked for his Palestinian identity card. He stated that his elderly father was still waiting in the queue and held both of their identity cards. When a different police officer later asked his father the same question, his response was that his son was collecting their suitcases and had both their identity cards. Amidst this confusion, he and his father were allowed to pass by the Egyptian authorities.

At the Palestinian side of the Rafah crossing, the officials there asked if N.G. was planning on visiting Gaza or if he wished to stay permanently. When he told them that he wished to stay and live in Gaza, the Palestinian officials warned him that his UAE visa would expire and that he might not be able to leave. He acknowledged this was a risk he was willing to take and he was allowed to enter Gaza.

N.G. has not been able to leave Gaza since the day he entered in 2005. His father died in Gaza in 2009 without residency or an identity card.

5.7 Unreported Children or Mistakes on the Population Registry

Details and personal information that have been entered incorrectly into the Population Registry have resulted in the exclusion of names and prevention of residency for Palestinians in the oPt, particularly in the days before the Population Registry was formally computerised and the system was still based on handwritten forms. However, even with the computerised system, there remain at present additional problems with the transliteration and translation of names from Arabic to Hebrew, which have caused omissions and errors in the Population Registry. In a written response to HaMoked, the legal advisor for the Civil Administration in the West Bank even admitted that “technical errors” had resulted in mistakenly “caus[ing] an active resident to be registered as having ceased residency status”, though they claimed that such cases had all been rectified.²¹⁸

²¹⁸ Letter from Lt. Omer Knobler, Population Registry Department, Office of the Legal Advisor, Civil Administration, Judea and Samaria Area, to HaMoked Adv. Ido Blum, 30 March 2011, para. 6.

Based on an interview conducted with Ghazi Gheith, a legal advisor to the PA Interior Ministry in Bethlehem, Badil Resource Center for Palestinian Residency and Research Rights noted:

Thousands of Palestinian inhabitants in the PA areas hold personal documents with misspelled or completely wrong names and false birth dates. Mistakes in the registration of personal data can be traced back to the time of the British Mandate. Most of the mistakes, however, occurred during the 28 years of Israeli military occupation, under which indifference to the Palestinian individual was the norm. Missing birth certificates are common, others are holding proper birth certificates, but the clerks of the military occupation forgot to enter the data into the computerized database.²¹⁹

Because the complicated procedures relating to the Population Registry and coordinated by both the PA and Israel may have crucial implications on one's status and legal existence, "thousands of people fill in official forms and requests by deliberately misspelling their names, stating their father's name as Ahmad (although it is Amjad), and putting a birth date which is not theirs – just in order to avoid a bureaucratic nightmare with the Israeli authorities....Any major change in the old documents requires the approval of a Palestinian court as well as notification of and approval by the Israeli authorities".²²⁰

Further, there is some indication that the births of new children may sometimes be underreported by their parents and due to bureaucratic error and, therefore, children may not be added to the Population Registry and consequently lack identity documents and residency. The lack of registration of these children results in what is termed "internal family unifications" – where the parents may have residency, but the children are unregistered due to omission or mistake.²²¹ According to B'Tselem, "Israel refused to provide a solution for residents of the West Bank and Gaza Strip whose parents did not register them in the population registry at birth".²²²

Children may also be indirectly affected if neither of their parents is included in the Population Registry or hold Palestinian identity cards. In such situation, even if the children are born in the Gaza Strip, they would not be able to be registered as new births for inclusion in the Population Registry and would, therefore, lack residency and citizenship.

5.8 Palestinians Living in the West Bank with Identity Cards Registered in Gaza

Another category, though largely outside the scope of this research, is the estimated 35,000 Palestinians living in the West Bank with identity cards registered in the Gaza Strip.²²³ While Israel considers these Palestinians as living in Gaza, the reality is that most have permanently relocated their lives to the West Bank.²²⁴

In April 2010, Military Order No. 1650 took effect, defining "anyone who enters the West Bank illegally

²¹⁹ BADIL, *Palestinian Residency in the PA Areas in the Seventh Years of Partial Self-Rule*, *supra* note 170.

²²⁰ *Ibid.*

²²¹ NRC interview with a diplomatic staffer, Jerusalem, 19 September 2011.

²²² B'Tselem, *Residency & Family Separation: Updates*, 29 May 2008, available at <http://www.btselem.org/ota?tid=68> [last accessed 5 December 2011].

²²³ Letter from Col. Uri Mendes, Division Head, Coordination and Operations Directorate, COGAT to HaMoked Adv. Ido Blum, 2 June 2010, available at www.hamoked.org [last accessed 5 December 2011]. By COGAT's own admission, this number may be inaccurate since "at the time, the computer system was not utilized comprehensively" – in some cases, only a single direction of passage happened to be recorded; a lack of diligence in the registration of the passages and 'a lack of full correlation' between the different border control systems; and exits from the West Bank via the Allenby Bridge using foreign passports."

²²⁴ HaMoked submitted a series of petitions on this issue, as well as a principal petition that is still pending: HCJ 4019/10 *HaMoked: Center for the Defence of the Individual et al. v. Military Commander of the West Bank*. In two High Court petitions cases, HaMoked did manage the forcible transfer of Palestinians from the West Bank to the Gaza Strip based on their address. NRC interview with Ido Blum, Adv., HaMoked – Center for the Defence of the Individual, Jerusalem, 31 August 2011.

as an infiltrator, as well as ‘a person who is present in the area and does not lawfully hold a permit’.”²²⁵ Tens of thousands of Palestinians living in the West Bank and carrying valid identity cards registered in the Gaza Strip therefore “automatically become criminal offenders liable to be severely punished.”²²⁶ For these Palestinians, being stopped at any checkpoint within the West Bank could result in deportation to the Gaza Strip.

In February 2011, the Quartet on the Middle East, established in 2002 to mediate the Israeli-Palestinian peace process and composed of representatives from the European Union (EU), the United Nations (UN), the United States, and Russia, announced a package under which Israel agreed to approve 5,000 address changes for Palestinians living in the West Bank with registered addresses in Gaza. However, despite both Israeli and Palestinian estimates of nearly 35,000 Palestinians living in the West Bank with identity cards registered to Gaza, the PA has had difficulty filling this 5,000 quota and, to date, only received 3,700 applications for address changes.²²⁷ As of 4 August 2011, only 2,254 of the 3,700 submitted address changes have been processed and approved by Israel.²²⁸

²²⁵ Amira Hass, “IDF order will enable mass deportation from West Bank”, *Ha’aretz*, 11 April 2010. For more detailed analysis of Military Order No. 1650, see Asem Khalil, “Impact of Israeli Military Order No. 1650 on Palestinians’ Rights to Legally Reside in their Own Country”, Robert Schuman Centre for Advanced Studies, *CARIM Analytic and Synthetic Note 2010/46*, 2010.

²²⁶ Hass, “IDF order will enable mass deportation from West Bank”, *supra* note 225.

²²⁷ Office of the Quartet Representative, *Ramadan Easing Measures Announced by COGAT*, 10 August 2011; NRC interview with a diplomatic staffer, Jerusalem, 19 September 2011. The PA attempted to publicise this campaign for address changes and the only potential explanations are either that both Israel and the PA overestimated the number of affected Palestinians or that the “freeze” on address changes has had a chilling effect on the willingness of Palestinians to utilise these mechanisms.

²²⁸ Gisha, *Israel authorized address changes for more than 1,900 people living in the West Bank*, available at: http://www.gisha.org/item.asp?lang_id=en&p_id=1393 [last accessed 17 December 2011].

6. Access to and from the Gaza Strip

The only available means for people to cross into and out of the Gaza Strip is either via the Erez/Beit Hanoun Crossing with Israel or the Rafah Crossing with Egypt. The Interim Agreement preserved continued Israeli control over these crossings and also “foresaw the construction of a seaport and airport, the latter of which operated briefly between 1999 and 2000”.²²⁹

In the Agreement on Movement and Access, signed by Israel and the PA on 15 November 2005, “[t]he parties agree on the importance of the airport” in the Gaza Strip and Israel “will undertake to assure donors that it will not interfere with the operation of the [sea]port.”²³⁰ The Yasser Arafat International Airport, located near Rafah, opened in 1998, but was shut down after Israeli airstrikes hit the control tower on 12 December 2001.²³¹ The airport’s runway was additionally destroyed by Israeli military action on 10 January 2002, “shattering hopes for the resumption of flights to the airport in the foreseeable future”.²³² To date, there remains no functional airport for the Gaza Strip and Israel controls all of Gaza’s territorial waters.

In the aftermath of the Hamas takeover of the Gaza Strip in June 2007, Israel and Egypt “imposed an unprecedented blockade on all border crossing in and out of the Gaza Strip,” which remains in place at present.²³³ This blockade resulted in the near-complete closure of all commercial crossings into the Gaza Strip as well as the closure of the passenger crossings via Erez/Beit Hanoun and Rafah, except for a limited number of “humanitarian cases”.²³⁴ For Palestinian families split between the West Bank and Gaza, separated by the blockade and unable to see each other for over a decade, the complete control exercised by Israel over their freedom of movement is burdensome and often unbearable.

6.1 Status and Access via Erez/Beit Hanoun Crossing

Entry to and exit from the Gaza Strip via the Erez/Beit Hanoun Crossing between Gaza and Israel is largely limited to humanitarian aid workers, diplomats, journalists, and Palestinians with permits for approved medical treatment. Annex I, Article IX of the Interim Agreement covered movement between the West Bank, the Gaza Strip, and Israel and expressly acknowledged Israel’s right to impose closure for security grounds as well as requiring an identity card for any entry into Israel.²³⁵

For most Palestinians in Gaza, even those with valid Palestinian passports and identity documents, the ongoing blockade means they no longer see crossing via Erez/Beit Hanoun as a viable option and have redirected all attention towards the Rafah Crossing.

According to statistics provided by the Coordinator of Government Activities in the Territories (COGAT), the Israeli Ministry of Defence (MoD) unit responsible for coordination in the oPt, in 2011, approximately 3,000 Palestinians have been permitted to exit the Gaza Strip through the Erez/Beit Hanoun crossing each month. In each case, permits are largely limited to documented medical cases, business professionals, and employees of sponsoring international organisations.

²²⁹ Gisha, *Disengaged Occupiers*, *supra* note 65, p. 47, n. 51. See Interim Agreement, Articles 13-14.

²³⁰ Agreement on Movement and Access, 15 November 2005.

²³¹ Gaza International Airport, Historical Background, available at: <http://www.gazaairport.com/history.html> [last accessed 12 December 2011].

²³² *Ibid.*

²³³ OCHA, *Locked In: The Humanitarian Impact of Two Years of Blockade on the Gaza Strip*, August 2009, p. 2.

²³⁴ *Ibid.*

²³⁵ Immigration and Refugee Board of Canada, *Israel: Travel documents issues by the Israeli government to residents of the West Bank and Gaza*, ISR102751.E, 17 March 2008.

Table 14: 2011 COGAT Statistics on Palestinian Access Via the Erez/Beit Hanoun Crossing²³⁶

	JAN	FEB	APR	MAY	JUN	JUL	SEPT
Total Number of Palestinians Who Exited Via Erez Crossing	3,103	3,043	2,965	3,295	2,894	3,622	3,295
Permits Issued for Exit Via Erez Crossing	3,139	3,193	2,834	3,612	2,894	3,843	3,045
Permits for Medical Cases (Patients)	1,482	1,516	1,439	1,892	1,634	1,752	1,522
(Accompanying Persons)	(743) (739)	(768) (748)	(737) (702)	(986) (906)	(830) (804)	(888) (864)	(762) (760)
Permits for Employees of International Organisations	N/A	N/A	48	115	131	120	57
Number of Businessmen Who Exited Erez Crossing	1,234	861	684	1,238	1,286	1,300	1,455

6.2 Status and Access via Rafah Crossing

The Rafah Crossing marks the only crossing along the Egyptian border with the Gaza Strip and is currently the only oPt land crossing not operated and administered by Israel. Since the partial Israeli disengagement from Gaza in September 2005, “it is hard to point to a single party that is exclusively responsible for the closure of the Rafah Crossing. Several parties are involved in control of the crossing to various extents: Israel, Egypt, the Hamas regime in the Gaza Strip and the PA. Each one of those parties is shirking its responsibility and pointing an accusatory finger at the others for closing the crossing.”²³⁷

Prior to Israel’s 2005 partial disengagement from the Gaza Strip, Israel withdrew its military presence from the Gaza-Egypt border and, as the security became less restricted, the number of Palestinians crossing through Rafah rose to 1,280 per day.²³⁸ Roughly two months after the disengagement, the Agreement on Movement and Access, signed by Israel and the PA on 15 November 2005, provided for the operation of the Rafah crossing by PA officials under the supervision of European Union (EU) monitors.²³⁹ From the implementation of the Agreement on Movement and Access until the Hamas takeover of the Gaza Strip in June 2007, the Rafah Crossing was administered by the PA, though “Gaza residents wishing to cross into Egypt must have a valid Palestinian ID card” and Israeli consent and cooperation remained necessary for the Rafah Crossing to remain open.²⁴⁰

In response to the kidnapping of the Israeli soldier Gilad Shalit on 25 June 2006 by armed Palestinian groups via underground tunnels into Israel near the Kerem Shalom Crossing, Israel instated a general closing of the Rafah Crossing, citing it as “a passageway in and out of Gaza for those instigating terror in the Gaza Strip”.²⁴¹ From the date of the Shalit’s capture through 14 November 2006, the Rafah Crossing was open for only 21 days and generally for less than two hours each day, rather than the scheduled 12

²³⁶ COGAT, Humanitarian and Civilian Activities towards the Gaza Strip, Monthly Reports, available at http://www.cogat.idf.il/Sip_Storage/FILES/8/2338.pdf [last accessed 12 December 2012]. Statistics for August 2011 and March 2011 were not publically available through the COGAT website.

²³⁷ Gisha, *Rafah Crossing: Who Holds the Keys?*, 2009, p. 8.

²³⁸ *Ibid.*, p. 21.

²³⁹ Gisha, *Disengaged Occupiers*, *supra* note 65, p. 10; Agreement on Movement and Access, 15 November 2005; Agreed Principles for Rafah Crossing, 15 November 2005.

²⁴⁰ Immigration and Refugee Board of Canada, *Israel: Travel documents issued by the Israeli government to residents of the West Bank and Gaza*, *supra* note 235. Agreed Principles for Rafah Crossing, 15 November 2005: “Use of the Rafah crossing will be restricted to Palestinian ID card holders and others in exception in agreed categories with prior notification to the GoI and approval of senior PA leadership”.

²⁴¹ *Ibid.* at 2 (quoting letter from Minister of Defense in response to Gisha letter); see Avi Issacharof, “Israel Using Rafah Crossing to Pressure PA on Shalit Release”, *Ha’aretz*, 31 August 2006.

hours.²⁴² The Rafah Crossing was again closed in response to the Hamas military takeover of the Gaza Strip in June 2007 and implementation of the Agreement on Movement and Access was suspended. The barrier sealing the crossing remained in place until it was breached by Palestinian armed groups on 23 January 2008, at which time thousands of Palestinians were able to cross into Egypt.²⁴³ Since then, Egypt did permit the opening of the Rafah Crossing in coordination with Hamas, though the opening was periodic and unpredictable.²⁴⁴

On 11 February 2011, after nearly 30 years in power, Egyptian President Hosni Mubarak resigned, ushering in a new government led by the Egyptian armed forces. Many of those interviewed by NRC in Gaza expressed the hope that a new Egyptian government would relax the restrictive Egyptian policies with regard to the Rafah Crossing and allow more Palestinians, particularly those without Israeli-issued identity documents, to cross freely. To date, there has not been any significant increase in the number of passengers allowed to cross, though the categories of Palestinians allowed to travel has gradually expanded. For example, Egyptian authorities had previously established narrow categories of individuals who are allowed to entry or exit to Egypt through the Rafah Crossing, namely students studying abroad, foreign passport-holders, medical emergencies, and other humanitarian cases. Since the change in Egyptian government in February 2011, these strict categories appear to have been loosened and issues regarding access via the Rafah crossing remain fluid and subject to change.

On average, the Egyptian authorities only allow 500 passengers to cross per day and there remains a waiting list of an estimated 30,000 Palestinians seeking to leave Gaza via the Rafah Crossing.²⁴⁵ Problems persist and, in June 2011, the local authorities in the Gaza Strip temporarily closed the Rafah Crossing for three days in response to the unannounced closure of the crossing the previous day by the Egyptian authorities, reportedly for maintenance and renovation.²⁴⁶

In practice, the Rafah Crossing is physically under the control of the Egyptian authorities, who ultimately determine who is permitted to enter Egypt and how many people will be allowed through on a given day.²⁴⁷ However, as the International Crisis Group noted, Egypt “has demonstrated reluctance to assume responsibility for the [Gaza] Strip” and “any opening [of the Rafah Crossing] would need to be coordinated with Israel, lest it perceive the emergence of a security threat that could provoke further military action.”²⁴⁸ Therefore, while Israel does not play an active role in the daily operations of the Rafah crossing, it is unlikely that Egypt would institute any significant change with regard to the Rafah Crossing without first coordinating with Israeli authorities and Israel maintain a level of indirect control.

To enter Egypt via the Rafah Crossing, Palestinians must present both a valid passport and a Palestinian identity card with an Israeli number in addition to an Egyptian entry or transit visa. A growing number of Palestinians who attempt to enter Egypt, even for necessary medical treatment, have been “blacklisted” and are denied entry.²⁴⁹ Palestinian men under the age of 40 face the greatest difficulties in entering Egypt

²⁴² Gisha, *Disengaged Occupiers*, *supra* note 65, p. 12.

²⁴³ Gisha, *Rafah Crossing: Who Holds the Keys?*, *supra* note 237; Immigration and Refugee Board of Canada, *Israel: Travel documents issued by the Israeli government to residents of the West Bank and Gaza*, *supra* note 235 (citing *New York Times*, 23 January 2008; *Washington Post*, 3 February 2008).

²⁴⁴ Gisha, *Rafah Crossing: Who Holds the Keys?*, *supra* note 237, p. 48.

²⁴⁵ NRC interview with Mohammed Azaiza, Field Researcher, Gisha – Legal Center for Freedom of Movement, Gaza Strip, 25 August 2011. Information is accurate as of late 2011.

²⁴⁶ *Ibid.*

²⁴⁷ NRC interview with a UN humanitarian worker, Gaza Strip, 18 August 2011.

²⁴⁸ International Crisis Group, *Gaza: The Next Israeli-Palestinian War?*, Middle East Briefing No. 30, 24 March 2011, p. 6 (quoting a senior Arab official, who stated that “Part of the occupation is control, from a legal perspective. If goods and people flow freely via Egypt, Israel can make the argument that it cannot be held accountable.”).

²⁴⁹ NRC interview with a field health officer, Gaza City, 8 September 2011.

and very few would be allowed entry in the absence of a documented medical emergency or possibly a second nationality.

To ensure permission to cross into Egypt via Rafah, Palestinian must first register with the Gaza Ministry of the Interior several months in advance of a planned trip. A ticket is then issued with a designated travel date and, on that day, all travellers must arrive in Khan Younis as early as 5:00am in order for the Gaza authorities to review all travel documentation. From Khan Younis, those with approved documents are driven on buses to Rafah where they await permission from the Egyptian side to allow the bus to pass. At this point, Palestinians must wait on the buses at the Rafah Crossing for the Egyptian side to grant permission to cross, which often takes hours and could be potentially dangerous in the desert heat, particularly during Ramadan when people have been fasting for the entire day.²⁵⁰

Even those who receive approval to travel have no guarantee they will be able to cross on the date of their choice. NRC interviewed B.S., a dual Polish-Palestinian citizen from Gaza who was studying at university in Bialystok, Poland, and had received permission two months in advance in order to travel on 6 September 2011.²⁵¹ On that day, he was turned away by Hamas officials after waiting more than eight hours with his elderly grandmother from Poland. They were told that additional, higher priority names had been added to the list of passengers for that day and that they should return the following day. B.S. had a flight from Cairo scheduled the following day and worried that he would miss this flight and be delayed in starting his university courses.²⁵²

For Palestinians unable to travel through the Rafah or Erez/Beit Hanoun Crossings, many have resorted to using the underground smuggling tunnels near Rafah in order to leave Gaza. The exact number of underground tunnels is unknown, though there are estimated to be as many as 1,000. Since 2009, 197 people have been killed in the tunnels and an additional 600 have sustained injuries. Twenty people were killed as a direct result of Israeli aerial attacks on the tunnel areas.²⁵³ Despite these inherent dangers, the tunnels continue to be a viable option for many Palestinians in Gaza. For approximately 100 ILS (about 26 USD), passengers can bypass the months-long waiting list and the chaos and uncertainty of the official Rafah crossing by using the underground tunnels.²⁵⁴ Even for those who are willing to accept the risk associated with the tunnels, it would still be difficult for them to leave Egypt and unlikely that they would be able to travel through the Cairo airport.²⁵⁵

²⁵⁰ NRC interviews with A.S. and B.S., Gaza Strip, 6 September 2011.

²⁵¹ NRC interview with B.S., Gaza Strip, 6 September 2011.

²⁵² NRC interview with B.S., Gaza Strip, 6 September 2011.

²⁵³ Al Mezan, *17 Persons Killed in Tunnels during 2011, Raising Death Toll to 197 since 2006; Al Mezan Calls on International Community to Lift Israeli Siege Imposed on Gaza Strip*, 25 September 2011.

²⁵⁴ The Economist, *Gaza's tunnels: The burrowing business*, 10 August 2011.

²⁵⁵ *Ibid.*: However, for those travelling via the tunnels, "[f]or a few more shekels, a counterfeiting operation in al-Arish, the main town in north Sinai, will produce fake Egyptian identity papers so they can return to Egypt through the checkpoints at the bridge over the Suez canal."

7. Policies and Procedures for Residency and Identity Cards

7.1 Roles of Israeli and Palestinian Authorities

Coordinator of Government Activities in the Territories (COGAT)

From 1967 to 1981, Israel administered all civil and bureaucratic matters for the oPt through a military government. By military order issued on 8 November 1981, the existing military government in the oPt was replaced by what Israel designated as a Civil Administration, the objective of which was to separate the security and civil activities within the Israeli occupation policies.²⁵⁶

Today, the COGAT, a unit within the Israeli MoD, coordinates Israeli policy with regard to civil matters for the entire oPt and oversees the Palestinian Population Registry as well as requests for family unification, the issuance of visitor permits, and medical transport. COGAT technically operates as a civilian unit. In practice, it is administratively commanded by the military, but professionally directed in policy decisions by the Israeli MoI. Employees of COGAT are directed in daily logistical work by the Israeli MoD.²⁵⁷

Within COGAT, the Civil Administration, headquartered near the settlement of Bet El, near Ramallah, administers all West Bank civil matters (not including East Jerusalem) and operates through nine District Coordination and Liaison Offices (DCOs or DCLs) based Jenin, Nablus, Tulkarm, Qalqiliyah, Ramallah, Jerusalem periphery, Bethlehem, Hebron, and Jericho. Established pursuant to the Interim Agreement, these Israeli DCOs do not have direct contact with the Palestinian population and instead coordinate through their counterpart Palestinian DCOs.²⁵⁸

Since Israel's partial disengagement from the Gaza Strip in September 2005, the Civil Administration no longer governs civil matters for Gaza. Instead, COGAT is now represented in the Gaza Strip by the Israeli Coordination and Liaison Administration (CLA) located adjacent to the Erez/Beit Hanoun Crossing, which "is responsible for coordination and liaison operations vis-à-vis the Gaza Strip and comprises two district representations (North and South)".²⁵⁹ The CLA for Gaza falls under the authority of COGAT and "operates with those Palestinian bodies in the Strip subordinate to the Palestinian government in Ramallah. The Coordination and Liaison Administration does not operate vis-à-vis the Hamas."²⁶⁰ Both the Israeli DCOs in the West Bank and the Israeli CLA at Erez/Beit Hanoun directly coordinate with the respective PA-affiliated CACs in the West Bank and Gaza Strip.

According to COGAT, the primary responsibilities of the CLA include "implementation of the Israeli Government's civilian policy regarding the transfer of commodities via the different overland crossings,

²⁵⁶ Al-Haq, *Civilian Administration in the Occupied West Bank: Analysis of Israeli Military Government Order No. 947*, January 1982; Order for the establishment of the Civilian Administration (Judea and Samaria) (No. 947) 5741-1981.

²⁵⁷ B'Tselem, *Perpetual Limbo*, *supra* note 29, p. 7: "In the command structure, the Civil Administration is subject to the directors of the OC Central Command, and in organizational and professional matters, to the coordinator of government operations in the Territories"; See also IDF Military Advocate General's (MAG) Corps Homepage, *The Legal Status of Judea and Samaria: What is the Role of the Civilian Administration?*, available at <http://www.law.idf.il/338-en/Patzar.aspx> [last accessed 7 December 2011]: "An officer (Brigadier General Rank) commands the [civil] administration. Civilian employees of the State of Israel also work at the administration, for the purpose of filling staff posts. Their authority stems from the power allocated to them by virtue of applied law in the region in general, and security legislation specifically."

²⁵⁸ HaMoked, *One Big Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan*, March 2005, p. 5.

²⁵⁹ COGAT website, *Coordination and Liaison Administration for Gaza*, available at <http://www.cogat.idf.il/1328-en/Cogat.aspx> [last accessed 8 December 2011].

²⁶⁰ *Ibid* (emphasis omitted).

civilian entry to and from the Gaza Strip with emphasis on the evacuation of Palestinian patients for medical treatment in Israel, the promotion of projects by the international community, and coordination of operations and aid in agriculture, transportation, trade and industry”.²⁶¹

Palestinian Authority Civil Affairs Committee (CAC)

From its creation in 1995, the PA has administered Population Registry matters primarily through the CAC (also known as the Ministry of Civil Affairs) and the local Palestinian DCOs that work in coordination with their counterpart Israeli DCOs. With regard to Population Registry issues, these Palestinian DCOs have been criticised as becoming “nothing more than literal liaison centers that simply deliver ID and *tassrih*’ (permit) requests to respective Israeli authorities such as the Ministry of Interior, military, border patrol, police force, and secret service (known as *Shabak*) – the institutions that make up the ID regime apparatus”.²⁶²

Since the start of the second Intifada in September 2000, there have been intermittent cessations of communication between the Israeli and Palestinian authorities. On 11 April 2006, in the aftermath of the Hamas parliamentary victory in January 2006, Israel issued Decision Number 4780 and froze all contacts with the PA on the grounds that it had become a “terror authority that was threatening to the State of Israel”.²⁶³ Since 2000, Israel has contended that the “freeze” on family unification requests has been imposed “because relations between Israel and the Palestinian Authority had been severed and the mechanism for handling the requests had broken down.”²⁶⁴ They also “argued that the freeze was due to the severing of work ties with the coordination offices”.²⁶⁵

In reality, after an emergency PA government for the West Bank was formed in June 2007 under Salam Fayyad, COGAT published that “the relations between the Civil Administration in Judea and Samaria and the local Palestinian security forces were renewed and reinforced, both in the civilian and security spheres, and working relations continue to exist for the benefit of regional development.”²⁶⁶

For the Gaza Strip, Israel has refused to engage with the local authorities and all Population Registry matters are now facilitated by the PA-affiliated CAC headquartered in Ramallah and with a branch in the Gaza Strip. At present, there is regular communication between individual Israeli and Palestinian officials and the CAC personnel based in Gaza regularly meet with the Israeli CLA at the Erez/Beit Hanoun Crossing. According to Khalil Faraj, Deputy Director of the CAC in the Gaza Strip, his office has maintained the same level of coordination with the Israeli CLA as prior to the Hamas military takeover of Gaza in 2007 and he participates in monthly meetings with Israeli officials at the Erez/Beit Hanoun checkpoint. He also asserts that, on a daily basis, all documents and forms related to new births and deaths are submitted to Israel so that this information within the Israeli “copy” of the database matches

²⁶¹ *Ibid.*

²⁶² Tawil-Souri, “Colored Identity: The Politics and Materiality of ID Cards in Palestine/Israel,” *supra* note 11, p. 92, n. 15.

²⁶³ HCJ 3170/07, *Dwikat, et al. v. State of Israel*, Response on Behalf of the Respondents, 18 September 2007, para. 14; Letter from Boaz Oren, Esq., Deputy Director of the Department for International Agreements and International Litigation, Ministry of Justice, to Mrs. Antigona Ashkar, Researcher, B’Tselem, dated 25 May 2006.

²⁶⁴ B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 53; HCJ 3170/07, *Dwikat, et al. v. State of Israel*, Response on Behalf of the Respondents, 18 September 2007, para. 29 (stating that since 2000 “the working relationship between the Palestinian Authority and Israel has been significantly limited.”); HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 15.

²⁶⁵ HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 15.

²⁶⁶ COGAT website, *Civil Administration in Judea and Samaria: History*, available at <http://www.cogat.idf.il/1280-en/Cogat.aspx> [last accessed 4 December 2011].

the Palestinian version.²⁶⁷ Israel also continue to coordinate with the PA when it “notifies the PA when crossings may be opened and uses the PA to inform Gaza residents that certain areas are off-limits to civilian movement.”²⁶⁸

7.2 Procedures for Applying for Residency and Identity Cards

No Palestinian identity cards are issued by the PA if an applicant is not already listed in the Palestinian Population Registry; therefore, the first step in the residency and identity card process is to seek addition to the Population Registry.

As previously stated, additions are only made to the Population Registry on the basis of family unification or child registration. For child registration, provided that at least one parent is already a Palestinian resident, this is generally a *pro forma* process and the names are added and an identification number is issued as a matter of course. With regard to family unification requests, however, this procedure has been effectively frozen by the Israeli authorities since the outbreak of the second Intifada and most applications are no longer even processed.

The actual procedure for applying for inclusion on the Population Registry is seemingly straightforward yet typically takes years and even decades. To apply, Palestinians residing in the Gaza Strip first must complete and submit a residency registration application to be submitted to the MoI in Gaza. From there, the application is submitted to the PA-affiliated CAC in Gaza and subsequently to the CAC offices in Ramallah.²⁶⁹ The Ramallah CAC then forwards the request to COGAT and requests that the applicant’s name be added to the Palestinian Population Registry. At this step, COGAT will forward names to the Israeli General Security Service, better known by its Hebrew acronym “*Shabak*”, to conduct a background and security check. If there are no security issues and the family unification or child registration is approved, then the Israeli authorities will add the name to the Population Registry and issue an identification number.

This Israeli-issued identification number grants legal residency to remain in the oPt. Palestinians cannot even begin applying for identification cards, passports, foreign travel visas or for family unification for their own spouses and immediate relatives until this identification number has been issued.²⁷⁰

7.3 Issues Related to the Administration of the Palestinian Population Registry

Israel’s ongoing control of the Palestinian Population Registry directly contravenes the Interim Agreement and raises serious issues regarding the basic residency and citizenship rights of Palestinians including, *inter alia*, the following:

Lack of Transparency and Accountability

There is a complete lack of transparency and accountability in the operation of the Population Registry and the application process. The majority of individuals interviewed by NRC for this report have been

²⁶⁷ NRC interview with Khalil Faraj, Deputy Director of PA Civil Affairs Committee, Gaza Strip, 5 September 2011. Although births and deaths continue to be registered and updated, other aspects of the Population Registry, including, but not limited to, family unification requests and address changes, have largely been frozen since September 2000.

²⁶⁸ Gisha, *Disengaged Occupiers*, *supra* note 65, p. 88.

²⁶⁹ NRC interview with Khalil Faraj, Deputy Director of PA Civil Affairs Committee, Gaza Strip, 5 September 2011. Prior to 2006, it was not necessary for the documents to be forwarded to Ramallah and the CAC within Gaza could directly submit all requests to the Israeli authorities.

²⁷⁰ NRC interview with Riad Al Zaytunyah, General Director, Directorate of Civil Status-Gaza, PA Ministry of the Interior, Gaza Strip, 11 September 2011.

waiting for more than 10 years for any response to their requests for family unification. No receipt or other documentation is provided to these applicants in writing and their applications remain in limbo, neither approved nor rejected. When applicants approach the Palestinian CAC, they are typically told that their applications will be successful “Soon, *Inshallah*” and to check back in a month.²⁷¹

Palestinians interviewed in the preparation of this report stated that there is currently no system for checking on the status of a pending application or even learning whether an application is still with the Palestinian side or has been forwarded to the Israeli authorities. One NRC interviewee, K.S., stated that he had filed three separate family unification applications on behalf of his wife while waiting for more than ten years for any response. After initially filing an application in 1996, he went to the Palestinian CAC in 2003 and was told to complete a new application since all the previous applications had vanished. When there was still no response six years later, he submitted yet another application. To date, he has received no response from any of his three applications.²⁷²

Even the announcement for approval of family unification requests is arbitrary. One interviewee, A.S., stated that, after waiting 12 years for her application to be approved, she learned that her name was included in one of the batches released in 2008 only after her name was published in a local newspaper.²⁷³ Another woman, who came to Gaza from Libya in 1993, learned her family unification application had been approved in 2008 through a television news programme.²⁷⁴ She was completely shocked to discover her name was included in a recent batch of approvals under the Israeli “political gesture” since she had received no prior notification that she was slated for inclusion in the Population Registry.

Changes in relevant procedures are also often announced without warning. Israel does not accept any detailed addendums or explanations to family unification applications and only accepts a list of the names.²⁷⁵ For applications that are denied, the only grounds ever provided are broad and generalised security claims.

Moreover, the whole Population Registry process as organized at present provides Israeli authorities with total control and no accountability. There is no process for appeal for a family unification case that has been denied or pending for over a decade and “a Palestinian has no means to hold the largely faceless, nameless, and ‘invisible’ regime accountable”.²⁷⁶ Because Israel has never recognised a legal obligation to allow family unifications despite contrary language under the Interim Agreement, there are no limitations on its ability to impose arbitrary restrictions.

Politicisation of Citizenship and Residency Rights

An overriding problem is that all changes or concessions with regard to family unification are done in the context of political agreements. The human rights issues are lost in the process and the occasional quota or gesture becomes a legal tool. Even the political agreements reached by the Quartet, in part, are reducing basic human rights to negotiating chips in the peace process.

Israeli officials have even made statements that directly politicise the issue by connecting family unification and residency with “right of return” negotiations. For example, COGAT Major-General Yusef Michlav stated in December 2005 that the 60,000 unregistered Palestinians present in the oPt “have

²⁷¹ NRC focus group with Palestinians resident in Gaza lacking identification cards or inclusion in the Population Registry, Gaza City, 7 September 2011.

²⁷² NRC interview with R.S., Gaza Strip, 6 September 2011.

²⁷³ NRC interview with A.S., Gaza Strip, 6 September 2011.

²⁷⁴ NRC interview with M.N., Gaza Strip, 6 September 2011.

²⁷⁵ NRC interview with Adv. Yossi Wolfson, Jerusalem, 31 August 2011

²⁷⁶ Tawil-Souri, “Colored Identity: The Politics and Materiality of ID Cards in Palestine/Israel,” *supra* note 11, p. 82.

already exercised the right to return through the back door.”²⁷⁷ By blurring this distinction between the rights of spouses and families to live together and the rights of refugees “gives the misleading impression that the right of every resident to live with his or her foreign spouse and children in the area is no more than a ‘gesture’ or ‘bargaining chip’ that Israel can use (or not use) in negotiations with the Palestinian Authority. Inasmuch as the right of people to live together with their families in their native land is enshrined in international law, breaching this right for political reasons is improper and illegal”.²⁷⁸

One consequence of the politicisation of the Population Registry is that family unification and legal identity are not being recognised as basic human rights and the Population Registry continues to be utilised. Even interviewees describe that it “is not a legal problem and entirely a political issue” and have avoided even bringing legal claims to challenge the policy.²⁷⁹

Vague Justifications on Security Grounds

The ongoing Israeli position that the Population Registry freeze it has instigated since September 2000 is motivated by security concerns following the second Intifada is itself disingenuous; when Israel chooses to approve applications, it can do so immediately. Moreover, “other than general, vague statements in this regard, Israeli officials have not explained how this policy serves its security needs. Failure to explain the connection makes the policy arbitrary and, therefore, illegal”.²⁸⁰

The security defence has also been abandoned when politically expedient to do so; for example, in response to the petitions submitted by HaMoked in 2007, Israel did not cite any security grounds for its policy and simply held that the Israeli High Court of Justice should dismiss the case as political and non-justiciable.²⁸¹ Even were there valid security grounds in these or other cases, Israel would need to demonstrate the proportionality of its response in each case. Israel has similarly “refused to consider alternatives that would reduce the harm to the Palestinian families. For example, Israel rejected the possibility of examining family unification requests on an individual basis, based on the security threat ostensibly involved in each particular case”.²⁸²

Deferral of All Responsibility for Population Registry Matters to PA

Notwithstanding this ongoing control by the Israeli authority, Israel denies any role in the Population Registry and maintains that “responsibility for this issue has been transferred to the Palestinian Authority and therefore it should be contacted with respect to this matter.”²⁸³

In defence of this position, Israel has relied on the terms of the Interim Agreement and affirms that it is bound to uphold those agreed policies. In a written response to a HaMoked inquiry, the Legal Advisor for the Military Commander for the West Bank stated, “Unilateral updating of the registry by the Israeli side

²⁷⁷ B’Tselem, *Forbidden Families: Family Unification and Child Registration in East Jerusalem*, January 2004, pp. 15-20.

²⁷⁸ B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 56.

²⁷⁹ NRC interview with M.N., Gaza Strip, 6 September 2011.

²⁸⁰ B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 53 (noting that “Under Israeli administrative law, a public authority must explain its decisions”. See Amendment of Administrative Arrangements (Decisions and Reasons) Law, 5719-1958).

²⁸¹ HCJ 3170/07, *Dwikat, et al. v. State of Israel*, Application on behalf of the petitioners to respond to the response on behalf of the respondents, 20 September 2007, p. 5.

²⁸² B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 59. Israeli High Court of Justice decisions have repeatedly upheld these security justifications without requesting additional reasoning. See HCJ 5919/05 *Al Salam v. Commander of the IDF Forces, Menasheh Division Commander, Takdin Elyon* 2005(4) 2671, p. 2672 (cited in HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007.).

²⁸³ HCJ 4019/10, *HaMoked: Center for the Defence of the Individual et al v. Military Commander of the West Bank*, Petition for Order Nisi, 25 May 2010, para. 18 (quoting response from assistant to the COGAT, Lieutenant Colonel Smulik Ozenboy, dated 9 January 1996).

is not possible seeing as the entire registry is administered and run by the Palestinian side in keeping with the provisions of the [Interim] Agreement.”²⁸⁴

Israel has additionally argued that “for some time, the Palestinian Authority has been abstaining from transferring such requests to Israel” and Israel “can not [sic] process them.”²⁸⁵ The PA denies this accusation, stating that “[t]he Palestinian side transferred the requests to Israel for handling, but Israel refused to accept them, claiming the situation in the area made processing and approval by Israel impossible.”²⁸⁶ Khalil Faraj, Deputy Director of the PA-affiliated CAC in Gaza, likewise confirmed that all family unification applications have been forwarded to the relevant Israeli department and Israel refuses to process any such requests.²⁸⁷ Thus, Israeli authorities have been able to fully control Palestinian residency matters while deferring all responsibility to the PA. Palestinians affected by this policy further have no recourse since Israel refuses to accept applications directly from residents, contending such actions would violate the spirit of the Interim Agreement. The consequence is “a blanket refusal to receive applications, consider them and decide their fate”.²⁸⁸

The Role of the PA in the Adoption and Implementation of Israeli Policies

The role of the PA in acquiescing to Israeli procedures has likewise been criticised and the PA has essentially adopted and implemented the Israeli screening policies for updating the Population Registry. Following the “freeze” of the Population Registry in 2000, the Israeli authorities refused to accept any family unification or address change applications from the PA. Because the PA will not issue identification cards that do not correspond to the Israeli copy of the Population Registry, the PA stopped even accepting requests from Palestinians living in the West Bank seeking to change their registered addresses from Gaza to the West Bank.

As reported by HaMoked, on 2 October 2010, the Palestinian Supreme Court expressly ordered “the Palestinian Civil Affairs Committee to accept Palestinians’ notices on change of residence from Gaza to the West Bank. This concerns Palestinians who live in the West Bank but are registered in a Gaza address in the Population Registry. The judgment, rendered in a petition of a Palestinian businessman whose request to alter his registered address was refused, stipulates that the Palestinian Civil Affairs Committee is to exercise the full authority it is vested with in this matter under the Oslo Accords.”²⁸⁹

To some extent, the PA-affiliated CAC has embraced its role as the primary contact between the Israeli authorities and the Palestinian population. For example, in 2009, Al-Dameer Association for Human Rights in Gaza directly approached Israeli authorities as well as several Israeli NGOs to attain travel permits for clients seeking medical treatment outside the Gaza Strip. In response, Hussein El-Sheikh, the Minister for the CAC, sent a confidential letter to the Israeli side asking that they not cooperate with Palestinian organisations on medical permits and that they only process applications submitted through

²⁸⁴ Letter from Legal Advisor for Military Commander for West Bank to HaMoked, 7 May 2007, para. 17, attached as exhibit P/6 to HCJ 4019/10, *HaMoked: Center for the Defence of the Individual et al v. Military Commander of the West Bank*, Petition for Order Nisi, 25 May 2010.

²⁸⁵ B’Tselem, *Perpetual Limbo*, *supra* note 29, letter attached from Boaz Oren, Esq., Deputy Director of the Department for International Agreements and International Litigation, Ministry of Justice, to Mrs. Antigona Ashkar, Researcher, B’Tselem, dated 25 May 2006 (citing HCJ 4227/05, *Muhammad Saadi Abed Adalla Jardat v. The Commander of the IDF Forces in the West Bank*, Tak Al 2005(2) 144, (8.5.05)).

²⁸⁶ B’Tselem, *Perpetual Limbo*, *supra* note 29, pp. 17-18 (Letter of 28 June 2001 to HaMoked from Ayman Qandil, head of the statistics department in the PA’s Ministry of Civil Affairs in Ramallah).

²⁸⁷ NRC interview with Khalil Faraj, Deputy Director of PA Civil Affairs Committee, Gaza Strip, 5 September 2011.

²⁸⁸ HCJ 3216/07, *Hamdan v. State of Israel*, Petition for Order Nisi and Temporary Injunction, 11 April 2007, para. 53.

²⁸⁹ HaMoked, *The Palestinian Supreme Court rules: the Palestinian Civil Affairs Committee must accept Palestinians’ notices on change of residence from Gaza to the West Bank in the Palestinian population registry, despite opposition by Israel*, 25 October 2010.

the CAC. On 18 October 2009, Al-Dameer, along with Al Mezan and other local human rights organisations in Gaza, sent a letter requesting the “PA to clarify the position and role for human rights centres in Gaza who are seeking to help civilians seeking medical treatment in Israel.” No response was received.²⁹⁰

Allegations of nepotism and cronyism within the PA’s processing and submission of family unification requests have also been raised. There was a sense among some people interviewed by NRC that family connections and patronage play a role in which applications are expedited and forwarded to the Israelis. In particular, some interviewees speculated as to why they have received no response after nearly 15 years while others are approved within a year or two. Khalil Faraj, Deputy Director of the Palestinian CAC in Gaza, rejected any claims of improper discretion on the part of the CAC and stated that the primary criterion for processing and submitting applications is the chronological date on which it was submitted, though considerations are made for humanitarian cases, such as refugees from Iraq or Libya, and such cases may be prioritised on this basis.²⁹¹ Such concerns could be allayed through a more transparent and accountable processing regime.

²⁹⁰ NRC interview with local NGO staff member, Gaza Strip, 11 September 2011.

²⁹¹ NRC interview with Khalil Faraj, Deputy Director of PA Civil Affairs Committee, Gaza Strip, 5 September 2011.

8. Consequences and Impact of Lacking Residency and Identification

Regarding the impact of Israel's ongoing control of the Population Registry on the daily life and human rights of Palestinians without identity documents in Gaza, it is necessary to make two key distinctions. First, a distinction needs to be drawn between those who entered the Gaza Strip on visitor permits prior to 2000 and have overstayed the expiration of their visas, and those who entered without permission or registration, either through lapses in the security at the Rafah border or through the underground tunnels near Rafah across the border with Egypt. A second distinction should be made as to the impact of not having legal residency *internally* with regard to daily life in Gaza and *externally* in terms of one's ability to travel outside the Gaza Strip. In addition to the multitude of human rights that are implicated due to the lack of status and identity documents for those in Gaza, the most worrisome issues are related to right to health and adequate standard of living violations caused by prohibitions on seeking medical treatment outside the Gaza Strip.

8.1 Distinction Between “Late Visitors” and Unregistered Returnees

For Palestinians who entered the Gaza Strip on visitor permits prior to 2000 and have since overstayed, Israel does, in some contexts, recognise their presence in Gaza and considers this category of Palestinians as “late visitors.”²⁹² Those Palestinians who applied for family unification prior to 2000 and who are still awaiting approval for their requests primarily fall within this category. While such “late visitors,” would be prohibited from regular travel outside Gaza, they may be permitted entry to Israel via the Erez/Beit Hanoun Crossing in order to undergo necessary medical treatment. This population of “late visitors” also may be on-track to have their status normalised as soon as Israel lifts its freeze on Palestinian family unifications.

By contrast, for Palestinians who entered the Gaza Strip illegally, Israel does not recognise their ongoing presence in the Gaza Strip and, even in cases of necessary and life-saving medical treatment, it is unlikely Israel would facilitate their transit or treatment outside Gaza. There also does not currently exist any procedure by which this population of unregistered returnees could ultimately attain Palestinian residency and legalise their presence in Gaza.

NRC interviewed R.H. who arrived in the Gaza Strip with her father and her sister in early 2000 on visitor permits. Her mother, brother, and two other sisters remained in Iraq awaiting the approval of their visitor permits and fully expected to join the rest of their family in Gaza within a matter of weeks. Yet, with the start of the second Intifada, these pending visitor permits were cancelled and her family remains separated to this day. Desperate to be reunited, her mother and younger sister entered Gaza through the underground tunnels near the Rafah border with Egypt in mid-2009. According to R.H., she feels only “partially illegal” since she entered Gaza in late-2000 on a PA-issued visitor permit and has some documentation. She believes her Palestinian residency application for Gaza could be approved “any day”. By comparison, she feels that under the current parameters, her mother and sister are “completely illegal” – they have no status within Gaza nor any hope that they can attain residency or a Palestinian identity card. Her only hope is that, after the pending family unification applications are finally approved, the Palestinian CAC will start examining other scenarios involving residency and identity documents.²⁹³

²⁹² NRC interview with a diplomatic staffer, Jerusalem, 19 September 2011.

²⁹³ NRC interview with R.H., Gaza Strip, 6 September 2011.

8.2 Internal Impact on Daily Life within the Gaza Strip

For Palestinians in the Gaza Strip who lack identity documents and residency, the Palestinian Population Registry freeze carries “harsh effects on the social, economic, and health situation of individuals, to the serious and at times irreversible impairment of the mental health of children and parents”.²⁹⁴ In some cases, this lack of status has resulted in broken families, divorce and single-parent families.

For individuals in the Gaza Strip who lack identity documents, in terms of daily life within Gaza, the restrictions and implications are generally less acute. Universities in Gaza accept temporary Palestinian identity cards issued by the authorities in Gaza, as do most employers and hospitals. Similarly, there is no limitation on receipt of UNRWA aid, provided an individual can present some proof of refugee status.²⁹⁵

Unlike the West Bank, there are no longer any internal Israeli checkpoints in the Gaza Strip and, therefore, even those without identity documents are permitted free movement throughout the Gaza Strip. When the internal checkpoints still existed in the Gaza Strip prior to the dismantling of the settlements in 2005, several men interviewed by NRC spoke of a fear of travel. A.N. stated that, when the checkpoints were still in place, he had not left Gaza City for nearly five years.²⁹⁶ Another woman stated that her father and brother were constantly afraid to leave Rafah before 2005 due to the checkpoints near the settlements. The fear was those without proper identity documentation would face harassment, questioning and potentially being detained by Israeli soldiers.²⁹⁷

There are, however, ongoing daily difficulties caused by the lack of formal identity documentation for Gaza residents, including, for example, in opening a bank account or registering a car, particularly since many of the banking mechanisms and vehicle licenses are still connected to the Israeli channels. One woman stated that, while attempting to open a bank account, she was repeatedly asked for proper identification and had to repeatedly explain that the temporary Palestinian identification card is her only documentation. She was eventually able to open the bank account, though this process served as a reminder of her lack of status and she is regularly asked why she has lived in Gaza for so many years and still does not have a *real* Palestinian identity card.²⁹⁸

During one NRC focus group discussion conducted in Gaza City, several participants discussed the difficulties in arranging marriages for children who lack residency and identity documents. In the familial discussions that typically proceed marriage arrangements in Gaza, the other family may ask about the son or daughter’s identity and residency status and may not be interested in a potential spouse who lacks formal documentation.²⁹⁹ For example, R.H. told NRC that her sister, who herself lacks residency, recently married a Palestinian man who had returned to Gaza from Yemen and lacks an identity card; she described the decision to marry another Palestinian without status as “foolish”.³⁰⁰ The reverse situation has also arisen in which those without identity cards feel compelled to marry someone with formal documentation in the hope that they can someday normalise their residency through family unification. For those without identity documents, marriage may be the only viable process for attaining residency.

²⁹⁴ B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 33.

²⁹⁵ However, one consequence of the freeze on updating the Population Registry for family unification and address changes is that UNRWA basically recognises two addresses: a physical address and a registration address. For example, for a Palestinian woman who moved from Jordan to the Gaza Strip for marriage, but was unable to attain Palestinian residency due to the freeze, her UNRWA registration address would remain in Jordan while her physical address would be updated to the Gaza Strip. If she eventually did receive residency in the Gaza Strip, both addresses would be updated to reflect this reality. An estimated 30 percent of UNRWA refugees registered in the Gaza Strip no longer physically reside in Gaza.

²⁹⁸ NRC interview with M.K., Gaza Strip, 4 September 2011; NRC interview with R. S., Gaza Strip, 6 September 2011.

²⁹⁹ NRC focus group with Palestinians resident in Gaza lacking identity cards, Gaza City, 7 September 2011.

³⁰⁰ NRC interview with R.H., Gaza Strip, 6 September 2011.

It is also difficult to measure the psychological impact that this lack of status and identity has on those affected in Gaza and the separation from family for more than a decade. One Palestinian woman living in Gaza who lacks residency and Palestinian identity documents stated that she does not feel like a citizen of her own country. While friends and relatives discuss the possibility of travel, she has been forced to accept that this is simply not an option for her.³⁰¹ Another Palestinian woman in Gaza told NRC that, after 12 years, her children in Gaza have never met their grandparents or all her other family members in Jordan.³⁰²

In addition to the direct impact on those without status, there are immeasurable direct and indirect ramifications for immediate and extended families. If both parents lack identity documents, their children will likely also lack status and residency, regardless of whether they are born in the Gaza Strip.

8.3 External Impact on Ability to Travel outside the Gaza Strip

Overwhelmingly, those interviewed by NRC stated that the inability to travel or ever leave Gaza was the most difficult consequences of their lack of residency and identity cards. The severity of the restrictions on travel is only accentuated when considering the size and population density of Gaza. The inability to travel outside the Gaza Strip without a valid Palestinian ID card has forced many to make impossible decisions; “spouses and their children must separate from each other or to go into exile *en bloc*—and must find work, schools, home, friends—in another country.”³⁰³

The reality is that, even for those Palestinians in Gaza with valid Palestinian passports and identity cards, travel outside the Gaza Strip is difficult and rare. Some interviewees acknowledged this reality but stated that with a passport, there is at least some possibility to leave; without residency or identity documents card, they cannot even entertain it as an option. Others confessed that their lack of residency status was actually worse prior to the Israeli-imposed blockade when travel was still a possibility for the average Palestinian in Gaza and they felt much more alone in being trapped. In a sense, the blockade’s curtailing effect on travel outside Gaza has made some of those without identity cards feel less alienated from their friends and relatives.³⁰⁴ For many, their desire to travel and leave Gaza was coupled with an ever-present fear that close relatives outside Gaza may become ill or die and they will be unable to visit them or attend the funerals.

Lack of residency further creates limitations with regard to access to employment opportunities, which are urgently needed in Gaza; between 2005 and 2006, unemployment in the Gaza Strip rose from 33.1 percent to 41.8 percent.³⁰⁵ Any job that requires travel abroad becomes impossible without identity documents. One man interviewed by NRC stated that his son had lost his job because he lacked identity documents and was unable to travel. One focus group participant, a surgeon born in Kuwait who returned to Gaza in 1998, has been forced to forego several foreign medical opportunities, including two fellowships in the United Kingdom, one in Egypt, and more recently one in Indonesia.³⁰⁶

These restrictions on travel likewise affect educational opportunities. According to M.K., a 25 year old Palestinian woman living in Gaza without an identity card, her brother also lacks residency and, despite having recently finished school with high marks and initial discussions of sending him abroad for a better

³⁰¹ Interview with R.H., Gaza Strip, 6 September 2011.

³⁰² Interview with R.S., Gaza Strip, 6 September 2011.

³⁰³ HCJ 3170/07, *Dwikat, et al. v. State of Israel*, Application on behalf of the petitioners to respond to the response on behalf of the respondents, 20 September 2007.

³⁰⁴ Focus NRC focus group with Palestinians resident in Gaza lacking identity cards, Gaza City, 7 September 2011.

³⁰⁵ Gisha, *Disengaged Occupiers*, *supra* note 65.

³⁰⁶ NRC focus group with Palestinians resident in Gaza lacking identity cards, Gaza City, 7 September 2011.

education, it was ultimately not possible. M.K. herself wants to pursue a Master's degree, but is limited to the educational opportunities within Gaza.³⁰⁷ In particular, Israel's ban on residents of Gaza from travelling to the West Bank severely limits their educational opportunities. According to Gisha, "critical professions—such as medicine, public health, and occupational therapy—can only be studied in the West Bank. Barring young Gazans from reaching these institutions prevents them from becoming doctors, occupational therapists, and public health workers".³⁰⁸ This has an impact on the quality of health care throughout Gaza thus affecting the entire population.

8.4 Process for Medical Referrals and Treatment outside Gaza

The most serious impairment on the ability to travel abroad arises with regard to necessary medical treatments. Even for those who are healthy, there is a constant fear that if they or their relatives become ill, they may not be able to receive necessary treatments. For M.N., these restrictions resulted in tragic consequences. Her mother, who had arrived with her in 1993 from Libya, lacked an identity card and could not undergo travel for necessary heart surgery not available in Gaza and subsequently died from heart-related issues.³⁰⁹

Again, even those who possess valid identity cards are only allowed to leave Gaza for medical treatment in the most "severe and urgent cases."³¹⁰ In order to be approved for medical treatment outside Gaza, applications must go through a number of steps:

- First, approval must be received from the Medical Referrals Department (MRD) within the Ministry of Health (MoH) in Gaza. A panel of medical experts and consultants will review a given case to determine whether treatment is possible within Gaza.
- All approved referrals are sent to the MRD in Ramallah for administrative and financial review; a coverage form is then issued that outlines the approved destination for treatment (Egypt, West Bank, Jordan, Israel, or East Jerusalem), the maximum allowable financial coverage, dates for travel and diagnosis.
- The coverage form is then directed to the MoH Coordination and Liaison Office, which arranges hospital bookings and coordinates permit issues with the Israeli CLA at Erez. The CLA refuses to receive applications more than 10 days prior to the hospital visit. An approval from the Israeli authorities is typically only given the night before and sometimes only a matter of hours beforehand.
- Cases not approved either remain pending, in which case an entire new application must be submitted to the MRD or are rejected and "red-lighted" for security reasons. If the same individual is also then "blacklisted" by the Egyptian authorities, they are effectively denied any medical treatment or transport.

There are approximately 1,300 to 1,500 applications for foreign medical treatment submitted to the MRD each month, with about a quarter of these referred to internal Gaza treatment facilities. Of the rest, between 600 and 800 cases each month are processed through the Erez/Beit Hanoun Crossing and another 300 to 400 cases are directed through the Rafah Crossing.³¹¹

An MRD referral does not require an Israeli-issued identification number or inclusion on the Population Registry, but the applicant must have entered the Gaza Strip legally and with Israeli authorization.

³⁰⁷ NRC interview with M.K., Gaza Strip, 4 September 2011.

³⁰⁸ Gisha, *Disengagement Danger: Israeli Attempts to Separate Gaza from the West Bank*, Briefing Paper, February 2006, p. 7.

³⁰⁹ NRC interview with M.N., Gaza Strip, 6 September 2011.

³¹⁰ Raja, "Root Cause of Palestinian Violence is Israeli Occupation", *supra* note 66.

³¹¹ NRC interview with a field health officer, Gaza City, 8 September 2011.

Therefore, those without residency or identity documents who originally entered Gaza on now-expired visitor permit may be allowed through the Erez/Beit Hanoun Crossing for the purposes of emergency medical treatment. M.R., for example, described accompanying his father for medical treatment in the West Bank. He himself holds an official Palestinian identity card and was processed through the Palestinian line by the Israeli military. However, because his father had entered Gaza in 1999 and carried an expired Egyptian RTD, he was treated as a non-resident foreigner and was processed by the Israeli Ministry of the Interior, along with other international passport-holders.

For those who entered Gaza without a visitor permit or other Israeli authorisation, Israel does not recognise their presence within the Gaza Strip and they are not permitted to cross at Erez/Beit Hanoun even for life-threatening medical treatment. The MoH Coordination and Liaison Office would be unlikely to even process this category of Palestinians without identity documentation or residency since they would be automatically rejected by Israel. Such individuals would be similarly denied access to Egyptian medical services via the Rafah Crossing and there has been at least one documented case of an individual who died of an aortic aneurysm while waiting at Rafah.³¹²

None of the organisations consulted in the preparation of this report were aware of any efforts to assist Palestinians who lacked identity documents in seeking medical treatment outside Gaza nor were they aware of any specific legal cases in which Palestinians who had illegally entered Gaza were seeking medical treatment abroad. Most advocacy and intervention efforts, primarily undertaken by the ICRC and Physicians for Human Rights – Israel, focus on those individuals who have been “red-lighted” by Israel or “blacklisted” by Egypt on undisclosed security grounds.

As a consequence, those without residency or identity cards may forego necessary medical treatments on the assumption that they would not be permitted to leave Gaza or that they could be prevented from returning. Those who know they would be denied medical transit may refrain from ever applying and, therefore, it is impossible to estimate the number of Palestinians who may be affected. NRC interviewed R.S., a Palestinian woman in Gaza who lacks identity documents, who stated that her child has chronic health problems and needs regular treatments outside the Gaza Strip. While her child has legal residency and has no problem leaving Gaza, Israel will not approve her requests to accompany her child for his medical treatments. Even if her child was approved for medical treatment outside Gaza, she would not be able to go to the hospital with him and would need to find another family member to accompany him.

The refusal to provide official identification documentation to many Palestinians resident in Gaza has a range of human rights and humanitarian consequences. It constitutes a violation of the right to a legal identity and nationality and engenders a feeling of ongoing insecurity in those affected. It interferes with the right to family life as individuals are prevented from being re-united with their spouses, or visiting children or other relatives outside Gaza for reasons including deaths, marriages and other important familial occasions. It interferes with the right to health care, and possibly the right to life, in denying Palestinians living in Gaza without identification documents access to health care outside Gaza in cases of medical emergency. Fundamentally it interferes with the rights of Palestinians resident in Gaza to travel throughout the oPt for reasons including employment, religious practice or educational opportunities and exercise of their other civil, political, economic, social and cultural rights. Security concerns by Israel can be addressed through individualized assessment of applications, not collective punishment.

³¹² *Ibid.*

9. Potential Interventions

For Palestinians in the Gaza Strip who lack inclusion on the Palestinian Population Registry, and thus legal residency status and formal identity documents, many feel they have exhausted all possible recourse. However, there are a number of avenues in which the diplomatic community, UN agencies, international organisations, and NGOs could intervene.

- **Coordination with Human Rights Organisations** – A first step may be to coordinate with Israeli and Palestinian human rights organisations as well as international NGOs. Based on interviews and consultations with both Palestinian and Israeli human rights organisations in preparing this research, it appears that there has been decreased interest in this issue in recent years, in part because it has become so connected to the political process. Efforts to depoliticise and highlight the larger human rights issues related to citizenship and residency could raise awareness for the circumstances in which many Palestinians in Gaza find themselves.
- **Israeli High Court of Justice Impact Litigation** – Another option may be to pursue impact litigation and principal cases before the Israeli High Court of Justice. This has been effectively accomplished in the past, most notably by HaMoked in 2007. While few cases related to Palestinian identity documentation and residency are ultimately heard on the merits before the High Court, pressure placed on the Israeli government by the litigation and threat of a decision from the High Court has in the past compelled concessions and approvals for family unifications.
- **Advocacy before International and Third Party Stakeholders** – The larger issue of ongoing Israeli control of the Palestinian Population Registry could be raised in discussions and compliance reports before the relevant UN human rights treaty committees, such as the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child. In particular as related to statelessness, the issue of the Population Registry could be addressed before the UNHCR Executive Committee. Likewise, discussions with the Quartet on the Middle East could also be pursued.
- **Renewal of Expired Jordanian Passports and Egyptian RTDs** – Advocacy efforts could also be directed towards Egyptian and Jordanian authorities to try to facilitate the renewal of expired travel documents, particularly on the grounds of humanitarian need and the lack of any adequate alternative documents. Discussions with the Egyptian side could raise the status of the Rafah Crossing between Egypt and the Gaza Strip and procedures for easing the backlog at that border. The 2005 Agreement on Movement and Access had initially envisioned the EU as a third-party independent observer and this could potentially be implemented. It may also be possible to arrange travel and visitations in Egypt for those who lack identity cards, particularly in cases where they have been unable to see their families for more than a decade.
- **Freedom of Information Requests** – To push for greater transparency on the entire family unification and Population Registry process, formal, written requests could be submitted to both the Israeli and Palestinian authorities. The goal should be to have the actual policy and procedures in writing and to provide some level of accountability. Such information could then be publicised and shared to create a public document regarding the policies. These requests could also serve to collect statistics and help identify at-risk groups.
- **Individual Legal Assistance and Client Intake** – Legal assistance could be provided on an individual basis to clients in the Gaza Strip who lack identity documents. Particularly since each case presents such unique circumstances and, even for those without residency, there are distinct legal issues raised in each case, this could provide some means of relief in some, though certainly not all circumstances. It would provide an opportunity to individually assess whether there is any opportunity for assistance under a given set of circumstances. For Palestinians who have never

received any individualised review of their family unification petitions, this could potentially provide an effective remedy in individual cases.

- **Role of Foreign Consular Officials** – Particularly with regard to foreign spouses married to Palestinians living in Gaza, the embassies and consulates for these nationals could place pressure on Israel and help facilitate travel and residency matters. For foreign nationals of Palestinian descent, Israel frequently refuses to grant entry to the oPt on the basis of discriminatory criteria. The difficulty here, however, would be that a foreign embassy may be able to ensure safe passage out of Gaza, but could provide no guarantees that Israel or Egypt would allow the individual to return. This is precisely what happened in the case of A.S., who was told by the Polish embassy in Tel Aviv that they could arrange for her to leave Gaza, but they would be unable to aid her return.³¹³
- **Coordination with the Palestinian Civil Affairs Committee** – Discussions with the Palestinian Civil Affairs Committee could, *inter alia*, focus on issuing “external-use only” Palestinian passports to those within Gaza to enable them to have some proof of their identity and citizenship.
- **Alternative Travel Documents** – Similar to RTDs, which are passport-like booklets issued by State Parties to the 1951 Refugee Convention, countries could issue 1954 Stateless Convention travel documents, formerly known as “Nansen passports”, on the basis that Palestinians without identity documents in the Gaza Strip are, if not *de jure* stateless, then *de facto* stateless at the very least. The ICRC is also able to issue travel documents “to refugees and displaced or stateless persons who, because they lack appropriate documents, are unable to return to their country of origin or cannot go to or stay in the country of choice that is willing to receive them or keep them”.³¹⁴ The criteria for such travel documents is the lack of a valid passport or travel document and inability to obtain one; a receiving country willing to accept the person and which cannot provide its own travel documents; evidence that an entry visa will be issued upon arrival; and evidence that an exit visa or safe passage will be granted.
- **Organisation and Support for Civil Society Committees** – Similar to the Right to Enter/Re-Enter committee formed in the West Bank, organisations could provide support for the informal committees that have formed in the Gaza Strip to address the needs of Gaza residents who lack identity documents. Such a committee could be based on the Interim Agreement, which called for the creation of a Joint Committee to address the issues of the Population Registry.

³¹³ NRC interview with A.S., Gaza Strip, 6 September 2011.

³¹⁴ Canadian Red Cross, *Other Services Provided: Documents*, available at <http://www.redcross.ca/article.asp?id=10198&tid=001> [last accessed 5 December 2011].

10. Conclusion

At its most basic, the Population Registry is intended as merely a statistical tool. The objective should be “to adjust the records appearing in the registry and its copies to correspond with reality, rather than adjusting reality to correspond with the records in the registry.”³¹⁵ Instead, Israel continues to administer the Population Registry and attempts to retain powers that were expressly transferred to the Palestinian side under the Interim Agreement. There are concerns that the Israeli policy with regards to the Population Registry is being utilised “to advance improper demographic objectives....[and] directly restricts the growth of the Palestinian population in the Occupied Territories, both by preventing the entry of spouses and children of residents, and by stimulating emigration from the area.”³¹⁶

It is necessary to move away from intermittent Israeli “political gestures” and quotas that remain subject to changing political dynamics and recognise the underlying legal obligations. The solution is case-by-case individual assessment and determination of each application. Such gestures are frequently in response to pending cases before the Israeli High Court of Justice and are a means for the Court to dismiss the petitions as moot without ruling on the merits. For example, “[i]n more than half of the cases HaMoked filed in the High Court, the state agreed to arrange the non-resident’s status in the Occupied Territories. Fearing that the High Court would rule on the issue and force the state to change its policy, Israel effectively admitted that its refusal was not based on security reasons.”³¹⁷ Moreover, the fact that Israel has been able to approve family unification applications when it chooses to do so completely undermines the Israeli position that the PA is the ultimate decider on such matters. When such gestures are processed, Israel maintains that it is under no legal obligation to do so and approves family unifications applications as an “act of benevolence.”

Even for those who have entered legally and attempted to attain legitimate status through the Israeli-dictated procedures, they still face years of being considered illegally present and potential deportation. As a result of Israeli policies, many in Gaza are essentially stateless – in both *de jure* and *de facto* situations of statelessness. For a population facing soaring unemployment and where the majority are under the age of 16, the lack of opportunities and possibilities for travel are felt more acutely.

Israel has also imposed unilateral changes to the criteria for establishing residency, often done in contradictory fashion and applied retroactively. For example, Israel has denied family unification applications on the basis that a spouse’s “centre of life” was established outside the oPt. Not only has Israel failed to define this criteria, but it has failed to acknowledge that many spouses were required to live for extended periods away from their families and outside the oPt because Israel had stopped approving visitor permits.

Each escalation of violence or political instability has been used as a pretense for denying basic rights to residency to Palestinians in Gaza, without ever specifically identifying a security risk involving those seeking status. Israel considers all those without status or identity cards, for whatever reason, to be remaining illegally in the oPt.

In terms of next steps and potential interventions, the basic human rights of residency and citizenship have become so entrenched as bargaining chips in the political process that there is little room for individual case assistance. A key area of involvement is advocacy efforts and impact litigation before the

³¹⁵ HCJ 4019/10, *HaMoked: Center for the Defence of the Individual et al v. Military Commander of the West Bank*, Petition for Order Nisi, 25 May 2010. para. 66.

³¹⁶ B’Tselem, *Perpetual Limbo*, *supra* note 29, p. 56.

³¹⁷ *Ibid.*, p. 18.

Israeli High Court of Justice. Both international humanitarian law and human rights law require Israel to uphold its obligations as an occupying force in the oPt. Further, Israeli constitutional law recognises a right to family life in terms even stronger than international treaties.

Bearing in mind the limitations on the PA in terms of facilitating access for Palestinians in Gaza to the West Bank, the PA should take appropriate steps to provide all Palestinians with proof of their Palestinian identity, including through the wider issuance of external use passports. Third states must take steps commensurate with their international obligations to prevent discrimination against Palestinians on the basis of their status, or lack of status. This may include facilitating travel or transit within their borders for humanitarian reasons. International organisations have a critical role to play in developing effective measures to guarantee a legal identity as a springboard for the realisation of other basic rights.

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Appendix I: The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Annex III, Article 28

28 September 1995

Annex III Protocol Concerning Civil Affairs

ARTICLE 28 – Population Registry and Documentation

1. 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.
2. The Palestinian side shall maintain and administer a population registry and issue certificates and documents of all types, in accordance with and subject to the provisions of this Agreement. To this end, the Palestinian side shall receive from Israel the population registry for the residents of the West Bank and the Gaza Strip in addition to files and records concerning them, as follows:
 - Notices of births.
 - Old handwritten records of births and deaths and the indexes from 1918 till 1981.
 - Photographs file with all its equipment.
 - All computer devices and equipment with all accessories (screens, printers and communications equipment).
3. A Joint Committee will be established to solve the reissuance of identity cards to those residents who have lost their identity cards.
4. The existing identity card of the present residents, as well as of new residents, shall be substituted by a new identity card with a new I.D. number. Such substituted identity cards shall be issued by the Palestinian side and shall bear its symbols. New identification numbers may be issued by the Palestinian side a year after the signing of this Agreement. The new identification numbers and the numbering system will be transferred to the Israeli side. All titles and values in such identity cards will be in Arabic and Hebrew, and the number of such identity cards will be in Arabic numerals (i.e. 0-9).
5. Possession of the aforementioned identity card, whether it was issued by the military government and its Civil Administration or substituted or issued by the Palestinian side, and any other necessary documents, notification of which will be given to the Palestinian side through the CAC, shall be required for entry into Israel by residents.
6. Safe passage between the Gaza Strip and the West Bank, as provided for in Annex I, shall require the possession of the aforementioned identity card, whether it was issued by the military government and its Civil Administration or substituted or issued by the Palestinian side, and any other necessary documents, notification of which will be given to the Palestinian side through the CAC.
7. Israel recognizes the validity of the Palestinian passports/travel documents issued by the Palestinian side to Palestinian residents of the West Bank and the Gaza Strip in accordance with the Gaza-Jericho Agreement and this Agreement. Such passports/travel documents shall entitle their holders to exit abroad through the passages or through Israeli points of exit.
8. The holder of a VIP Palestinian passport/travel document will pass the international passages free of the fees and will enjoy VIP treatment in the Israeli international exit points.

9. Special VIP certificates may be issued as concluded in the Protocol regarding Arrangements with respect to Passages of October 31, 1994, and in this Agreement.
10. In order to ensure efficient passage procedures and to avoid discrepancies and with a view to enabling Israel to maintain an updated and current registry, the Palestinian side shall provide Israel, on a regular basis through the CAC, with the following information regarding passports/travel documents and identity cards:
 - a. With respect to passports/travel documents: full name, mother's name, ID number, date of birth, place of birth, sex, profession, passport/travel document number and date of issue and a current photograph of the person concerned.
 - b. With respect to identity cards: identity card number, full name, mother's name, date of birth, sex and religion and a current photograph of the person concerned.

The Palestinian side shall inform Israel of every change in its population registry, including, inter alia, any change in the place of residence of any resident.

- k) 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.
- l) The Palestinian side shall have the right to register in the population registry all persons who were born abroad or in the Gaza Strip and West Bank, if under the age of sixteen years and either of their parents is a resident of the Gaza Strip and West Bank.
 - a. Persons from countries not having diplomatic relations with Israel who visit the Gaza Strip and the West Bank shall be required to obtain a special visitor's permit to be issued by the Palestinian side and cleared by Israel. Requests for such permits shall be filed by any relative or acquaintance of the visitor, who is a resident, through the Palestinian side, or by the Palestinian side itself. All titles and values in such permits will be in English.
 - b. Visitors to the Gaza Strip and the West Bank shall be permitted to remain in these areas for a period of up to three months granted by the Palestinian side and cleared by Israel. Such visitors can enter Israel during the validity of their visit permit, without any need for another permit. The Palestinian side may extend this three months period for an additional period of up to four months. The Palestinian side will notify Israel of this extension. Any further extensions require the approval of Israel.

The Palestinian side may, upon clearance by Israel, issue visitors, permits for the purpose of study or work, for a period of one year which may be extended by agreement with Israel. In any event, the duration of such visitors, permits shall not exceed the period of validity of the said visitors, passports or travel documents. The Palestinian side may grant permanent residency to the employees upon agreement with Israel.
- m) Persons from countries having diplomatic relations with Israel who visit the Gaza Strip and the West Bank shall either be required to obtain the aforementioned visitor's permit or to hold a valid passport and an Israeli visa, when required. Such visitors can enter Israel during the validity of their visit permit, without any need for another permit.
- n) The Palestinian side shall ensure that visitors referred to above shall not overstay the duration of their entry permit and authorized extensions.

- o) The Palestinian side shall use, in the West Bank and the Gaza Strip, Palestinian revenue stamps and shall determine their required fees.
- p) The CAC will establish a subcommittee to supervise the implementation of this Article.

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