At the Supreme Court **HCJ 2797 /11**
Sitting as the High Court of Justice

In the matter of:

1. **____ Qarae'en, ID ____**
2. **HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger**
3. **The Association for Civil Rights in Israel**

all represented by counsel, Leora Bechor (Lic. No. 50217) and/or Noa Diamond (Lic. No. 54665) and/or Elad Cahana (Lic. No. 49009) and/or Att. Ido Blum (Lic. No. 44538), and/or Hava Matras-Irron (Lic. No. 35174) and or Sigi Ben Ari (Lic. No. 37566) and/or Daniel Shenhar (Lic. No. 41065) and/or Nimrod Avigal (Lic. No. 51583)
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Tel: 03-5608185; Fax: 03-5608165

The Petitioners

v.

1. **Minister of the Interior**

Represented by the State Attorney's Office
Ministry of Justice, Jerusalem

The Respondent

Petition for Order Nisi

The honorable court is requested to issue an *order nisi* directed at the respondent ordering him to appear and show cause

1. Why he will not determine that the permanent residency permits held by residents of East Jerusalem cannot be revoked due to prolonged residency abroad or the acquisition of status in a different country.

2. Why the Entry into Israel Regulations 5734-1974 will not be amended to stipulated that a visa and permit for permanent residency granted following the annexation of a territory to the State of Israel under Section 11(b) of the Law and Administration Ordinance, 5708-1948 will not be revoked.

Introduction

1. This petition concerns the demand to desist from the policy of revoking the residency permits of residents of East Jerusalem under Sections 11(c) and 11a of the Entry into Israel Regulations 5734-1974 and pursuant to the Interior Ministry's interpretation of the rule laid out in the **'Awad** case (HCJ 282/88 **'Awad v. Prime Minister and the Minister of the Interior**, IsrSC 42(2) 424 (1988)). The petition focuses on East Jerusalem and its Palestinian residents, but it shall be noted at the outset that all that is stated therein holds true and is relevant also for the Syrian residents of the Golan Heights. These are two areas which were annexed to Israel and their residents were forced to become permanent residents of Israel.

2. The **'Awad** rule, according to its language and purpose, was designed to "reflect the reality of life". Since it was delivered in 1988 and up to the present day, not only has not reflected realty of life but, under the interpretation of the Ministry of the Interior, has turned into a brutal and destructive bureaucratic-administrative tool for changing the reality of life. Over the past twenty years, the interpretation given by the Interior Ministry to the **'Awad** rule has become an instrument for revoking the status of **thousands** and for "dwindling" the Palestinian population of East Jerusalem. This policy is integral to the general policy of abuse of this population which is designed to push Jerusalem's Palestinian residents out of the city and attain a Jewish majority therein.

3. In the years that have passed since the **'Awad** judgment, it has become clear that those who paid the price for the technical implementation of the rule fare the people for whom East Jerusalem was a home to which to return. The manner by which the **'Awad** rule is implemented by the Interior Ministry has placed East Jerusalem resident between a rock and a hard place: their right to leave their homes for a limited time for the purpose of self realization, obtaining an education or a livelihood and participation in the life of modern society was pitted against their right to a home and a homeland. The **'Awad** rule has become a legal cage that imprisons residents of East Jerusalem, precludes them from being mobile like everyone else, and confines them to the narrow and forsaken space where they were born. The punishment for leaving the city for a limited time, even for the purpose of obtaining an education and employment (which are unavailable to the residents in their hometown), as well as the acquisition of status in other countries, means the loss of one's home and one's possibility to return to the homeland. This policy has a particularly grave effect on women residents of Jerusalem.

4. Indeed, since the **'Awad** rule was delivered and up to the present day, this honorable court has not examined the grave **repercussions** of the respondent's interpretation of the **'Awad** rule. The

honorable court has not examined the abstract analysis of the judgment in the **'Awad** case against the backdrop of the practical world and the norms which apply to East Jerusalem. It has not adjusted it to the reality of life and has not prevented the grave ramifications stemming from the manner in which the rule is interpreted by the respondent.

5. With respect to reality of life, it appears that the respondent interpreted the **'Awad** rule very broadly and used it to revoke the status of thousands of East Jerusalem residents. These harsh ramifications have yet to be reviewed. The **normative aspects** relating to East Jerusalem and its residents have not been reviewed in depth either. Thus far, the provisions of international law – international human rights law and international humanitarian law, according to which East Jerusalem residents are not just "residents of Israel" but also "protected persons" who are entitled to continue living in the territory have not been examined. The provisions of international human rights law whereby every person is entitled to return to his or her homeland have also not been reviewed. These provisions of international law must be interpreted in conjunction with the changes that occurred in domestic Israeli law over the past twenty years with respect to East Jerusalem and which apply following political treaties signed by Israel. All these shed light on the special status of East Jerusalem residents. Even if the status of East Jerusalem residents stems from the Entry into Israel Law 5712-1952 (hereinafter: the **Entry into Israel Law**), as held in the **'Awad** case, indeed, their status is unlike that of any other resident, certainly not immigrants who came to Israel. Their special circumstances as individuals whose parents (or they themselves) lived in East Jerusalem prior to its annexation by Israel affects the law that applies to them.

The petitioners and communications with the respondent

6. Petitioner 1 (hereinafter: the **petitioner**) was born in 1985 and is a resident of Silwan in East Jerusalem. The petitioner's parents received permanent residency permits following the annexation of East Jerusalem and thus he received status upon his birth. The reality described in the petition is the petitioner's reality of life. The legal regime imposed by the respondent is the regime governing his life. The petitioner must conduct himself knowing that any choice which means remaining outside his city for a protracted period of time be it for residential or familial reasons or for the purpose of studying or working involves a punishment – the loss of status and with it the loss of the possibility to return to his family, home, city and homeland. This petition is not hypothetical. It is the petition of a man who seeks to break the walls of the legal ghetto imposed upon him by the respondent. This is the petition of a man who wishes to have a full life, like any other human being in the early 21st century, without having the natural course of modern life cost an unbearable price.

7. Petitioner 2, HaMoked: Center for the Defence of the Individual, founded by Dr. Lotte Salzberger (hereinafter: **HaMoked**, or **HaMoked: Center for the Defence of the Individual**) is a registered non-profit organization which takes action to promote human rights in the Gaza Strip and West Bank, including East Jerusalem. HaMoked assists East Jerusalem residents battle a range of human rights violations relating to their civil status and right to family life.

8. Petitioner 3, the Association for Civil Rights in Israel (hereinafter: **ACRI**) is the largest and oldest human rights organization in Israel. Its goal is to defend the entire array of human rights in Israel, the Occupied Territories and anywhere human rights are violated by Israeli authorities. Amongst others, ACRI takes action to protect human rights in aspects relating to citizenship and residency in Israel.

9. HaMoked and ACRI often serve as petitioners "in various matters bearing general public importance and relating to the rule of law in the broad sense of the term and to matters of a constitutional nature". (HCJ 651/03 **The Association for Civil Rights in Israel v. Chairman of the Elections Committee for the Sixteenth Knesset** IsrSC 57(2) 62, 69 (2003); HCJ 9733/03 **HaMoked: Center for the Defence of the Individual v. State of Israel**). They often conduct joint proceedings and are jointly heard in matters which include questions of principle.

10. HaMoked and ACRI have asked to join proceedings as amicus curiae in two appeals before this honorable court in matters of residency revocation in East Jerusalem and they make their detailed arguments in this petition: Adm.Pet 2392/08 **Siaj v. Minister of the Interior** and Adm.Pet.5037/08 **Khalil v. Minister of the Interior**. The **Siaj** case, which began as a case of residency revocation, took the course of family unification on December 24, 2008, and hence the arguments were not reviewed. The **Khalil** case was reviewed on February 1, 2010. The respondent agreed to examine the appellant's request on humanitarian grounds. Again, HaMoked's and ACRI's arguments were not reviewed. In the hearing, the honorable court (Honorable Justices Procaccia, Naor and Rubinstein) thought that HaMoked and ACRI must make their case with respect to the policy and the regulations before the respondent and inasmuch as they remain unsatisfied by his response, they should bring the case before the court in a focused petition on the issue.

11. Against this backdrop, HaMoked and ACRI contacted the respondent and the deputy attorney general on March 3, 2010 and presented their arguments in detail. The letter received no response. On April 25, 2010 and on October 14, 2010, HaMoked and ACRI sent reminders. These also remained unanswered.

    A copy of the letter dated March 3, 2010 is attached and marked **P/1**.
    A copy of the reminder dated, April 25, 2010 is attached and marked **P/2**.
    A copy of the reminder dated, October 14, 2010 is attached and marked **P/3**.

    Hence the petition.

The Arguments in Detail

Introduction

12. Two decades ago, the Supreme Court laid the foundation with respect to the status of East Jerusalem residents. It was in the **'Awad** case. The **'Awad** judgment was given in the context of a unique and singular factual background, both with respect to the facts relating to the nature of the petitioner's emigration in that case and to his activities during the first intifada. The judgment set out a number of rules relating to the legal nature of residency status in East Jerusalem and the criteria for revoking residency.

    Twenty years on, the abstract analysis of the **'Awad** judgment must be examined in the context of the practical world and the reality of life. Furthermore, the findings made in the **'Awad** case must be examined in the context of other norms in the legal world, particularly those applicable to East Jerusalem.

    With respect to the reality of life, it has become apparent that the respondent has given the **'Awad** rule the broadest interpretation and has turned an instrument for revoking the status of **thousands** and for "dwindling" the Palestinian population of East Jerusalem. This policy is integral to the general policy of abuse of these residents. With respect to the law, this matter falls under the

provisions of international law – international human rights law and international humanitarian law – according to which East Jerusalem residents are not merely "Israeli residents" (as set forth under domestic Israeli law) but are also "protected persons" who are entitled to continue living in the territory. It is also a norm of international human rights law that every person has a right to return to his or her country. These provisions should be interpreted in conjunction with the changes that occurred in domestic Israeli law over the past twenty years with respect to East Jerusalem and which apply following political treaties signed by Israel. All these shed light on the special status of East Jerusalem residents. Even if the status of East Jerusalem residents is pursuant to the Entry into Israel Law, as held in the **'Awad** case, indeed, their status is unlike that of any other resident, certainly not immigrants who came to Israel. Their special circumstances as individuals whose mothers and fathers lived in East Jerusalem prior to its annexation by Israel, affects the law that applies to them.

The honorable court, which referred to the **'Awad** rule over the years, has yet to address these questions and left them for future review. In the **Dari** case, in which the court repeated the rule, the following remark was made before concluding:

> This conclusion does not necessarily bring an end to the argument that a distinction must be made between a person who received permanent residency status by virtue of being born in Israel (or a territory which became a part of Israel) and was raised therein and a person who obtained permanent residency status subsequent to immigrating to Israel. The transference of the center of one's life can be deduced from the entirety of ties and connections, none of which constitutes an exhaustive test on its own. The distinction between a situation in which a resident of Israel has some ties to a different country and a situation in which these ties have reached the level of severing the tie of residency with Israel is not always simple (see in a different context, CrimA 3025/00 **Haroush v. State of Israel**, IsrSc 54 (5) 111, 124). In the context of the consideration and balance between the different particulars and ties, the question of the basis for the permanent residency permit may have weight. In any case, this question need not be answered in our matter and I shall therefore leave it for future review. (AdmA 5829/05 **Dari v. Ministry of the Interior** (judgment September 20, 2007)).

Against this backdrop we shall turn to the matter in order.

The judgment in the 'Awad case

13. The background for the petition and judgment in the **'Awad** case is the decision of the Prime Minister's and Interior Minister's decision of May 1988 to deport the petitioner, Mubarak 'Awad, from Israel.

'Awad was a resident of East Jerusalem. After the occupation of the West Bank and the annexation of East Jerusalem, 'Awad was enumerated in the census and received an Israeli identity card. In 1970 he travelled to the USA, where he studied and acquired citizenship. 'Awad returned to Israel on a number of occasions over the course of the years. After acquiring American citizenship he entered Israel on his American passport. In 1987, when he contacted the Ministry of the Interior

requesting to change the identity card in his possession, he was informed that his residency had expired. His residency permit was not extended. In May 1988, during the early days of the first intifada, a deportation order was issued against him. The reason for the deportation order was detailed in the judgment, and it therefore merits citing:

> …during the time he spent in Israel, and particularly recently, while, according to the Minister of the Interior, illegally present in Israel, the petitioner has been openly and intensively engaged in activism against Israeli control of the Judea, Samaria and Gaza Areas... In 1983, the petitioner published a book in Arabic and English entitled Non-Violent Resistance: A Strategy for the Occupied Territories. In January 1985, the petitioner established an institution, which he heads, in Jerusalem: The Institution for the Study of Non Violence. There are different versions as to the essence and worldview of the institution. The petitioner claims that he opposes Israel's control of the "held territories" but calls for action against it only by non-violent means. The petitioner noted methods of non-violent struggle such as a boycott of products, refusal to work in Israeli workplaces, refusal to pay taxes or fill out forms, yet, all these acts of resistance are to be carried out, according to the petitioner's worldview, on one condition: no act of physical violence is to be committed. The petitioner espouses the sovereign existence of the State of Israel along with the sovereign existence of a political entity for the Palestinians and the two states, according to his doctrine and opinions will live in peace and acceptance. The petitioner went so far as saying, on Israeli television (in early April) that: One has to arrive at full reconciliation, including negotiations with the refugees regarding compensation for their abandoned property and to turn over a new leaf in the relationship between the Jewish people and the Palestinian people.
> The petitioner believes he is one of the moderates among Palestinian leaders. According to his principles, "violent reactions such as stone and Molotov cocktail throwing, which presently occur in the 'held territories' should be rejected and more violent actions all the more so." Conversely, "Yossi" who works for the Israel Security Agency's counter terrorism and insurgency division in the areas of Jerusalem, Judea and Samaria and whose affidavit was attached to the respondent's response notes that "the alleged moderate image the petitioner attempts to create for himself is no more than a facade which does not correspond to his real ambitions." According to "Yossi", the petitioner's political goal is "the liberation of the Areas from Israeli rule and thereafter the establishment of a bi-national Palestinian Israeli state which is to have a Palestinian character." According to "Yossi"'s version, the petitioner preaches for civil disobedience and calls and preaches for, *inter alia*, a boycott of Israeli products and services, refusal to pay taxes, organized abandonment of workplaces in Israel, non-carrying of identity cards, boycott of collaborators and other such actions. Initially, the petitioner's actions did not reverberate among the Arab public. Ever since the beginning of the uprising in the Areas in December 1987, his ideas began to be expressed in public announcements issued by the uprising

> headquarters and as a result, in real actions taken by residents of the Area on the ground. These actions are, *inter alia*, laborers from the Areas refraining from going to work in Israel, non-payment of taxes, resignation of police officers, attacks on collaborators, calls for the resignation of mayors and more. "Yossi" notes that "the petitioner himself took part in the publication of announcements which included, *inter alia*, a call for violent and hostile actions against the state on the part of residents of the Area." In "Yossi"'s opinion, the petitioner's actions these very days constitute a substantive breach of security and public order and his ideas and goals have an immediate effect on events in the Areas. The petitioner's continued presence in Israel constitutes a substantive breach of security and public order." This opinion by "Yossi" guided the respondent when ordering the petitioner's deportation from Israel (**'Awad**, 427-428).

14. We recall once more: this was back in the days of the first intifada, a time that predated the Oslo Accords and predated the establishment of the Palestinian Authority. This was a time when Israel had yet to recognize the right of the Palestinian people in the West Bank and the Gaza Strip to govern itself (as stated in Oslo Accords A and B). We shall examine the Interior Minister's decision in the **'Awad** case against the background of this reality.

15. In its judgment the court addressed three questions:

> [F]irst, whether the Entry into Israel Law applies to the petitioner's permanent residency in Israel; second, whether the Minister of the Interior is empowered to deport the petitioner pursuant to the Entry into Israel Law, if the same applies; third, whether the power to deport was lawfully exercised (*ibid.* 429).

16. As to the first question, the court responded that the annexation of East Jerusalem created "synchronicity… between the state's law, jurisdiction and administration and Jerusalem and those who dwell therein". (*Ibid.* 429). In order to "validate this purpose" and to anchor it "as much as possible" in the language of the Law (*Ibid.* 430), the court accepted the state's claim that East Jerusalem falls under the provisions of section 1(b) of the Entry into Israel Law that states:

> The residency in Israel of a person who is not a citizen of Israel or a holder of an oleh visa or an oleh certificate shall be by a residency permit under this Law.

In this context the court held:

> Such anchoring raises no difficulty, since the residents of East Jerusalem can be viewed as having been granted a permit for permanent residency. True, ordinarily, the permit is granted in an official document, but this is not imperative. The permit may be granted without an official document and the granting of the permit can be implied by the circumstances of the matter. Indeed, pursuant to this recognition of East Jerusalem residents who were enumerated in the census held in 1967 as persons lawfully residing therein

> permanently, they were entered in the population registry and given identity cards. (Ibid. 430)

17. The court dismissed the petitioner's argument that his status in Jerusalem was a "quasi citizenship", noting that:

> As known, for reasons relating to the interests of the residents of East Jerusalem, they were not granted citizenship without their consent and each was given the possibility to apply and receive Israeli citizenship according to his own wishes. Some applied and received Israeli citizenship. The petitioner, and many like him, did not. Since they refrained from obtaining Israeli citizenship, it is difficult to accept their claim regarding "quasi citizenship" which bears only rights and no duties... In this context, counsel for the petitioner claimed that applying the Entry into Israel Law to the permanent residency of the residents of East Jerusalem is inconceivable as this means that the Minister of the Interior could, with a single breath, deport all the residents of East Jerusalem by way of revoking their permanent residency permit. This claim does not hold. The revocation power held by the Minister does not turn permanent residency into residency by grace. Permanent residency is by law and only proper considerations may give rise to the exercise of the powers of the Minister of the Interior. It is superfluous to note that the exercise of this power, is, in practice, subject to judicial review. (Ibid. 430-431).

18. After declaring the above, the court proceeded to determine whether the Minister of the Interior was authorized to deport 'Awad from Israel. The court ruled that the Minister was authorized to deport 'Awad because his permanent residency permit had expired:

> The Entry into Israel Law does not stipulate any express provision that a permanent residency permit expires if the holder leaves Israel and settles in a country other than Israel. Provisions on this issue may be found in the Entry into Israel Regulations (hereinafter: the entry regulations), enacted pursuant to the Entry into Israel Law. Regulation 11(c) of the entry regulations stipulates that "the validity of the permanent residency permit expires if the holder leaves Israel and settles in a country other than Israel." Regulation 11a stipulates:
>
> '…a person shall be considered as having settled in a country other than Israel if one of the following applies:
>
> (1) He remained outside Israel for a period of at least seven years…;
> (2) He received a permit for permanent residency in that country;
> (3) He received the citizenship of that country by way of naturalization."
>
> There is no doubt that the appellant comes under the terms of regulation 11a of the entry regulations as he meets each of the three conditions stipulated

therein – conditions, any one of which would suffice to invalidate the permanent residency permit…

The Entry into Israel Law expressly empowers the Minister of the Interior to "prescribe, in a visa or permit of residence, conditions upon the fulfillment of which the validity of such visa or permit shall depend" (Sec. 6(2)). Such "terminating" conditions may be of an individual nature or a general nature. Regulations 11(c) and 11a must be considered as stipulating terminating conditions of a general nature…

I am of the opinion that one can also reach a conclusion regarding the expiration of the permanent residency permit without the regulations and pursuant to an interpretation of the Entry into Israel Law. As stated, the Entry into Israel Law empowers the Minister of the Interior to grant a residency permit. This permit may be for the period of time enumerated therein (up to five days, up to three months, up to three years) and it may be for permanent residency.

Obviously, a permit for a set period of time expires "of itself" once the period ends and there is no need for an "external" act of revocation. Can a permit for permanent residency expire "of itself" without an act of revocation by the Minister of the Interior? I believe the answer to this is affirmative. A permit for permanent residency, when granted, is based on a reality of permanent residency. Once this reality no longer exists, the permit expires of itself. Indeed, a permit for permanent residency – as opposed to the act of naturalization – is a hybrid. On one hand, it has a constituting nature, creating the right to permanent residency; on the other hand, it is of a declarative nature, expressing the reality of permanent residency. Once this reality disappears, the permit no longer has anything to which to attach, and is, therefore, revoked of itself, without any need for a formal act of revocation (compare HCJ 81/62 **Golan v. Minister of the Interior** IsrSC 16 1969). Indeed "permanent residency", in essence, is a reality of life. The permit, once given, serves to provide legal validity to this reality. Yet, once the reality is gone, the permit no longer has any significance and it is therefore revoked of itself. (*Ibid.* 431-433).

19. How did 'Awad's residency permit expire? The court answers:

[A] person who left the country for a long period of time (in our case, since 1970), acquired permanent residency status in a different country… and even acquired, in that country, of his own will, citizenship whilst taking all the necessary actions in the USA for the purpose of acquiring American citizenship – is no longer a permanent resident in the country. This new reality reveals that the petitioner uprooted himself from the country and rooted himself in the USA. His center of life is no longer the country but the USA. It is superfluous to note that it is often difficult to point to a specific

> point in time at which a person ceased from permanently residing in the country and that there is certainly a span of time in which a person's center of life seemingly hovers between his previous place of residence and his new place of residence. This is not the case at hand. In his behavior, the petitioner demonstrated his wish to severe his tie of permanent residency with the country and create a new and strong tie – permanent residency initially and citizenship ultimately – with the USA. True, it may be that the motivation for this wish was obtaining certain advantages in the USA. It may be that in his heart of hearts he aspired to return to the country. Yet, the decisive test is reality of life as it transpires in practice. According to this test, the petitioner transferred his center of life to the USA at some point, and he is no longer to be considered as permanently residing in Israel (*Ibid.* 433).

20. On the basis of these findings the court ruled that the deportation power was lawfully exercised:

> As we have seen, the foundation for the respondent's discretion is the recognition that the petitioner's actions disrupt public order and safety, as he openly and intensively engages in activism against Israel's control of Judea, Samaria and the Gaza Strip.
> We need not resolve the factual differences between the parties regarding this issue, as, even according to the appellant's own version, he acts against Israel's control of Judea, Samaria and the Gaza Strip. We see no unlawfulness in the position of the Minister of the Interior according to which a person who is not an Israeli citizen, is illegally present therein and is acting against state interests – should be deported from Israel. (Ibid. 434).

21. As we shall demonstrate, over the years, the respondent extracted an abstract, mathematic-like formula from the **'Awad** judgment. Rather than having case law develop whilst taking changing times and the test of practicality into consideration, it was reduced to a rigid calculation to be followed no matter the circumstances. The judgment, which is merely an attempt to anchor law in reality, was turned into an instrument for changing reality of life in East Jerusalem.

The authorities' alienation of East Jerusalem residents

22. The law that the respondent deduced from the 'Awad case resulted in consequences that are too harsh to bear. The implementation of the 'Awad case turned into yet another facet of a transparent policy by Israeli governments through the years, which is primarily concerned with attaining a Jewish majority in Jerusalem and pushing the Palestinian residents of the city out. In order to reach this goal, Israel has, for years, implemented both a policy of denying citizenship rights to residents of East Jerusalem (for example by imposing many restrictions on the family unification process and on child registration, and also – as in the issue addressed in this petition – revocation of the residency status of the city's residents) and a policy of deliberate discrimination in various areas. Thus, residents of East Jerusalem are discriminated against in anything related to building and planning policy, land expropriation policy, investment in physical infrastructure and in government and municipal services that are provided to them. Indeed, the policy which the respondent derives from the **'Awad** rule does not exist in a vacuum. For this reason, before turning to the consequences

of the implementation of the **'Awad** rule, as the respondent interprets it, we request that we may preface our presentation by illustrating the reality in which these matters take place – a reality that has made life for East Jerusalem residents intolerable and has pushed them out of city.

23. According to the law in Israel, permanent residents are eligible to benefit from almost every right that is granted to citizens. The official array of rights granted to permanent residents is similar to that of citizens, and differ only in a limited number of fields. Thus, for example, permanent residents cannot elect or be elected to the Knesset (Sections 5 and 6 of the Basic Law: The Knesset). And they are not eligible to receive an Israeli passport (Section 2 of the Passports law 5712-1952). However, this notwithstanding, the official array of rights accorded to these residents is similar to that of citizens. Residency permits granted to Palestinian residents have formalized (at least by law) their eligibility to work in Israel, to receive emergency services and socio-economic resources. They have granted these residents identifying documents (Section 24 of the Population Registry Law, 5725-1965), social rights (National Insurance pensions are paid according to the National Insurance Law [amended version] 5755-1995, to individuals who are residents of Israel. The State Health Insurance Law, 5754-1994 applies to anyone who is regarded a resident of Israel in accordance with the National Insurance Law), etc.

24. Despite the provisions of Israeli law, which in many spheres and for all practical purposes equates the array of rights of East Jerusalem residents with that of Israeli citizens, there is a gaping chasm between the Jewish neighborhoods and the Palestinian neighborhoods of East Jerusalem, and in practice, government policy is biased against East Jerusalem and against its Palestinian residents using deliberate and systematic discrimination. This is the case when it comes to planning and construction; to the shameful standard of government and municipal services, to which they are entitled, and so too to the matter of the status of residents and the protection thereof.

25. It is no secret that East Jerusalem is one of the poorest and most neglected amongst the locales to which Israeli law applies. Over many years, state authorities have avoided investing in and developing East Jerusalem. As a result thereof, the population has suffered poverty and dire need, serious deficiencies in the provision of public services, dilapidated infrastructure and harsh living conditions. The Jerusalem municipality has consistently avoided massive and serious investment in the infrastructure and services provided to the Palestinian neighborhoods in Jerusalem, including roads, pedestrian sidewalks, and water and sewage systems. Since the annexation of East Jerusalem, the municipality has built almost no new schools, public buildings or clinics, and most of the investment has been in the Jewish areas of the city. Below we shall cite a number of data, which demonstrate the gravity of the situation. (for further details regarding the data presented hereinafter see: Human Rights in East Jerusalem: Facts and Figures, ACRI, May 2010, http://www.acri.org.il/he/wp-content/uploads/2011/03/eastjer2010.pdf [in Hebrew])

26. At the end of 2009, the Palestinian population of East Jerusalem was assessed at 303,429,which is 36% of the city's population which numbers 835,450.

27. Jerusalem is the poorest city in Israel, and **the poverty rate in East Jerusalem** is higher than the poverty rate in the rest of the city. According to the figures of the National Insurance Institute, ("Poverty Indexes and Social Gaps, 2009" (National Insurance Institute, November 2010)), the rate of poor Palestinian residents of Jerusalem stands at 75.3%. The rate of poor Jewish residents, on the other hand, is 29.2%. The rate of poor Palestinian families is 71.2% as opposed to 22.7% of Jewish

families. 83.1% of Palestinian children in Jerusalem – the vast majority – are poor. The rate of poor Jewish children is 42.4%.

28. **East Jerusalem experiences overcrowding and harsh living conditions**. Since 1967, whilst wide ranging construction takes place and huge investments are made in Jewish neighborhoods, construction designated for the Arab population in Jerusalem has been stifled. The Jerusalem municipality has refused for years to prepare future zoning plans for Palestinian neighborhoods in East Jerusalem. Currently, despite the fact that most the plans have been completed, few are in the stages of preparation and approval. Even amongst the plans that were approved until the beginning of the millennium, only 11% of the area of East Jerusalem is in fact available for construction. Wide areas have been designated as "village landscape open areas", where building is prohibited. Information provided by the Jerusalem Institute indicates that the population density in East Jerusalem in 2008 was almost double that of the western part of the city and stood at 1.9 individuals per room, as opposed to 1 per room in the west. According to assessments by Bimkom – Planners for Planning Rights, currently, there is a shortage of 10,000 residential units for the Palestinian population living in East Jerusalem. The shortage is expected to increase by some 1,500 residential units annually corresponding to population growth and cycles of youths reaching matrimonial age. On the other hand, the scope of house demolitions in East Jerusalem is unprecedented. In 2008, the Jerusalem municipality demolished 85 buildings in East Jerusalem, compared to 36 in the west of the city. In 2009, 80 buildings were demolished in East Jerusalem as opposed to 57 in the west. Between January and May 2009, 1,052 administrative and judicial demolition orders were issued against apartments and buildings in East Jerusalem. In 2010, 22 residential units were demolished in East Jerusalem.

29. The discrimination in the field of **welfare** is expressed, among other things in the human resources designated for providing services to residents of East Jerusalem. Despite the fact that these residents constitute a third of the Jerusalem population, only 15% of all positions in the welfare apparatus in the city provide services to this population. In addition, the number of welfare offices in East Jerusalem is low in comparison to other parts of the city (3 as opposed to 20). This fact encumbers adequate distribution of welfare services and reduces access to them, such that many of those who need the services do not obtain them. As a result thereof, social workers' caseload is unbearable. Indeed, though 65.1% of the residents of East Jerusalem live under the poverty line, only 10.3% of East Jerusalem residents are serviced by welfare. As of late 2009, a social worker in a west Jerusalem office has a caseload of 101 families, whereas each social worker in the East Jerusalem offices handles a caseload of 141 families, on average.

30. Another example is the discrimination and neglect in the field of **education**. Due to a serious shortage of classrooms, there are some schools in which teaching takes place in shifts. Other schools are run in overcrowded residential buildings. In some of the schools there are no computers, no library, no laboratories, no gymnasium, and even no teachers' staff room. Approximately 90% of the 15,000 children aged 3 and 4 do not attend kindergarten (in practice, only 55 children attend municipal kindergartens, about 1900 attend private care, and the remainder do not attend any facility). Some 12,000 school-aged children are not enrolled in any educational facility.

31. The Compulsory Education Law 5709-1949 applies to every school-aged child who lives in Israel, irrespective of his status in the populations registry of the Ministry of the Interior (Ministry of Education, Circular of Director General 5760/10 (a): The Application of the Education Law on

Children of Foreign Workers, dated June 1, 2000). In other words, the Law does not distinguish between children who have citizenship status and those who have permanent residency status or any other status, and states that compulsory free education applies to every child or youth aged 5-16. Despite this, and despite a HCJ ruling that held that school-aged children in East Jerusalem should be allowed to be enroll for regular studies, as stated in the Compulsory Education Law (HCJ 3834/01 **Hamdan v. Jerusalem Municipality** and HCJ 5185/01 **Baria v. Jerusalem Municipality** (partial judgment dated August 29, 2001)) the right of thousands of Palestinian children in East Jerusalem to education is currently implemented only partially, and the education system in the eastern part of the city suffers from serious problems, which require immediate and special handling. At the center of the problems in this field is the problem of a **serious shortage of classrooms** (see HCJ 5378/08 **AbuLabda v. Minister of Education** (judgment, February 6, 2011)(hereinafter: the **Abu Labda** case)). The state comptroller's inquiry revealed that in the 2007-2008 school year, there was a shortage of 1,000 classrooms in East Jerusalem. It is anticipated that by the year 2011, the shortage will stand at 1,500 classrooms. The result is that every year many children who wish to study in schools in East Jerusalem are rejected and the dropout rate in the secondary education system stands at around 50% of all Palestinian students as opposed to 7.4% among Jewish students. To compare, the highest dropout rate in Israel – in Jisr A-Zarqa – stands at 11.8%. The rate of students eligible for a matriculation diploma is also at the bottom of the national list.

32. **Much of the infrastructure in East Jerusalem is in a dire state and suffers from many deficiencies, including the water and sewage infrastructure as well as the road infrastructure**. East Jerusalem also suffers from serious **sanitation problems**. In 2008, the state comptroller found that the municipality's handling of sanitation in East Jerusalem has been persistently derelict. The municipality does not provide waste removal services in many of East Jerusalem's streets and the service provided to those that do is partial and deficient. The **planning and building division** suffers from constant budgetary constraints, which have created a huge gap between the needs of the population and the solutions provided thereto. Research carried out by B'Tselem revealed that in the 1999 Jerusalem Municipality Development Budget less than 10% was earmarked for Palestinian neighborhoods, despite the fact that the residents of those neighborhoods constitute approximately a third of the residents of the city. As a result of this lack of investment, the state of East Jerusalem's infrastructure is grave. Thus for example, entire Palestinian neighborhoods are not connected to the sewage system. Based on data collected by Hagihon, Jerusalem Water and Waste Water Works Corporation, it is estimated that over half the population, some 160,000 residents, does not receive legal water supply. According to Hagihon's official estimate, there is a shortage of 50 kilometers of sewage lines in East Jerusalem.

33. There are also **serious deficiencies in the provision of a wide range of public services, such as employment and postal services**. Thus, for example 8 post offices serve a population of 300,000, as opposed to 42 post offices serving the 500,000 people in the west of the city.

34. The continued neglect and discrimination in budgets and services on the part of the authorities has brought about a situation of deep poverty and systemic problems in many fields. The ramifications of this situation may also be seen in the long list of severe social ailments which include: harm to the family system; a rise in the level of violence inside the family; increased dysfunction among children in the family which is expressed in the 50% high school dropout rate and subsequent entry

into the “black” market workforce at a young age; turning to crime and drugs; health and nutritional problems, and more.

35. In all of these instances the state did not merely violate its basic obligations towards its residents. It labeled residents of Jerusalem unwanted in their own country. One of the reasons behind the systemic neglect of East Jerusalem is an aspiration that the city’s residents would seek their future outside it, which in turn will serve the official goal of maintaining a demographic balance in the city. Indeed many found accommodation solutions on the outskirts of the city, instead of the overcrowded and crime-ridden neighborhoods located within the area to which Israeli law has been applied, or have left to seek their livelihood and higher education abroad.

The alienation in the field of the population administration services

36. The treatment of East Jerusalem residents as foreigners whose status can be routinely revoked is added to the above. The State of Israel established a special Interior Ministry office for East Jerusalem residents. This is the only city in the country in which there are two population administration offices. “East Jerusalem” includes neighborhoods in the north, east and south of the city. Jewish residents who live in the area that was annexed by Israel receive their services from the population administration office in central Jerusalem. Only Palestinian residents of East Jerusalem – from the north, east and south – are referred to the East Jerusalem office. This inaccessible office has become notorious for its inferior and insufferable service, that flouts the basic precepts of good governance (see HCJ 2783/03 **Jabra v. Minister of the Interior**, IsrSC 58(2) 437 (2003); Adm. Pet. (Jerusalem) 754/04 **Badawi v. Director of the District Office of the Population Administration**, (judgment dated October 10, 2004)).

37. The caseload at the East Jerusalem Population Administration Office is enormous, and processing applications takes many months and in many cases, many years. Residents are forced to wait in a long queue (despite the office having been transferred to a new residence) and often even those who are able to enter the office are turned away without receiving any service. For basic services such as arranging status for the children fees amounting to hundreds of shekels are collected, and the applicants are required to produce countless documentation. Many of those applying for service are forced to seek the assistance of an attorney, and many have no choice but to take legal action in order to receive their requests.

38. East Jerusalem residents are forced to prove their residency in the city to the Ministry of the Interior and to the National Health Institute time and again. The latter conduct investigations and inspections, the entire purpose of which is to revoke their residency due to residency outside the demarcated areas in which “the law, jurisdiction, and administration of the state” apply, and to take away their status. The revocation of status takes place, not infrequently, in an arbitrary fashion, without granting the right of a hearing, and is discovered only *ex post facto*, in the process of filing an application to receive services.

    All of this is a direct result of the respondent's interpretation of the judgment in the **‘Awad** case. Below we will expand on this issue.

East Jerusalem residents as the rest of the residents of the Occupied Territories: The open bridges policy

39. Over the course of the few decades following the annexation of East Jerusalem, Israel made sure to apply the same arrangements to both East Jerusalem residents and the rest of the residents of the West Bank with respect to their departure abroad, their return to Israel and the West bank and their civilian status upon their return. The foundation for these arrangements was the "open bridges policy" which the Government of Israel implemented beginning in 1967. The "open bridges policy" was designed to encourage the free passage of East Jerusalem residents and residents of the Occupied Territories via the Jordanian bridge border crossings, subject to security considerations. This policy recognized that residents of East Jerusalem and the Occupied Territories need to remain in Jordan and other Arab countries, not only for temporary or short term purposes, such as visits or business trips, but also for needs which require continuous presence and residency abroad, including for the purpose of studies, work, and family ties.

40. The departure of these residents was conditional on obtaining an exit permit. Any resident who fulfilled the exit permit condition (an exit card, which also constituted a return visa) was permitted to return, and receive rights as a resident immediately upon returning. Upon the return of the resident to East Jerusalem (or to the Occupied Territories, as the case may be), he or she was permitted to go abroad again, equipped with a new exit card. The exit card was not a travel document such as a passport or a laissez-passer, but rather it entailed documentary proof of having exited via the Jordanian bridge border crossings, and of permission to return via the same route so long as it was still valid. This was a special document which served the residents of the territories seized in 1967 (including East Jerusalem) within the framework of the open bridges policy.

41. This policy allowed thousands of Palestinians – residents of East Jerusalem and the West Bank – who worked in the Gulf States and in Saudi Arabia, and who studied in Arab countries and maintained a family life there, to leave and to return without prejudicing their rights. As aforesaid, the Israeli authorities recognized the many pressures, which caused East Jerusalem residents to seek their livelihood in Arab countries, to complete their education there and also to conduct their family lives there.

    See, in this matter, for example, the speech of the then Minister of the Interior, Mr. Moshe Dayan to the Knesset (**Knesset Speeches**, Vol. 12, 5730, 697-699).

42. The application of the open bridges policy to East Jerusalem residents, without distinguishing them from the residents of the rest of the Occupied Territories, reflected an Israeli recognition of the dual nature of their status: on the one hand permanent residents of Israel, to whose place of residence Israeli law applies, and on the other hand protected residents in the territory control of which was transferred to the hands of Israel after 1967.

43. This policy did not only take into account the needs and connections of the residents, it also served Israeli interests, because it compensated for the lack of infrastructure in East Jerusalem and for the restrictions with regard to building and family unification in the city. The respondent's policy, which allowed residents to maintain their status in the city if they lived in the Occupied Territories, and even if they went abroad, so long as they extended the period of validity of the exit card in their possession, facilitated and even encouraged this trend.

Implementing the 'Awad rule as of the mid-1990s: wholesale revocation of status

44. Beginning in the second half of the 1990s, the respondent embarked on a strict policy, which meant the blocking of East Jerusalem's residents' path of return to the city and their virtual expulsion from their homes, even if they had returned thereto in the interim. This policy was based on a broad interpretation of the **'Awad** rule – an interpretation that brought the formula established in the **'Awad** case to the level of absurdity.

45. Beginning in the second half of the 1990s, many residents of East Jerusalem, who contacted the Ministry of the Interior with various applications were met with refusals to provide the requested service, and were handed a brief standard letter informing them that their permanent residency permit had expired because, according to the Ministry of the Interior, they had transferred their center-of-life outside Israel. This "expiry of residency" included, for the most part, the expiration of the residency of the resident's children. The notice ended by instructing the resident and his family members to hand in their identity cards and leave the country, usually within 15 days.

46. This policy – which eventually became known as the "quiet deportation" – was also implemented against individuals who were in Jerusalem at the time, but the Ministry of the Interior determined had transferred their center-of-life outside Israel, as well those who were residing abroad at the time and were entirely unaware that their residency had "expired". The West Bank and the Gaza Strip were also considered to be "abroad" for this purpose, contrary to the policy practiced previously, whereby persons who relocated to the Occupied Territories did not lose their status. It shall be noted that under the previous policy, so long as East Jerusalem residents residing abroad, made sure to come to Jerusalem and renew their exit permits before the validity period expired, they were guaranteed that their residency would not be revoked. Moreover, those residents who lived abroad were able, according to this policy, to obtain an extension for their exit card through relatives in East Jerusalem.

47. Despite the fact that this was a radical change in policy and a wide-ranging interference in the practices maintained by the residents for many years in accordance to the old familiar policy, the Ministry of the Interior did not see fit to publicize this new policy. Additionally, the policy was applied retroactively, despite the fact that many of those who had lived abroad did so on the basis of the old policy, according to which their status would not be revoked as a result thereof. Retroactive application of this policy took on an especially radical guise, in light of the fact that the status was revoked also from those residents whose center-of-life during that period was in East Jerusalem. The Ministry of the Interior was well aware of the fact that their center-of-life was in East Jerusalem – amongst other things by relying on determinations made by the National Health Institute – and nonetheless it revoked their residency.

48. The Ministry of the Interior argued that this policy is an outcome of the **'Awad** rule. According to the approach adopted by the Ministry of the Interior, the only logical conclusion to be drawn from the **'Awad** rule is that the residency of all these persons expired of itself, and in fact the Ministry of the Interior has no discretion in the matter of the expiries. According to this claim, the Ministry of the Interior has merely accepted upon itself the binding case law, and is acting accordingly. The residency expired "without any human interference" and the Ministry of the Interior had no alternative but to relate to that person as someone who has no status in East Jerusalem. As a result thereof, the Ministry is obliged – with no discretion – to confiscate that person's identity card and to remove him or her outside the borders of the state.

49. So for example in the state's response to a petition by a resident of Jerusalem who lived with her husband in Jordan for many years, and then returned to live in Jerusalem in 1995, it was stated:

> In accordance with the aforesaid and likewise in our case, the reality of life has taught that the petitioner's permanent residency in Israel terminated, for all practical purposes, at the end of the 1970s… and the residency permit that she had for Israel, and which relied on the reality of her being a permanent resident in Israel, had lost all meaning and as such had expired and had become nullified of itself (Para. 14 of the state's response in HCJ 9499/96 **Atarash v. Minister of the Interior**).

50. Furthermore, according to the Ministry of the Interior's logic, if it is not obligated to exercise its discretion, but must conduct itself solely upon legal principles, which, in its opinion were determined in the **'Awad** case, indeed there is no place for conducting a hearing for residents whose residency status "expired". In a parliamentary question that was filed in 1997 by then Member of Knesset Professor Amnon Rubenstein and addressed to the Minister of the Interior, the Minister was asked to state how one could be assured that "such an invalidation of an identity card was lawfully carried out after a hearing in which the principles of natural justice were maintained". The Minister of the Interior replied:

> As to the matter of a hearing, since the Law states and the HCJ has held that the residency expires of itself, I do not think that from a legal perspective there is place to conduct a hearing…(Knesset Speeches, 21 Shvat, 5757 (January 29, 1997)).

Indeed, and apparently in light of the understanding that such a reading of the judgment does not comply with general legal norms, the respondent ordered hearings be conducted (see in this matter, for example: the respondent's response in HCJ 3122/97 **Darwish v. Minister of the Interior**; judgment in HCJ 3120/97 **McCarry v. Minister of the Interior** (judgment dated June 10, 1997).

Nonetheless, these are but a few cases. Thus, for example, in 2007, of 229 cases in which notices of residency revocation were sent out, only 11 hearings were held, and this to only "for persons who contested the decision or petitioners". This indicates that even in these cases, the hearings are retroactive only.

See copy of a response by counsel for the respondent dated April 13, 2010 as per parties' agreement in Adm.Pet. (Jerusalem) 8467/08 **HaMoked: Center for the Defence of the Individual v. Minister of the Interior** http://www.hamoked.org.il/files/2010/112360.pdf [in Hebrew].

51. HaMoked and ACRI, along with other human rights organizations and East Jerusalem residents who had been harmed by the policy filed an HCJ petition against the "quiet deportation" policy in 1998 (HCJ 2227/98 **HaMoked: Center for the Defence of the Individual v. Minister of the Interior**). During the proceedings in this petition, then Minister of the Interior, Natan Sharansky made an affidavit which provided some relief from the aforementioned policy. Pursuant to what is stated in the affidavit, some of those whose residency was revoked would be able to have their status reinstated if they satisfied certain conditions.

52. The “Sharansky Affidavit” thus softened the harsh consequences of the **‘Awad** rule. The absurd outcome in which residency was revoked from thousands of people who acted in accordance with the procedures laid out by the Ministry of the Interior and who maintained a connection with Israel was overturned by way of the Minister of the Interior considering as them having maintained their status. The need to reverse the policy of revoking residency, and the manner in which it was done in the affidavit issued by Minister Sharansky, indicate a need to insert essential modifications to the respondent's interpretation of the **‘Awad** rule in order to avoid the absurd reading that underlay the “quiet deportation” policy.

53. Following the petition and the “Sharansky Affidavit”, which was given within the framework of this hearing, the policy of mass revocation of residency was “relaxed” for a certain period of time. Nonetheless, the arrangement prescribed by the affidavit did not resolve the matter of all those whose residency was revoked during that period. Only those whose residency was revoked after 1995 and visited Israel within the period of validity that was stamped on their exit card and who lived in Israel for at least two years benefited from the new arrangement. In other words, a person whose residency was revoked even a few days before 1995 would not find relief in the provisions of the procedure. This is likewise true for a person whose residency was revoked while he was abroad, and the Ministry of the Interior does not allow his return to Israel. It should also be noted that this procedure applies only to those whose status was revoked because they had allegedly resided outside of Israel for a period of more than seven years. The possibility of having one’s status reinstated according to the procedure, does not apply to those who acquired a permanent residency permit in another country or received foreign citizenship.

54. Moreover – the revocation of residency of East Jerusalem residents has not ceased even for moment, even if a certain “relaxation” has taken place since 2000. In effect, it appears that this was a temporary abatement only. According to data originating in the Ministry of the Interior, and which was gathered and compiled by B’Tselem, the Ministry of the Interior revoked the residency of 1,363 individuals in 2006 and of 4,577 in 2008. In other words – in the past three years, regarding which figures have been provided, the Ministry of the Interior revoked almost half the number of residency permits it revoked from 1967 up to the present day.

Year	**Number of Palestinian Residents revoked of their residency**
1967	105
1968	395
1969	178
1970	327
1971	126
1972	93
1973	77
1974	45

1975	54
1976	42
1977	35
1978	36
1979	91
1980	158
1981	51
1982	74
1983	616
1984	161
1985	99
1986	84
1987	23
1988	2
1989	32
1990	36
1991	20
1992	41
1993	32
1994	45
1995	91
1996	739
1997	1,067
1998	788
1999	411
2000	207
2001	15 (up to end of April, 2001)
2002	no data
2003	272
2004	16
2005	222
2006	1,363
2007	229
2008	4,577

See: http://www.B'Tselem.org/english/jerusalem/revocation_statistics.asp
http://www.hamoked.org.il/items/110582_eng.pdf
http://www.hamoked.org.il/items/110584_eng.pdf
http://www.hamoked.org.il/files/2010/112360.pdf [in Hebrew]
http://www.hamoked.org.il/items/110587_eng.pdf

55. When B'Tselem applied to the person in charge of freedom of information at the Ministry of the Interior in order to investigate the reason behind the extremely steep rise in the scope of residency revocations in 2006, (over a 600% increase from the figure in 2005), it received the following answer:

> …the rise in the number of updates of residency expirations in the registry, flows from an improvement in the **operating and control procedures** of the Ministry, including at Israel's border crossings. (Emphasis added).

The Ministry of the Interior told HaMoked that the reason for the immense increase in 2008 (4,577 residency revocations, over 35% of all revocations from 1967 to the present day), was an "**initiated review process**".

56. If any further proof of the Interior Ministry's relating to the permanent residents of East Jerusalem as foreigners was necessary - the above quote is once again a prime example. In a government ministry that is charged with the provision of services to the citizens and residents of the country, the purpose of an "improvement in the operating and control procedures", or "streamlining" is normally designed to benefit the applicants and provide better service. According to the Interior Ministry's understanding, when the beneficiaries of the service are residents of East Jerusalem, "streamlining" means trapping as many people as possible and placing them within the grasp of the residency revocation policy.

The gender aspect of the current implementation of the 'Awad rule

57. The policy of revoking the status of East Jerusalem residents has an additional aspect, gender. This policy mortally harms women.

58. The absolute majority of East Jerusalem residents establish a family with Arab spouses; some of these spouses are East Jerusalem residents or Israeli residents, however many of them are naturally residents of the Occupied Territories or residents of Arab countries.

As is well known, up to the mid 1990s Israel did not review family unification applications filed by **female East Jerusalem residents** for their spouses. This was the direct result of a discriminatory policy practiced by the respondent, whereby only family unification applications filed by **male East Jerusalem residents** were reviewed. This policy was justified on the grounds that in Arab society the prevailing custom is that the "woman follows her husband" and therefore there is no reason to grant Israeli status to a male spouse who is a resident of the Occupied Territories or a foreign country. As a result of this, women were forced to contend with the predicament where if they wished to live together with their husbands and children, they would have to risk the loss of status and the severance of ties with their families in Jerusalem. And indeed, many women lost their status due to a lengthy stay "outside of Israel". In 1994, following a petition to the HCJ filed by ACRI (HCJ 2797/93 **Jarbit v. Minister of the Interior**) this discriminatory policy was rescinded and female residents could thereafter file applications for family unification with their spouses.

59. However the harm to permanent female residents – as women – was not confined to this aspect. In a traditional society (and it is definitely possible to describe East Jerusalem residents, generally speaking, as living in a society with traditional values), the woman's world, as a wife, revolves around her family home. If the ties between the spouses are rent asunder and the family unit

disintegrates, the wife has no real choice but to return to her family – her parents' home or near of her brothers and sisters – in her hometown, East Jerusalem. A woman's status is tenuous from the outset, but if her security net of being able to return to her home and town is also taken away from her, her dependence on her husband and his family becomes absolute. For in case the marriage runs into difficulties, a woman whose status has been revoked has no way out, and she is often forced to stay with a violent or abusive husband. Revoking the status of Jerusalem female residents is comparable to removing the anchor to a life in which she has a modicum of dignity, stability and support.

60. Discrimination against women may take the form of a law, regulation, custom, and the like, **whose purpose** it is to discriminate against women, or a situation the **de facto** results of which are discriminatory against women. This position is clearly reflected in both Israeli law – Section B of the Equal Rights of Woman Law, 5711-1951 establishes that "[…] there is no difference if the underlying action which resulted in discrimination contained a discriminatory intent, or did not" – and in international law, especially the Convention on the Elimination of All Forms of Discrimination against Women (1971), which was signed and ratified by Israel. As stated, Israel is obligated to prevent the promotion of direct or indirect discrimination against women and to examine the degree of harm to women, as taken form in practice.

61. Thus, the respondent's policy does not only wrongfully discriminate between East Jerusalem permanent residents and Israel's general population. It also creates a distinction amongst the permanent residents themselves, so that the primary "targets" of the residency revocation policy are female residents – who are a disempowered group from the outset. And so, in the guise of a policy deduced by the respondent from the **'Awad** case, Israel has exacerbated the harm to women, and perpetuated their subjugation.

Residency revocation – the people behind the numbers

62. Below we cite a number of cases which illustrate the severe harm caused by the revocation of residency. These are cases that were processed in recent years by HaMoked.

Mrs. Abu Haikal

63. An especially heart breaking example, which illustrates the harsh impact inherent in the act of residency revocation, is the case of Mrs. Abu Haikal. Mrs. Abu Haikal, a permanent resident of East Jerusalem, married a Jordanian resident in 1978. In 1979 Mrs. Abu Haikal left Israel, and returned to East Jerusalem in 1994. Throughout the years she resided abroad, Mrs. Abu Haikal diligently maintained a very close connection with East Jerusalem, where she also gave birth to three of her children. Throughout the entire period, Mrs. Abu Haikal acted in accordance with the rules implemented by the respondent at that time: i.e. that the residency of a person remains intact so long as he makes sure to return to the country while his exit card is still valid. And indeed, throughout those years, the respondent considered her a resident for all intents and purposes, and did not revoke her status.

64. At some point, a fierce conflict erupted between Mrs. Abu Haikal and her spouse. Mrs. Abu Haikal wanted to return to her hometown. In the summer of 1994, after she had returned to East Jerusalem and enrolled her children in local schools, Mrs. Abu Haikal went with her children for a visit to Jordan. Her spouse, who was displeased with her decision to return to East Jerusalem, prevented her from returning until 1997. Eventually Mrs. Abu Haikal succeeded in freeing herself from under

his yoke and returned to East Jerusalem with her children. She officially divorced her husband in 2000. As of 1997, Mrs. Abu Haikal lived in the city, and only left Israel for a few days. From then on, East Jerusalem was, in every possible sense, the center of her life – her home was there, it was where she worked as a kindergarten teacher and also studied for a certified kindergarten teacher diploma, and it was there that her children resided with her.

65. It was only in 1999 that Mrs. Abu Haikal was informed of the fact that the respondent had revoked her residency. At the time of the decision to revoke her status, December19, 1994, Mrs. Abu Haikal was in Jordan with no possibility of returning to East Jerusalem, and without fathoming that her status, which she had so diligently maintained throughout the years was taken away from her. She even left Israel and reentered it in 1997 and 1998, as a resident for all intents and purposes. Ever since she was informed of the respondent's decision in her case, she has tried everything to have her status and that of her children reinstated. She applied to the respondent on numerous occasions – in her own capacity and through various attorneys – however the respondent refused to reinstate her residency. The respondent repeated his claim that her status had been lawfully revoked, and refused to relate to Mrs. Abu Haikal's life circumstances since her return to East Jerusalem.

66. The respondent's decision in Mrs. Abu Haikal's case stems from a simplistic application of the **'Awad** rule, as if the life of a human being was a set of mathematical formulae: this woman's residency automatically expired "without human contact" some time between 1978 and 1994. This "fact" was not the result of any action by the respondent but was, so to speak forced upon him against his will. Once she ceased to be a resident she was defined as an alien. The fact that the respondent allowed her entry as a resident during the years that followed is of no relevance. The respondent "did not notice" that the residency had automatically expired. In fact, allowing her entry into Israel (from the perspective of this simplistic analysis) was *ultra vires*. The change in circumstances that took place thereafter is also irrelevant, since the respondent is unable to revive a permanent residency permit that was taken away, as though by a higher power. At the same time, Mrs. Abu Haikal was not entitled to a "new" residency permit, since she does not fall within the criteria that would allow her to immigrate to Israel.

67. We should note that according to the "Sharansky Affidavit", it is possible to reinstate the status of a resident, if it was revoked from 1995 onwards. This is a date which was arbitrarily selected, and approximately marked the commencement of the policy of wholesale residency revocation. It was clear that Mrs. Abu Haikal, whose status was revoked a mere 12 days before the beginning of the year 1995, was injured as a result of that very policy. HaMoked claimed in that case, that even if the respondent relied, for the purpose of setting its policy, on a date which has an arbitrary dimension, it is not possible to implement a policy that is so radically at odds with the norm, in such a "black and white" fashion, when it comes to cases that are on either side of the set date. However the respondent was equally unimpressed with this claim.

68. When all hope was lost, Mrs. Abu Haikal petitioned the Court for Administrative Affairs (Adm.Pet. (Jerusalem) 186/07). Following the petition, the respondent indeed agreed to transfer the case for examination by the Inter-Ministerial Committee for Humanitarian Affairs, but lying in wait was yet another bitter disappointment. The committee members refused to consider Mrs. Abu Haikal's main arguments and again dismissed her with an argument no longer than a few written lines. Even after all those years in which she set up her home in East Jerusalem, the respondent still held on to the

claim that her residency expired lawfully. Her arguments with respect to the application of the "Sharansky Affidavit" to her case were ignored by the respondent as if they were never made.

69. At this stage Mrs. Abu Haikal's mental endurance began to wane. At that time, she worked in Jerusalem, but her home was in Kafr 'Aqab – a neighborhood, which despite being part of Jerusalem is on the other side of the separation wall, and passage from it into the city requires, at the very least, a stay permit. As a result, Mrs. Abu Haikal stopped working and her economic situation gradually deteriorated.

Desperate, Mrs. Abu Haikal decided to pack her belongings and move to Jordan with her children.

70. Mrs. Abu Haikal returned to the home of her former spouse and father of her children. In her desperation, she tried to convince herself that it would be possible to heal the deep wounds between herself and her spouse. This was the case since aside from her former spouse she had no real connection to Jordan. However, this was an attempt destined to fail. As expected, the relationship between the couple broke down once more.

71. At this point, HaMoked filed another administrative petition on her behalf Adm.Pet. (Jerusalem) 8612/08 **Abu Haikal v. Minister of the Interior**). Only following this petition did Mrs. Abu Haikal's sorrowful tale reach its end. The respondent consented "*ex gratia*", according to him, to reinstate her status. The respondent allowed Mrs. Abu Haikal's return to East Jerusalem and on March 17, 2009, she was granted temporary status. It was agreed that two years thereafter, Mrs. Abu Haikal would be able to file an application to have her permanent residency status restored.

Thus, Mrs. Abu Haikal's long and arduous journey will, apparently, reach its happy end. However, as the information presented above indicates, this result (achieved according to the respondent *ex gratia*) is not the fate of many of East Jerusalem's residents whose residency the respondent decided to revoke.

Mr. Redwan

72. Mr. Redwan was born in Jerusalem in 1960, and later received the status of permanent resident. Mr. Redwan left the country for the first time in 1981, for the purpose of acquiring a higher education in the USA. To facilitate his remainder and studies in the USA, Mr. Redwan applied for a "green card", and then for American citizenship. In 1991 and 1992 he returned to Jerusalem for a while and married a woman who was also a permanent resident. While in Jerusalem, Mr. Redwan looked for work, with the aim of staying in the city with his spouse, but found none. Therefore, and because of the couple's wish to become financially established so that they would be able to start a family and earn a living with dignity, the couple left for the USA for a restricted period in order to realize their ambitions. While in the United States, the couple continued to maintain close ties with East Jerusalem. Mrs. Redwan diligently visited East Jerusalem for a few months every year. After about five years, with the improvement in their financial situation and with their firstborn, Walid, reaching kindergarten age, the couple returned to Jerusalem in order to establish their home there, as did many young couples. Mrs. Redwan and the couple's children returned to Jerusalem in July 1997. Mr. Redwan joined them in January 1998.

73. It should be noted that Mr. Redwan entered Israel not as a tourist but on the basis of his status as a permanent resident of Israel. His American passport was not stamped with a visitor's permit, but rather a regular entry stamp (the same type of stamp used on travel documents of Israeli residents

who enter the country), this after a query on the computer terminus revealed that Mr. Redwan was a resident of the country. His identity number as it appeared in the population registry was written down alongside the stamp. Mr. Redwan was not referred to any type of inquiry with respect to his status or anything similar to this.

74. It is therefore clear that on that date the authorities were aware of Mr. Redwan's periods of stay abroad (which emerged from data provided by the police border control unit) as well as the fact that he was an American citizen. While they were completely aware of these facts, the authorities still allowed his entry into Israel as a resident, while marking down his identity number in his American passport. Nothing was hinted to him then about the different perspective through which the authorities would view things two years later.

75. And indeed on May 16, 2000 Mr. Redwan was sent a letter on behalf of the Ministry of the Interior, informing him that his residency and the residency of his family were being revoked. This was on the grounds that he had acquired American citizenship and that his and his wife's and children's center-of-life was in the USA until 1998. Therefore, even the application he filed to register his daughter 'Arin in the population registry was denied, and he was informed that he and his family are considered to have ceased to be residents.

76. From the day he was informed of the decision, Mr. Redwan tried everything in order to remedy this injustice. He applied on numerous occasions to the East Jerusalem population administration office. Each time he was asked to produce additional documents which attest to the fact that the center of his life was in Jerusalem, but ultimately his request remained unanswered. It should be noted that over the course of these applications it became clear to Mr. Redwan that the Ministry of the Interior had changed its mind with respect to revoking his wife's and family's residency status. Nonetheless, when it came to him personally the Ministry of the Interior persisted in its refusal.

77. In 2005 the Ministry of the Interior allowed Mr. Redwan to file an application to have his residency reinstated, which was termed by the Ministry of the Interior as "self family unification". This application necessitated payment of a fee. As expected, this application was also denied, with the claim that the residency revocation was lawfully executed. In his distress, Mr. Redwan petitioned the Jerusalem Court for Administrative Affairs (Adm.Pet. (Jerusalem) 751/06). In his petition, Mr. Redwan claimed that not only did the Interior Ministry's conduct in his case not send warning signs that he was residing in Israel illegally, but rather the contrary: the message that was conveyed to him was that there was no problem with his American citizenship, nor was there any problem with his continuous residency in the USA. This was the case upon his arrival, and likewise every day since he had landed in Israel. Through its conduct, the Interior Ministry had allowed Mr. Redwan to rely on the fact that his presence in Jerusalem was legal, and there was nothing wrong with reestablishing himself in his city.

78. In his petition all the circumstances of Mr. Redwan's life were detailed from the day he returned to Jerusalem until the time of submission of the application. It was noted that that Mr. Redwan had been living with his family members in Jerusalem since 1998. It was noted that Mr. Redwan was working in Jerusalem, and his children were studying in the city. In fact, it is difficult to imagine a closer tie of any person to any place. Mr. Redwan attached all the documents attesting to his center-of-life having been in Jerusalem to his applications to the Ministry of the Interior. The Ministry of the Interior did not address this fact in its decision. The Ministry of the Interior's decision, which justifies the refusal to reinstate his residency with the same reason for the revocation of his status,

indicates that the respondent did not exercise his discretion with respect to the circumstances of Mr. Redwan's life and his overall connections from the day of his return.

79. Even at court, Mr. Redwan was unable to find any relief. His claims were not accepted, and the petition was deleted. Fortunately for Mr. Redwan, his wife's status was not revoked, so it was possible for her to file a family unification application for him. And so it was. The family unification application was approved and in December 2007, Mr. Redwan entered the "graduated procedure" for acquiring status as the spouse of a permanent resident.

80. The aforesaid indicates that the Interior Ministry's policy is not only arbitrary with regard to the manner in which the decision to revoke a person's status is made – blindly relying on the "presumptions of establishment" that appear in the Regulations, and without exercising discretion with respect to the circumstances behind his or her temporary departure abroad, or the person's desire to return to Jerusalem and to set down roots there. The Ministry of the Interior outdoes itself, and after allowing these residents to return and settle in Jerusalem – it ignores the circumstances of their lives and bases its decision exclusively on the claim that the residency, originally, was allegedly lawfully revoked.

Mrs. Mustafa

81. In many cases the decision to revoke the residency status does not only harm the resident himself, but also his family members. This was the case of Mrs. Mustafa. Mrs. Mustafa and her spouse married in 1978 and lived in Jordan and Saudi Arabia until 1995 for the purpose of the spouse's work. In 1995 the couple returned with their children to Jerusalem, where they lived for about a year. For the next three years they lived in Qalandiya and from the year 2000 on they set up their home in Jerusalem.

82. In 1996, Mrs. Mustafa was informed that despite being careful to update the validity of her travel documents while abroad, as she was instructed to do so in order to maintain her status, her status in Israel was revoked. Mrs. Mustafa applied to the Ministry of the Interior to have her residency reinstated. Following intervention by HaMoked, her status was reinstated in 2003.

83. After her status was returned to her, Mrs. Mustafa filed a family unification application for her spouse and an application to register her children in the Israeli population registry. Yet, by that time, some of her children were already adults, and therefore the applications in their respect were classified as "not meeting criteria". The applications were thus only filed for Mrs. Mustafa's spouse and her minor children. The Ministry of the Interior did not rush to handle these applications, and they were only approved at the end of 2006, and only following a petition to the Court for Administrative Affairs (Adm.Pet. (Jerusalem) 917/06).

84. The Ministry of the Interior's position was that if an application was made for the adult children, it would be dismissed for "not meeting criteria". Despite this, the Ministry of the Interior allowed Mrs. Mustafa to file her application, in such a way that it would be handled through the same avenue as applications filed for "humanitarian reasons". In the application, the special circumstances of her adult children were emphasized. It was noted that they fell victim to a tragic chain of events from their perspective and that variables outside their control, i.e. the date of the reinstatement of their mother's status and their age at the time of the filing of the application for registration, sealed their fate. It was further claimed that blocking any possibility of receiving any

type of status in Israel practically splits the family two, and the adult children had no connection to any place other than Jerusalem. The applicants also noted their family's dependence on the adult children's income and the assistance they provided for the family. This, especially in light of the fact that the parents were chronically ill, and hence unable to financially support themselves and also required medication on a regular basis.

85. The Ministry of the Interior refused to view this case, in which three family members would have to separate from their parents and siblings, as a humanitarian case. The Ministry of the Interior refused to consider the fact that Mrs. Mustafa's children had nowhere to go, since they did not have a connection to any place in the world other than Jerusalem. The Ministry of the Interior refused to consider an entire family's dependence on their adult children. In its reply to the application, the Ministry of the Interior determined that "no humanitarian reasons were found to justify the granting of status in these cases", and refused to transfer the case of Mrs. Mustafa's children for examination by the Inter-Ministerial Committee for Humanitarian Matters, which is entrusted with granting status in cases such as these. In light of this, in this case too, a petition was filed with the Court for Administrative Affairs (Adm.Pet. (Jerusalem) 1028/07 **Herbatawi v. Minister of the Interior**). The court, which did not see any purpose in intervening in the "broad discretion available to the respondent", dismissed the petition by the family members and issued a costs order against them (judgment of Judge Y. Adiel dated June 18, 2008). An appeal was filed against this judgment with the Supreme Court on July 17, 2008 (AdmA 6410/08). The appeal was deleted in May 2010, based on parties' agreement to transfer Mrs. Mustafa's application to the Inter-Ministerial Committee for Humanitarian Matters. Today,15 years in Israel, Mrs. Mustafa's adult children are still waiting for their presence in the country to be approved.

86. Thus, the decision to revoke a permanent resident of his status also has an "environmental" impact, affecting more than just the matter of the resident himself. Even after the Ministry of the Interior reversed its decision, and decided to reinstate Mrs. Mustafa's status, the past decision to revoke her residency continued to pursue her and her children. Mrs. Mustafa's children – who without doubt had no part in the decision to go live abroad for a significant period – are now paying the price of the policy of wholesale residency revocation. They are now paying the price for the fact that their mother dared to want to return and live together with her family in Jerusalem – her hometown.

An interim summary

87. The judgment in the **'Awad** case was given two decades ago. It was delivered against the backdrop of the outbreak of the first intifada, and the decision of the Minister of the Interior to deport from Israel an East Jerusalem resident, who had lived for years in the USA, where he acquired status, and was organizing political activity intended to bring an end to the Israeli occupation of the Territories. The court held that East Jerusalem's annexation to Israel turned its residents to permanent residents in Israel. This residency, according to the judgment, expires upon transference of one's center-of-life. Because of this, it was ruled, the Minister of the Interior was permitted to deport **'Awad**, who was residing in Israel without a permit and was "acting against the interests of the State".

88. The respondent, who throughout the years allowed East Jerusalem residents to leave the city and to return to it for the purpose of employment, academic studies and family, changed his policy following the judgment and began its policy of massive revocations of East Jerusalem residency permits. This policy is consistent with the state authorities' alienation of East Jerusalem residents. The respondent revokes the status of East Jerusalem residents as a matter of "efficiency". All East

Jerusalem residents, whoever they may be, are vulnerable to this policy and its outcomes; however the harm to female residents is especially severe.

89. Two decades after the judgment in the **'Awad** case, it must be reexamined against the backdrop of its overall results. The findings in the **'Awad** case must also be examined against the backdrop of other norms in the legal world, especially the norms which apply to East Jerusalem.

90. The "synchronicity" which the court sought to chart between the laws which apply to East Jerusalem and its residents turned a blind eye to other normative strata that apply to East Jerusalem. Moreover, over the years that have passed since this judgment was given, other normative strata have been added, which it is impossible to continue to ignore. **East Jerusalem is not just another region of Israel and its residents are unlike any other resident**.

91. Before the petitioners elaborate on the full normative framework, they wish to circumscribe the dispute and to clarify their position with respect to the judgment in the **'Awad** case and to the status of East Jerusalem residents:

    The applicants are prepared to assume that according to Israeli law, ever since East Jerusalem was annexed, East Jerusalem residents are permanent residents who hold permanent residency permits that were given to them according to the Entry into Israel Law. Indeed, as held in the **'Awad** case, their status is granted by law and not as an act of grace. However, the status of East Jerusalem residents is a special status, which includes by its very nature a condition that their permits do not expire. In other words, one must read a condition into the permanent residency of East Jerusalem whereby, residency does not expire because of a departure from the country or because of transference of center-of-life.

    The petitioners accept that the tests with respect to the expiry of residency that were established in the **'Awad** case, and the provisions of the Entry into Israel Regulations with regard to the expiry of residency, could apply to **immigrants** who voluntarily entered Israel and acquired permanent residency permits therein as per their request, and for our present purposes: to **anyone who acquired permanent residency permits <u>not by way of</u> their place of residency being annexed by Israel following military occupation**.

    The application of identical rules with regard to residency expiration to immigrants, who voluntarily acquired their status, and East Jerusalem residents, who received their status following the annexation of East Jerusalem after its occupation, unlawfully ignores the special situation of East Jerusalem residents. It either turns East Jerusalem into a ghetto which one may not exit if one wishes to maintain one's status or unlawfully pressures East Jerusalem residents to become Israeli citizens. It was not for nothing that East Jerusalem residents did not become Israeli citizens whose status is protected from arbitrary revocation. The State of Israel may not force citizenship upon them, and may not urge them to naturalize and become loyal to it.

    This is not an overturning of the **'Awad** rule but rather an essential development thereof. The **'Awad** rule itself recognized the possibility that Israeli residency permits may include general conditions, and that these conditions, like the permits themselves, would not be explicitly specified in the permit, but would be derived from the general rule. The **'Awad** rule itself required that the features of the Israeli residency permit would conform to reality of life and would not distort it.

Below we shall specify our position in detail.

The Special Status of East Jerusalem Residents and the Prohibition to Revoke Their Residency

Introduction

92. The normative status of East Jerusalem and its residents is composed of various strata. International law views the area as occupied territory, which is held under belligerent occupation. For this reason, according to international law, the Palestinian residents of East Jerusalem are protected persons who are entitled to the protection of international humanitarian law. Israel, on its part, unilaterally applied the "law, jurisdiction and administration of the State" to the area and established in its domestic law that it is part of the city of Jerusalem. Palestinian residents were given Israeli permanent residency permits.

93. Residency permits ostensibly grant Palestinian residents protections that are similar in many respects to those enjoyed by Israeli citizens. In practice, Israel has reduced the provisions of these protections, and in fact – has alienated itself from Palestinian residents of East Jerusalem and has encouraged their connections to the Occupied Territories. Over the years, Israel has treated East Jerusalem residents as West Bank residents in many aspects. From the time it signed the Oslo Accords Israel has recognized the fact that East Jerusalem is located at the heart of the dispute, and that the Palestinian residents of East Jerusalem are part and parcel of the Palestinian Nation in the West Bank and Gaza Strip. Israeli legislation was drafted in such a way as to enable this connection between East Jerusalem residents and the Palestinian Nation in the Occupied Territories.

94. Because of the importance of the normative arrangements and political treaties to the understanding of the special status of East Jerusalem residents; to the definition of their array of rights; to the definition of the obligations of the State of Israel towards them – we wish to elaborate further on the legal status of East Jerusalem; on the status of East Jerusalem residents; and on the purpose of residency, which was granted to East Jerusalem residents.

The legal status of East Jerusalem

95. In June 1967, Israel conquered the West Bank. Immediately after the war, the Government of Israel decided to annex to Israel about 70,500 dunam from the occupied territory north, east and south of Jerusalem ("**East Jerusalem**"). Pursuant to a government proposal, the Knesset passed an amendment to the Law and Administration Arrangements Ordinance on June 27, 1967, in the framework of which Section 11b was added to the Ordinance. The Section sets forth: "The law, jurisdiction and administration of the State shall apply to any area of the Land of Israel which the government has determined by Order." The next day, on June 28, 1967 the government enacted the Law and Administration Arrangements Order (No. 1), 5767-1967, which applies the "law, jurisdiction and administration of the State" to East Jerusalem. That day by proclamation made under the Municipalities Ordinance, the annexed territory was included in the boundaries of the Jerusalem Municipality (see the **Abu Labda** case, para. 22 of the judgment).

96. Basic Law: Jerusalem, Capital of Israel, which was enacted in 1980, added and established in Section 1 thereof that "Jerusalem, complete and united, is the capital of Israel". In 2000, the Basic Law was amended to set forth, in Section 5, that the "boundaries of Jerusalem include, for the purposes of this Basic Law, among other things, the entire territory described in the annex to the

Proclamation on the Expansion of the Jerusalem Municipal Area dated 3 Sivan 5727 (June 28, 1967) and which was enacted pursuant to the Municipalities Ordinance". Section 6 of the Basic Law sets forth "no authority that relates to the border of Jerusalem and which was lawfully granted to the State of Israel or to the Jerusalem Municipality shall be transferred to any foreign agent, political or governmental, or to any other similar foreign agent, whether permanently or for a limited period." Section 7 of the Basic Law states that "the provisions of Sections 5 and 6 may only be amended by a Basic Law that is passed by a majority of the members of Knesset. (See also Amnon Rubinstein and Barak Medina, **The Constitutional Law of the State of Israel** (sixth edition, Schoken, 5765) 926-927, 932 -935 (hereinafter: **Rubinstein and Medina**)).

97. According to **Israeli domestic law**, therefore, Israeli law applies to the territory of East Jerusalem. However, "the territory of a State, or its sovereign borders, are a matter to be decided by international law", not by its own domestic law (**Rubinstein and Medina**, 924). According to international law, sovereignty is acquired in two ways: through signing an agreement with the bordering states, or through acquiring sovereignty over territory which is not under the sovereignty of any state (*Ibid.*). The unilateral application of the "law, jurisdiction, and administration" to a territory that has been occupied is not recognized by international law as a way of applying sovereignty.

98. Moreover, the principle that the use of force cannot lead to or cause any transfer or change of sovereignty constitutes one of the basic principles of international humanitarian law:

> The foundation upon which the entire law of occupation is based is the principle of inalienability of sovereignty through the actual or threatened use of force. Effective control by foreign military force can never bring about by itself a valid transfer of sovereignty." (Eyal Benvenisti, The International Law of Occupation (Princeton University Press, 1993) pp. 5-6)

Furthermore:

> An occupation, thus, suspends sovereignty insofar as it severs its ordinary link with effective control; but it does not, indeed it cannot, alter sovereignty." (Orna Ben-Naftali et al. *Illegal Occupation: Framing the Occupied Palestinian Territory, 23* **Berkeley Journal of International Law** 551, 574 (2005)) (hereinafter: **Ben-Naftali et al.**).

99. This principle is also included in the following three fundamental principles, a combination of which guides the laws of occupation: A. The principle that use of force or occupation do not confer sovereignty and cannot lead to or cause any kind of transfer or change of sovereignty over a territory; B. the occupying power is charged with administering civilian and public life in the occupied territory; C. occupation must be temporary:

> [A]n occupation that cannot be regarded as temporary defies both the principle of trust and of self-determination. The violation of any one of these [fundamental legal] principles [of the phenomenon of occupation], therefore, unlike the violation of a specific norm that reflects them, renders an occupation illegal per se." (**Ben-Naftali et al.** 554-555)

100. And indeed, **international law** does not recognize the unilateral annexation of East Jerusalem or the legal validity of the normative steps that Israel adopted to apply its sovereignty to East Jerusalem. In a long list of sharp decisions, the international community and international institutions have repeatedly stressed that the practical and normative steps adopted by Israel in its annexation of East Jerusalem are in contravention of the rules of international law, and East Jerusalem is occupied territory (see, *inter alia*: UN General Assembly Resolution 2253 (ES-V) and 2254 (ES-V) (both of July, 1967); UN General Assembly Resolution 35/169E (December 1980), UN General Assembly Resolution A/61/408 (December 2006); UN Security Council Resolution No. 252 (May 1968); No. 267 (July 1969); No. 271 (September 1969); No. 298 (September 1971); No. 478 (August 1980); and No. 673 (October 1990)).

101. The International Court of Justice (hereinafter: the **ICJ**) adopted the UN Security Council resolutions and held in its 2004 advisory opinion to the UN General Assembly with respect to the separation wall, that East Jerusalem is occupied territory like the rest of West Bank and Gaza Strip, and that the steps that Israel adopted are invalid under international law

    Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion (International Court of Justice, July 9, 2004), 43 IL M 1009 (2004) (paras. 75-78 of the Opinion) hereinafter: the **ICJ Opinion**)).

    The court held:

> The territories situated between the Green Line… and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories… have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power." (para. 78 of the opinion)

102. This position of international law is one shared by the world's states. All countries that have diplomatic relations with Israel on the ambassadorial level do not recognize the annexation and therefore are not prepared to house their embassies in Jerusalem (in recent years the embassies of Costa Rica and El Salvador, the last to be housed in Jerusalem, have left the city).

    See also: Rubinstein and Medina 924-927, and 933; Yoram Dinstein, *Zion Shall be Redeemed by International Law* (in Hebrew) **HaPraklit** 27 (5731) 5; **Ben-Naftali et al.**, 573, David Herling *The Court, the Ministry and the Law: 'Awad and the Withdrawal of East Jerusalem Residence Rights*, 33 **Israel Law Review** 67, 69-70 (1999).

The status of East Jerusalem's residents according to international law

103. A longstanding rule before the honorable court has held that residents of the territories which were occupied by Israel in 1967 have the status of "protected persons" under the Fourth Geneva Convention, and are entitled to the protections international law grants to protected persons (see in this regard, for example: HCJ 1661/05 Gaza **Beach Local Council v. The prime Minister**, IsrSC 59(2), 481, 514-515 (2005); HCJ 606/78 **Ayub v. Minister of Defense**, IsrSC 33(2), 113, 119-120

(1979); HCJ 785/87 '**Afu v. Commander of IDF Forces in the West Bank**, IsrSC 42(2), 4, 77-78 (1988)).

104. The powers of the military commanders, whom the state appointed over the Occupied Territories, even when those powers are enshrined in military legislation, are also subject to the rules of international law which enshrines the rights of protected persons (see: HCJ 393/82 **Al-Masuliya v. Commander of the IDF Forces in the Area of Judea and Samaria**, IsrSC 37(4) 785, 790-791 (1983)(hereinafter: the **Al-Masuliya** case)). And what is the law that pertains to East Jerusalem residents? This honorable court has never examined the question of whether or not they enjoy the status of "protected residents" alongside their status as Israeli residents. The answer to this question may be derived from the provisions of international humanitarian law.

105. International humanitarian law, which is concerned with protecting civilians during times of conflict, has adopted a pragmatic approach when it comes to implementing the basic principle that use of force cannot lead to or cause any transfer or change of sovereignty. And this is the language of Article 47 of the Fourth Geneva Convention:

> Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the Occupied Territories and the Occupying Power, nor **by any annexation by the latter of the whole or part of the occupied territory**. (Emphasis added)

The Article does not delve into the question of whether or not the changes to the institutions of the occupied territory were legal, or whether the annexation is legal. The purpose of the Article is the protection of those civilians, who, as a result of a war, find themselves under the rule of a foreign power, with whom they do not identify, and which does not identify with them.

Since from a pragmatic perspective it is clear that any annexing country would claim the annexation is legal, the drafters of the Convention ensured that even if such a claim is made, it shall not be sufficient to deprive the protected persons of their rights as defined by international humanitarian law.

This is the approach the petitioners request the honorable court to adopt: the petitioners do not request that the court make a finding that Israeli law does not apply to East Jerusalem, but that the application of Israeli law does not deprive the residents of East Jerusalem of their special rights as protected persons.

106. Obviously, the court is required to rule in accordance with Israeli law. This includes both Knesset legislation and customary international law, which has been absorbed into domestic law. While the provisions of Israeli law hinge on the interpretation of Knesset legislation – and indeed the **'Awad** rule is based entirely on interpretation in the absence of special statutory provisions with respect to status in East Jerusalem (the **'Awad** case, 429-430) – this interpretation should, as much as possible, be consistent with the provisions of international law.

107. The position of international law is not given any mention in the **'Awad** case, yet it still has an impact today. The opinion of the International Court of Justice (hereinafter: **the ICJ opinion**) "is an interpretation of international law performed by the highest judicial body in international law", and therefore, "the ICJ's interpretation of international law should be given its full appropriate weight". (HCJ 7957 **Mara'abe v. The Prime Minister of Israel** (judgment dated September 15, 2005, para. 56 of President Barak's opinion, and see also paras. 73 and 74 of the judgment. (Emphasis added) (hereinafter: the **Mara'abe** case)). This appropriate weight must receive expression in the effective status of the residents of the annexed territory.

Against this backdrop we shall now examine the special status of East Jerusalem residents.

The status of East Jerusalem residents: a synthesis of legal rules

108. According to **international law**, the law that applies to the territory that was occupied and annexed to Jerusalem is that of belligerent occupation. The residents of the occupied territory are protected persons according to international law. Since they are protected persons, the occupying power has an obligation to protect their rights both by virtue of the detailed obligations enshrined in international humanitarian law (The Fourth Geneva Convention of 1949 and the Hague Regulations), and by virtue of the general obligation of the occupying power to maintain public order and safety, which is enshrined in Regulation 43 of the Regulations annexed to the Hague Convention respecting the Laws of War on Land 1907.

109. Case law has interpreted the positive obligation incumbent on the occupying power as imposing a duty to see to the rights and quality of life of residents of the occupied territory (see the **Al-Masuliya** case at 797-798; HCJ 202/81 **Tabib v. Minister of Defense**, IsrSC 36(2) 622, 629 (1981); HCJ 3933/92 **Barakat v. GOC Central Command**, IsrSC 46(5) 1, 6 (1992); HCJ 69/81, 493 **Abu Aita v. Regional Commander of Judea and Samaria**, IsrSC 37(2) 197, 309-310 (1983))

110. In addition to the rules of international law, the state as an occupying power, must also abide by the basic principles of administrative law (the **Al-Masuliya** case, at 810; HCJ 5627/02 **Seif v. Government Press Office**, IsrSC 58(5) 70, 75 (1994); HCJ 10536/02 **Hass v. Commander of the IDF Forces in the West Bank**, IsrSC 58(3) 443, 455 (2004); the **Mara'abe** case, para. 14 of the judgment). Likewise, certain undertakings by the state pursuant to international human rights law also apply (see the **ICJ opinion**, paras. 102-113).

111. International law recognizes the sensitive relations between the occupying power and the protected persons who are under its rule, and establishes guidelines. Thus, among these **Article 45 of the Hague Regulations forbids the occupying power from compelling residents of the occupied territory to swear allegiance to it**:

> It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.

112. **Article 49 of the Geneva Convention prohibits the occupying power from carrying out any type of forcible transfer of the protected persons**. This prohibition is absolute, and is in force regardless of the motive behind the intention to carry out the forcible transfer. Article 78 of the Geneva Convention does recognize the occupying power's authority to use the measure of "assigned residence" with respect to protected persons within the borders of the occupied territory,

but only as an exceptional and necessary measure for security reasons. According to case law, it is not possible to take such a step, unless the security risk, which is foreseen to emanate from a person against whom it is implemented, may only be removed by means of taking this step. In any event, this step should not be used as a punitive measure but only as a deterrent (HCJ 7015/02 '**Ajuri v. 92IDF Commander in the West Bank**, IsrSC 56(6) 352 (2002)).

113. The application of Israeli law to the East Jerusalem area and its residents does not diminish the protections that international humanitarian law grants them. So long as the State of Israel seeks to view East Jerusalem and its residents as part of Israel, it is choosing to apply to East Jerusalem and its residents additional strata of normative protections, whose force is no lesser than that of international humanitarian law. Israeli law carries its own constitutional protections, as well as Israel's undertakings under the provisions of international human rights law. Thus the application of Israeli law to East Jerusalem, inasmuch as the State of Israel insists on its application to East Jerusalem and its residents, means that Israel, according to its own position, is applying the fundamental rights enshrined in Israeli law, as well as Israel's undertakings under international human rights law.

114. These matters have a direct impact on the status of East Jerusalem residents. The status of Palestinian residents of East Jerusalem was given to them against their will. Refusing to accept status meant denial of the right to continue living in their homes and risk of being forcibly deported. Indeed, first and foremost, the residency permits grant Palestinian residents of East Jerusalem a right to permanently reside in their homes and immunity from deportation. This is not merely an entry visa, like that given to immigrants who have recently arrived in Israel (the **'Awad** case 429-430) but a permit that attests to the reality of life and gives it legal force (*Ibid.* at 433) Precisely because of this, **the permit, in the HCJ's words is given to Palestinian residents of East Jerusalem by law and not by grace** (*Ibid.* at 431). The dicta articulated by the court in the **'Awad** case is consistent with the special status of East Jerusalem residents.

115. However, the additional step taken by the court – when it held that East Jerusalem residents are like all other residents who may become naturalized citizens if they so wish but may lose their status if they do not – subverts that special status. Although East Jerusalem residents may request to become naturalized citizens of Israel (provided they are able to overcome the bureaucratic hurdles) very few of them actually do. The majority of them do satisfy the conditions for naturalization laid out in Section 5 of the Citizenship Law 5712-1952 (excluding, perhaps some knowledge of the Hebrew language), but they see themselves, and this is perfectly justified in terms of international law, as residents of an occupied territory, whose status in Israel has been forced upon them. They have ties to the West Bank and have no desire for Israeli citizenship. Moreover, the acquisition of Israeli citizenship through naturalization requires swearing allegiance to the State of Israel (Section 5(c) of the Law), and very few consent to this. **The State of Israel, as aforesaid is barred from forcing this upon them**.

The right of every East Jerusalem resident to return to his homeland

116. In the absence of an obligation to naturalize, it is also clear that the permit that is given to East Jerusalem residents cannot imprison them in East Jerusalem or in Israel as a condition for maintaining their status. East Jerusalem residents – residents who have a special status – are entitled, like any other person, to leave their home and return to it, without being at risk that their

travels abroad or their departure to the Occupied Territories, and even their acquisition of status in another country, would lead to the deprivation of their right to return to their homeland.

117. Reality of life often calls upon people to move to foreign countries and live there, for various periods of time and for various motivations. One may not deduce from this that in all instances the connection with the country of origin has been severed.

See in this regard:
J. Page, S. Plaza, *Migration Remittances and Development: A Review of Global Evidence,* **Journal of African Economies**, Volume 00, AERC Supplement 2, 245-336; P. Gustafson, *International Migration and National Belonging in the Swedish Debate on Dual Citizenship,* **Acta Sociologica** 2005; 48; 5).

118. The provisions of international law on this issue support the rights of individuals to return to their countries, even if they are not citizens thereof.

119. Article 13(2) of the Universal Declaration of Human Rights (1948) states:

> Everyone has the right to leave any country, including his own, and to return to his country.

Article 12(4) of the International Covenant on Civil and Political Rights (1966), which was ratified by the State of Israel in 1991 *(***Conventions** 1040) continues and states the following:

> No one shall be arbitrarily deprived of the right to enter his own country.

With respect to article 12(4) and the concept of "arbitrarily deprived", the UN Human Rights Committee stated the following in its official interpretation of the Convention's provisions:

> In no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. (UN Human Rights Committee General Comment 27, CCPR/C/21/Rev.1/Add.9 of November 2, 1999, para.21). (Hereinafter: **General Comment 27**).

120. In our matter, the interpretation that was given to the words "his own country" is especially important. Note that this specific phrase was not chosen by chance (that is to say, it was copied from the version that appeared in the Universal Declaration of Human Rights). Attempts made to limit the extent of this phrase, so that the right would only apply to those persons who were citizens of the country to which they wish to return, were dismissed. This so that the possibility of returning is not denied to individuals who are not considered citizens under the domestic law of the country to which they wish to return.

See in this regard:
Hurst Hannum, **The Right to Leave and Return in International law and Practice**, 56, (Martinus Nijhof Publishers 1987).

In this regard the scholar Bossuyt adds that the decision to deliberately choose the phrase “his own country”, rather than the phrase “a country of which he is a national” was accepted in light of the desire of many countries to confer the right to return to a country also on persons who have permanent residency status rather than citizenship

(M. J. Bossuyt, **Guide to the "Travaux Preparatoires" of the International Covenant on the Civil and Political Rights**, 261, (Martinus Nijhof Publishers 1987).

The selection of the broad term, i.e. “his own country” is also consistent with Article 2(1) of the International Covenant on the Civil and Political Rights, according to which each state party to the Covenant undertakes to ensure the rights enshrined therein to all individuals residing within its territory and territories subject to its jurisdiction without distinction of any kind.

The UN Human Rights Committee, the official interpreter of the Convention has also held that the right to return to one’s country per Article 12(4) to the Convention, is not available exclusively to those who are citizens of that country. It certainly also applies, so the Committee held, to those who because of their special ties to that country, cannot be considered “aliens”. As an example, the Committee points out that this right shall also be available to residents of territories whose rule has been transferred to a foreign country of which they are not citizens:

> The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his own country". The scope of "his own country" **is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence.** Since other factors may in certain circumstances result in the establishment of close and enduring connections between a person and a country, States parties should include in their reports information on the rights of permanent residents to return to their country of residence. (General Comment 27, para. 20). (Emphasis added)

121. In order to remove any doubt it should be noted in this context, that the prevailing opinion among scholars is that the right to return per Article 12(4) of the Covenant, is a right that is available to

individuals. It does not apply to large groups of people, who were deported or immigrated to foreign countries as a result of wars or other conflicts. Jagerskiold points out in this context:

> There was no intention here to address the claims of masses of people who have been displaced as a by product of war or by political transfers of territory or population, such as the relocation of ethnic Germans from Eastern Europe during and after the Second World War, the flight of the Palestinians from what became Israel, or the movement of Jews from Arab countries… The covenant does not deal with those issues and cannot be invoked to support a right to 'return'. These claims will require international political solutions on a large scale. (S. A. F. Jagerskiold, The Freedom of Movement180 (1981).

See also Hannum, 59.

The special status of East Jerusalem residents since the Oslo Accords

122. As stated, the judgment in the **'Awad** case turned a blind eye to the normative aspects that apply to East Jerusalem. These aspects necessitate a reexamination of the rule as it relates to East Jerusalem residents. Moreover – over the course of the years that have elapsed since the **'Awad** judgment was handed down other normative strata have been added with regard to East Jerusalem residents, which increase the need to reexamine the rule as it applies to East Jerusalem residents and beg the question whether Israeli law can still seek "synchronization" of their civilian status in such a way that turns a blind eye to the special situation that pertains to East Jerusalem.

123. The State of Israel does not want Palestinians in East Jerusalem to be its residents, and even less so – its citizens. Israel thereby recognizes that the residents of East Jerusalem are no different than the residents of the West Bank, and even encourages the formers' link to the Occupied Territories and to the Palestinian Authority. They in turn generally do not view themselves at all as Israelis, but Palestinians, who are connected to the Occupied Territories. Despite the fact that East Jerusalem residents number a third of all the residents of Jerusalem, and despite the fact that they are entitled to participate in elections for the Jerusalem Municipal Council and for mayor (see Section 13 Local Authorities (Elections) Law 5725-1965), they do not generally participate in elections. There is not a single Palestinian member in the Jerusalem Municipal Council.

124. An example of the fact that the State of Israel treats East Jerusalem residents as residents of the rest of the Occupied Territories is found in Israel's decision to apply the same arrangements for exiting abroad, returning to Israel and the West Bank and status upon arrival that it applied to the rest of the residents of the West Bank (the "open bridges policy" which we discussed) to East Jerusalem residents. As aforesaid, this policy recognized the needs of the residents of East Jerusalem and the Occupied Territories to travel to Jordan and other Arab countries, and not only for temporary needs or for short periods, like visits or commerce, but also for needs requiring continuous living abroad, including for the purpose of studies, employment, and family ties. From 1967 until today, departure abroad and return has been possible by way of an exit card which also constitutes a return visa. This applies equally to East Jerusalem residents and residents of the West Bank. Both leave and return in the same manner.

125. The State of Israel's alienation of the Palestinian residents of East Jerusalem and the encouragement of their forging links with the Occupied Territories was given concrete expression in the Oslo Accords, in the legislation for their implementation and in implementation in practice. Within the framework of the Oslo Accords, signed between the State of Israel and the PLO, Israel explicitly recognized that East Jerusalem lies at the heart of the conflict, and that there is a complete affiliation between the Palestinian residents of East Jerusalem and the rest of the Palestinian residents in the West Bank and Gaza Strip

126. In the Oslo Accord A, dated September 13, 1993 Israel undertook to discuss the status of East Jerusalem within the framework of negotiations for a final settlement, and it agreed that "Palestinians from Jerusalem who live there shall have the right to participate in the election process" to the Palestinian Council, "pursuant to the Agreement between the two sides". In the Oslo Accord B dated September 28, 1995 general rules for holding elections for the Palestinian Legislative Council and the Chairman of the Executive were agreed upon. It was agreed that "Palestinians from Jerusalem who live there shall be permitted to participate in the election process" (to elect and to be elected), provided that they are not citizens of Israel. In Appendix II to the Agreement arrangements for voting in East Jerusalem were established. After signing these agreements two laws were enacted for their implementation: The Implementation of the Interim Agreement with Respect to the West Bank and the Gaza Strip (Restriction of Activities) Law 5755-1994, and the Implementation of the Interim Agreement with Respect to the West Bank and the Gaza Strip (Jurisdictional Authority and other provisions) (Legislative Regulations) Law, 5756-1996. Israel's undertaking to hold the elections in East Jerusalem and to enable the participation of East Jerusalem residents in the elections was enshrined in legislation. The legislation establishes that these provisions would be implemented according to the government's discretion, with its consent and notwithstanding anything stated in any other law.

127. Since the first Implementation Law, elections in the Palestinian Authority have taken place three times: in 1996, 2005 and 2006. East Jerusalem residents participated in each of these elections with the consent and support of the Government of Israel. The Government of Israel defended its decision to allow the participation of East Jerusalem residents before the HCJ, which ruled that this participation in the elections was lawful (HCJ 298/96 **Peleg v. Government of Israel** (judgment dated January 14, 1996): HCJ 550/06 **Ze'evi v. Government of Israel** (judgment dated January 23, 2006 with reasons for judgment dated February 9, 2006)).

128. As stated East Jerusalem residents took part in the most recent elections, held in the beginning of 2006, as well. On January 17, 2006 the then Prime Minister, Ehud Olmert clarified the decision to allow East Jerusalem residents to participate in the elections. Below is a verbatim transcript of his words, as published on the internet website of the Office of the Prime Minister:

> I want to remind you that in both 1996 and 2005, elections were held in Jerusalem. The responsible approach that I supported both in 1996 and in 2005 said that while we do not concede our authority and sovereignty over all parts of Jerusalem, we certainly have an interest in maintaining East Jerusalem residents' link to a Palestinian state and not to the State of Israel. We never thought that the State of Israel's interest is that all East Jerusalem Arabs will be citizens and participate in the elections in it. It is impossible to deny them the right to vote in Palestinian Authority elections.

> Since we are not interested in having them vote in Israeli elections, we certainly need them to agree to participate in the Palestinian Authority elections and therefore the decision was correct then and it is still correct today […]. I assume that most Israelis prefer that East Jerusalem Arabs not participate in Israel's elections but in the elections of the state with which they identify, i.e. the Palestinian state."

http://www.pmo.gov.il/PMOEng/Archive/Current+Events/2006/01/eventpre170106.htm

129. The Implementation of the Oslo Accords Laws – whose practical implementation was approved, as stated, by the HCJ – introduced the distinction between the status of East Jerusalem residents and the status of other residents of Israel into law. How is it possible that in the current situation, where Israel views East Jerusalem residents as part of the Palestinian Nation and encourages their links with an independent Palestinian administration – an independent Palestinian administration, which apparently was something which even Mubarak **'Awad** had striven to establish in 1988 - the **'Awad** rule, as interpreted by the respondent, still remains intact? Is it possible that one may still speak of a "synchronization" of East Jerusalem and its residents with Israel, as interpreted by the court on the basis of legislation in 1988? Clearly, the changes made to the law and the current situation no longer permit the same attitude towards the status of East Jerusalem residents which regards them as having been "swallowed" by the laws of status in Israel, as if they were immigrants like all other immigrants.

Conclusion: the change of policy in view of reality of life and the normative changes

130. It is impossible to look at the policy of residency revocation without considering the normative and factual aspects which we have illustrated. We have seen that the **'Awad** rule must be expanded so that it may be reconciled with other norms of Israeli law, which imbibe the principles of human rights and international humanitarian law. The expansion of the **'Awad** rule is also required within the framework of drawing conclusions from its implementation until today and within the framework of adjusting it to life in the modern world.

131. In the **'Awad** case, the court assumed a reality in which a person relocates the center of his life from one country to another. For a certain interim period, this center-of-life "seemingly hovers between his previous place of residence and his new place of residence", however by the end of this interim period the disconnection is complete. This assumption does not always pass the test of reality.

    As we have seen from the examples that have been cited above, a woman in a traditional society who goes to live with her spouse in another country has not severed her relations with the country of her birth. This is the natural and only place of refuge for her if the relationship between the spouses breaks down.

    We have also seen other examples of how leaving abroad for study and livelihood purposes, even if it is for an extended period, comes to an end, usually when children are born and reach the age of formal education. The bond with the country of origin, even if it has wavered over the years, is revealed in all its might when one has to send one's child to the education system.

In the modern patterns of human movement in the global village, an extended stay abroad is a frequent phenomenon. It does not cancel out the constant and deep connection between a person and the country of his or her birth. In times of crisis, or at the opposite end of the spectrum, when starting a family or reaching retirement, the urge to "come home" is reawakened in full force.

132. In the years that have passed since the **'Awad** judgment, it has become clear that the simplistic implementation of the **'Awad** rule does not lead to the removal from East Jerusalem of those people who have no real link to it, or those who came to the city as political agents only. Those who paid the price of the technical application of the **'Awad** rule were those for whom Jerusalem was a home to return to.

133. And perhaps even worse; the **'Awad** rule has dangerous ramifications for the future. As early as 1967 Israel recognized, within the framework of the open bridges policy, that it was necessary for East Jerusalem residents to remain abroad for extended periods of time in order to acquire an education and a livelihood that were not available in Jerusalem, and to preserve their societal and familial links with Arab states. Israel also saw the possibility of these residents fulfilling themselves abroad as a clear Israeli interest. Now, when the entire world is one global village, the self fulfillment of human beings is more and more dependent on their mobility across international borders.

134. The implementation of the **'Awad** rule by the respondent places East Jerusalem residents between a rock and a hard place: their right to leave their homes for a limited time for the purpose of self realization, education, a livelihood and participation in the life of modern society clashes with their rights to a home and a homeland. The **'Awad** rule has turned into a judicial cage which imprisons East Jerusalem residents, precludes them from being mobile like everyone else, and confines them to the narrow and forsaken space in which they were born. The punishment for leaving the city for a limited time, as well as for acquiring status in other places means losing one's home and the possibility of returning to the homeland.

135. In light of the harsh results of the **'Awad** rule, and in order to conform it to the legal rules that apply to East Jerusalem residents, it needs to be expanded. There is no need to amend the ruling that East Jerusalem residents live in Israel by virtue of the permanent residency permits that were granted to them as a whole, in accordance with the Entry into Israel law. There is no need to amend the ruling that Israeli permanent residency permits, in the event that they are granted to an immigrant from a foreign country, include a general stipulation that the validity of the permit is dependent upon the reality of being a permanent resident. However, with respect to East Jerusalem residents, for whom this piece of earth is home, and who enjoy the status of protected persons under international humanitarian law, it must be held that their residency permits in Israel include a general stipulation that the permit does not expire, even following extended periods of living abroad or the acquisition of status in another country. That is, as stated in the judgment in the **'Awad** case, the respondent is permitted to stipulate conditions for granting residency permits (Section 6 of the Entry into Israel Law). However, the condition that must be read into the residency permits which the respondent granted East Jerusalem residents is that those may not be revoked as a result of continuous living abroad or the acquisition of status in another country.

Therefore, the honorable court is requested to issue an order nisi as sought and render it absolute subsequent to receiving the respondent's response.

7 April, 2011

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