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At the Supreme Court
Sitting as the High Court of Justice

AAA 3268/14

In the matter of:

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The Applicants

In the matter of:

____________ **Alhak**

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The Appellant

v.

Minister of Interior

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

The Respondent

Application to Join as Amicus Curiae

The honorable court is requested to join the applicants to the court proceeding as *amicus curiae*.

Preface

1. This appeal concerns the revocation of appellant's permanent residency status, a native of Jerusalem. The respondent revoked his status because he had been living for long period of time in the United States and obtained a US citizenship. The honorable court of first instance decided not to intervene with this decision. The honorable court of first instance based its determination on Regulations 11(c) and 11A of the Entry into Israel Regulations, 5734-1974 (hereinafter: the **Entry into Israel Regulations**), as interpreted in a judgment that was given two decades ago in the **Awad** case (HCJ 282/88 **Awad v. The prime Minister and Minister of Interior** IsrSC 42(2) 424 (1988) (hereinafter: the **Awad case** or **Awad**).

2. The **Awad** judgment, according to its language and purpose, was meant to “reflect the realities of life”. However, ever since it was given and until today, not only has it failed to reflect the realities of life, but according to the interpretation given to it by the Ministry of Interior it has become an aggressive and devastating bureaucratic administrative tool, for altering the realities of life. Over the past twenty years the interpretation given by the respondent to the **Awad** judgment has been used as a tool for the revocation of the status of **thousands** and for the “dilution” of the Palestinian population in East Jerusalem. This policy is consistent with the general abusive policy towards these residents, which is meant to push the Palestinian residents of Jerusalem away from the city thus obtaining a Jewish majority in Jerusalem.

3. In the years that have elapsed since the **Awad** judgment, it became evident that the price for the simplistic implementation of this judgment was paid by those people for whom Jerusalem constituted a home to return to. The implementation of this judgment by the Ministry of Interior placed the Palestinian residents of East Jerusalem between the rock and the hard place: their right to leave their home for a limited period for self realization, education, livelihood, medical matters and participation in the life of modern society was juxtaposed against their right to home and homeland. The **Awad** judgment became a legal cage that imprisons the residents of East Jerusalem, does not allow them to freely move like any other person, and binds them to the narrow and neglected area in which they were born. The sanction for leaving the city for a limited period, as well as for acquiring status in other places, is the loss of one's home and ability to return to the homeland. The effect that this policy has on women residents of East Jerusalem is particularly severe.

4. Indeed, ever since the **Awad** judgment was given and until this day, the honorable court has not examined the harsh **results** arising from respondent's interpretation of the **Awad** judgment**.** The honorable court has not examined the abstract analysis that was made in the **Awad** judgment against the backdrop of the real world and against the backdrop of the norms which apply to East Jerusalem, has not modified it to the realities of life and consequently has failed to prevent the harsh result that flow from the manner by which said judgment is interpreted by the respondent.

5. As far as the reality of life is concerned, it became clear that the respondent interpreted the **Awad** judgment very broadly, and used it in order to revoke the status of thousands of East Jerusalem residents. These severe results have yet to be discussed. As far as the law is concerned, the **normative aspects** concerning East Jerusalem and its residents have also not yet been discussed in depth. Up until now no examination has been made of the provisions of international law – international human rights law and international humanitarian law – according to which the residents of East Jerusalem are not merely "residents of Israel" but are also "protected persons", who are entitled to continue living in the area. There has also been no examination of the provisions of international human rights, according to which every person is entitled to return to his country. These provisions of international law should be interpreted together with the **changes which took place during the last twenty years in the internal Israeli law with respect to East Jerusalem,** which apply following political agreements to which Israel has committed itself. All of the above shed light on the special status of East Jerusalem residents. Even if the status of East Jerusalem residents is derived from the Entry into Israel Law, 5712-1952 (hereinafter: the **Entry into Israel Law**), as was held in the **Awad** case, their status is not like the status of any other resident, and is most certainly unlike the status of immigrants who came to Israel. Their special circumstances, as persons whose ancestors (or they personally) lived in East Jerusalem before its annexation by Israel, have an impact upon the law that applies to them.

6. The appellant's case raises these aspects. The applicants request to join the proceedings and to shed light on them.

Amicus Curiae – the Normative Framework

7. Applicant 1, HaMoked: Center for the Defence of the Individual founded by Dr. Lotte Salzberger (hereinafter also **HaMoked**: **Center for the Defence of the Individual** or **HaMoked**), is a registered not-for-profit association which has been engaged, over twenty five years, in the promotion of human rights in the Occupied Palestinian Territories (OPT) – the Gaza Strip, the West Bank and East Jerusalem. Among other things, applicant 1 assists East Jerusalem residents to fight against a wide range of human rights violations, which pertain to their lawful status in Israel and their right to family

life. In the context of this activity applicant 1 filed, throughout the years, hundreds of petitions with the High Court of Justice and with the Courts for Administrative Affairs in matters of East Jerusalem residents and their family members. Some of these petitions involve general issues, the decisions in which had broadly affected the status of hundreds of Esat Jerusalem residents (see, among other: AAA 5569/05 **Ministry of Interior v. Aweisat**; HCJ 7052/03 **Adalah v. Minister of Interior**; AAA 8849/03 **Dufash v. Director of the Population Administration in East Jerusalem**).

8. Applicant 2, The Association for Civil Rights in Israel (hereinafter: the **Association for Civil Rights** or **ACRI**), is the oldest and largest human rights organization in Israel. Its purpose is to protect the whole spectrum of human rights in Israel, in the OPT and wherever human rights are violated by the Israeli authorities. Among other things ACRI acts to protect human rights in aspects related to status in Israel.

9. HaMoked and ACRI assist East Jerusalem residents to fight an array of human rights violations, including violations which pertain to their lawful status and their right to family life. They have on more than one occasion served as public petitioners "on various issues of general public importance, related to the rule of law in its broad sense and to other matters of a constitutional nature" (HCJ 651/03**The Association for Civil Rights in Israel v. the Chairman of the Elections Committee for the Sixteenth Knesset** IsrSC 57(2) 62, 69 (2003)). They frequently conduct joint proceedings and are jointly heard in issues of general aspects. Thus, for instance, the applicants have recently submitted an application to join as *"amicus curiae*" and were heard in AAA 1038/08 **State of Israel v. Ghabis** (judgment dated August 10, 2009), which concerned the grant of the right to be heard in family unification procedures of spouses, when the Ministry of Interior considers denying a family unification application based on security or criminal information.

10. The specific dispute being the subject matter of this appeal also has public aspects, intrinsically related to the rule of law. Indeed, on more than one occasion, within the framework of a specific proceeding, a general issue arises, the ramification of which are much broader than the individual case at hand. In these cases a third party with relevant expertise – such as the applicants – can assist in the establishment of a judgment by providing the court a full and clear presentation of knowledge in the field of its expertise, which applies to the general issue. For this purpose the courts have recognized the importance of joining an *amicus curiae* in appropriate cases. As stated by President Barak:

> The *'amicus curiae*' institution has been recognized in various legal theories for hundreds of years… its main purpose is to assist the court on any issue whatsoever, by someone who is not a direct party to the dispute in question. Originally this institution was a tool for presenting an exclusively neutral position in the proceedings, while rendering objective assistance to the court. Later on, however the *amicus curiae* institution developed into a party to the proceedings, which was not necessarily neutral or objective, but it rather presents – by virtue of its position or engagement – an interest or expertise that should be heard by the court in a specific dispute". (*Retrial* 7929/96 **Kozli v. The State of Israel**, IsrSC 53(1) 529, 533 (1999) (hereinafter: **Kozli**)).

11. Accordingly, the guiding principle is that the knowledge and expertise of the applicant wishing to join as *amicus curiae* provide an appropriate presentation and articulation of the general aspects of the specific dispute. As stated by President Barak:

> In those cases where there is a third party – who is not himself involved in the dispute – it may be possible to join him as an *amicus curiae*, if its presence in

> the proceedings contributes to the establishment of a judgment in a specific case, based on a full presentation of the relevant positions in the case in question and by providing eloquent and knowledgeable representation to representative and professional bodies." (**Kozli,** *ibid*.).

12. The **Kozli** case provides a list of tests which should be satisfied for the purpose of granting any organization the status of *amicus curiae*:

> Indeed, before giving an organization or a person the right to express its/his position in a proceeding to which it/he is not an original party one must examine the potential contribution of the proposed position. One must examine the nature of the organization that applies to join. One must investigate its expertise, experience and the representation it provides to the interest for which it wishes to join the proceedings. One should clarify the type of the proceeding and the procedure implemented therein. One must examine the identity of the parties to the proceeding itself and the stage in which the application to join was filed. One must be aware of the nature of the issue to be decided. All of the above are not exhaustive criteria. They are insufficient to determine in advance when one should or should not be joined to the proceeding as *amicus curiae*. At the same time one must consider these criteria, amongst others, before making a decision in an application to join a proceeding as aforesaid. (*Ibid*. 555)

13. The rule established by the Supreme Court with respect to *amicus curiae* in the **Kozli** case, by virtue of which the joining of an *amicus curiae* was allowed in criminal proceedings, has been implemented in various types of proceedings, pending before different courts (**In constitutional and administrative proceedings** see for instance: HCJ 1119/01 **Zaritskiya v. Ministry of the Interior** (decision dated April 15, 2001); HCJ 2531/05 **"Recovery and Recuperation" Management and Services Netanya Ltd. v. State of Israel – Ministry of Health** (decision dated June 26, 2005); HCJ 2056/04 **Beit Surik Village Council v. The Government of Israel** IsrSC 58(5) 807, 824-826 (2004); HCJ 7803/06 **Abu Erpah v. Minister of Interior** (decision dated 25 December, 2006); AP (Tel Aviv) 1464/07 **Perach Hashaked Ltd. v. Bat Yam Municipality** (decision dated July 9, 2007). **In civil proceedings** see for instance: CA 11152/04 **Pardo v. Migdal Insurance Company Ltd**. (decision dated April 4, 2005); CA 9165/02 **Clalit Health Services v. Minister of Health** (decision dated September 29, 2003); **In the Labor Courts** see for instance: LA 1233/01 **Orielli – Herzlyia Municipality** IsrLC 37 508, 519 (2001); MApp 3415/00 **Na`amat - Clal Insurance Company Ltd.** (decision dated September 11, 2001); Nat.Ins 1245/00 **Diwis – National Insurance Institute** (judgment dated November 3, 2005)).

14. As aforesaid, the courts are prepared under suitable circumstances to allow the joining of *amicus curiae*, if knowledge, which is within its field of expertise, is liable to assist the determination of the case at hand in an efficient and complete manner (see also on this matter: Michal Aharoni "The American Friend – A Sketch of the *Amicus Curiae*" [in Hebrew] ***HaMishpat*** 10 (5765) 255; Israel Doron, Manal Totry-Jubran "*Too Little, Too Late? An American Amicus In An Israeli Court*" 19 Temple (Int'l.&Comp. L. J. 105 (2005)).

15. In view of the general nature of the issue which is raised in this appeal, the relevant considerations for joining an *amicus curiae*, and the unique expertise and experience of the applicants, the honorable court is requested to order of the joining of applicants as *amicus curiae* to the proceeding.

16. The joining of the applicants is not expected to encumber the judicial hearing. Firstly, the applicants wish to join as *amicus curiae* solely for the purpose of filing an opinion on their behalf, and solely for the purpose of arguing for the issues which appear in the said opinion. Beyond that, the status and degree of involvement of the applicants in the proceedings shall be determined by the court, as it deems appropriate. In view of the fact that the applicants shall not intervene in the clarification of the factual questions between the parties, if any, and in view of the fact that their involvement will be limited to an opinion on the general questions addressed by them, their joining, then, will not jeopardize the efficiency of the hearing. In addition, the application is filed at a preliminary stage, before a hearing on the merits has been held, so as not to cause damage to any of the parties or delay in the hearing.

17. I should be noted that HaMoked and ACRI submitted applications to join as *amicus curiae* in three appeals which were pending before the honorable court in matters concerning the revocation of residency in East Jerusalem and raise their arguments specified in this application: AAA 2392/08 **Sayeg v. Minister of Interior**; AAA 5037/08 **Halil v. Minister of Interior**; and AAA 2761/13 **Zein v. Minister of Interior**. HaMoked and ACRI were heard in the context of the first two proceeding. The appeal in AAA 2393/08 **Sayeg v. Minister of Interior** continued to be heard as a specific case, and therefore the arguments were not heard. In a hearing which was held in AAA 5307/08 in the Halil case on February 1, 2010, the honorable court (the Honorable Justices Procaccia, Naor and Rubinstein) was of the opinion that the applicants should present their arguments concerning the policy being the subject matter of the appeal and its ramifications before the respondent, and to the extent its response would not satisfy them, they should file with the court a specific petition concerning the policy (namely, not in the context of a specific proceeding concerning the revocation of residency in a specific case). The applicants acted as directed by the honorable court. The turned to the respondent and to the Deputy Attorney General, and have broadly presented their arguments. In the absence of any response, they filed a petition (HCJ 2797/11 **Karain v. Minister of Interior**). Following the filing of the petition the honorable court decided to stay the decision in the appeal in AAA 5307/08 **Halil**, until a decision was made in the petition. In the hearing which was held in the petition on March 21, 2012, the honorable court (the Honorable President Grunis and Justices Melcer and Sohlberg) was of the opinion that judicial scrutiny over respondent's policy could be exercised solely within the framework of a specific proceeding (rather than in the context of a petition which focuses on policy). Therefore, the honorable court recommended that the petition would be withdrawn by the petitioners. The applicants advised that they took the path which the honorable court directed them to take. However, if the court was of the opinion that the issue should be heard in the context of a specific proceeding, they accepted the court's recommendation to withdraw their petition, and in the context of the proceeding which would resume in the appeal in AAA 5307/08 **Halil**, they would re-submit their application to present their position. The hearing in the appeal resumed, but like the **Sayeg** case it also took the path of a specific proceeding, and therefore the arguments have not yet been heard. Shortly after the submission of the application to join the third proceeding in AAA 2761/13 in the **Zein** case, the respondent notified that he would be willing to reinstate appellants' status also in the framework of a specific proceeding, and the appeal was deleted.

18. Therefore, the applicants request to present their position in the context of this proceeding. The honorable court is requested to join the applicants as *amicus curiae* and summon them for the hearing in the appeal.

Detailed Arguments

I. Introduction

19. More than two decades ago the Supreme Court laid the first layer concerning the status of East Jerusalem residents. This was in the **Awad** case. The judgment in the **Awad** case was given against the backdrop of special and exclusive factual circumstances – both in connection with the facts that pertain to the nature of petitioner's emigration from Israel in that case and as well as in connection with his activities during the first intifada. The judgment established several guidelines regarding the nature of the legal status of East Jerusalem residency and the criteria according to which residency would be revoked.

As more than twenty years have elapsed, the abstract analysis of the **Awad** judgment should be reconsidered against the backdrop of the practical world and the reality of life. Furthermore, the rulings made in the **Awad** case should be reconsidered against the backdrop of other norms in the legal arena, especially the norms which apply to East Jerusalem.

As far as the reality of life is concerned, it became clear that the respondent gave the **Awad** judgment a very broad interpretation, and turned it into a tool for denying the status of thousands, thereby "diluting" the Palestinian population of East Jerusalem. This policy constitutes an integral part of a general abusive policy applied against these residents.

As far as the law is concerned, this case concerns provisions of international law – international human rights law and international humanitarian law – according to which East Jerusalem residents are not merely "Israeli residents" (as stipulated by the domestic Israeli law) but are also "protected persons" who are entitled to continue to live in the Area. We are also concerned with the norm of international human rights law, according to which every person has the right to return to his country. These provisions should be interpreted together with the changes made in the domestic Israeli law with respect to East Jerusalem, which apply as the result of political agreements to which Israel has committed itself. All of the above shed light upon the special status of East Jerusalem residents. Even if the status of East Jerusalem residents is derived from the Entry into Israel Law, as was held in the **Awad** case, their status is still not the same as the status of any other resident, and is most certainly not the same as the status of immigrants who came to Israel. The special circumstances of those whose fathers and mothers lived in East Jerusalem before its annexation by Israel, have an impact on the law which applies to them.

The honorable court which over the years relied on the Awad judgment has not yet referred to these questions and left them under advisement. In **Dari** in which the court reiterated said judgment, it was noted before conclusion as follows:

> The above conclusion does not necessarily bring to an end the argument that a distinction should be drawn between an individual who received a permanent residency status because he was born in Israel (or in a territory which became part of Israel) and grew up therein, and an

individual who received a permanent resident status after he had immigrated to Israel. A host of ties and connections indicates of a change of a center of one's life, neither one of which constitutes an exhaustive test. Drawing a distinction between a situation in which an Israeli resident has some ties with another country as opposed to a situation in which the level of the ties severed the residency connection with Israel - is not always easy (see in a different context, CrimApp 3025q00 **Harush v. State of Israel**, IsrSC 54(5) 111, 124). It is possible that in the process of weighing and balancing between the different data and ties, the question concerning the basis of the temporary residency status will also have weight. Anyway, there is no need to resolve this question in the case at hand and I shall therefore leave it under advisement. (AAA 5829/05 **Dari v. Minister of Interior** (judgment dated September 20, 2007)).

20. Indeed, some of the judges of the courts for administrative affairs do not adopt the broad interpretation given by the respondent to the Entry into Israel Regulations following the **Awad** judgment. In specific cases which were heard, it was held that more limited and proportionate interpretation should be applied, *inter alia*, based on the recognition of the unique status of the residents of East Jerusalem and the great injury inflicted on them as a result of the revocation of their status and their deportation from their own city (see AP 279/07 **Mukhsan v. Minister of Interior** (judgment dated January 16, 2008); AP 8141/08 **Hadara v. Director of the Population Administration Bureau in Esat Jerusalem** (judgment dated November 12, 2008); AP 1174/09 **Wuzwuz v. Minister of Interior** (judgment dated December 16, 2009); AP 1630/09 **Huseini v. Minister of Interior** (judgment dated August 24, 2010); AP 20173-05-10 **'Atai v. Minister of Interior** (judgment dated February 20, 2011); AP 1760/09 **Sivana v. Minister of Interior** (judgment dated April 17, 2011); AP 720/06 **Kamel v. Minister of Interior** (judgment dated February 17, 2013); AP 18526-04-13 **Odalah v. Minister of Interior** (judgment dated September 8, 2013); AP 19473-10-13 **Nablusi v. Minister of Interior** (judgment dated December 26, 2013)).

    However, case law, as indicated by the appeal at hand, is not homogenous and even the judgments given by the court do not cause the respondent to change his policy. The respondent adheres to the wide revocation of residency policy and disregards the judgments of the courts for administrative affairs which criticize his policy. In fact, unless the court for administrative affairs explicitly directs the respondent in a specific case which was brought before it to change his decision, he continues to adhere to his policy. In **Kamel**, mentioned above, the court even expressed its dismay of the situation by stating that: "This phenomenon in which some of the cases pertaining to the reinstatement of residency are reviewed according to the written procedure and others are determined according to general principles and case law additions, is neither appropriate nor desired."

21. Against the above backdrop, we shall present our arguments in an orderly manner.

II. The Awad Judgment

22. In the background of the petition and judgment in the **Awad** case was the decision of the Prime Minister and the Minister of Interior 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 counted in the population census and received an Israeli identity certificate. In 1970 he travelled to the USA. He studied in the USA, where he acquired citizenship. Awad returned to Israel on a number of occasions over the course of the years. Ever since acquiring American citizenship he entered Israel on his American passport. In 1987 when he submitted to the Ministry of Interior an application to replace his identity certificate in his possession he was informed that his residency had expired. His residency status was not extended. In May 1988, in the beginning of the initial days of the first intifada, a deportation order was issued against him. The reason for the deportation order was detailed in the judgment, as cited below:

    > …During petitioner's stay in Israel, and especially in the recent period, in which, in the opinion of the Minister of Interior, he stayed unlawfully in Israel, the petitioner openly and intensively acted against Israeli rule over Judea and Samaria and the Gaza Strip areas… In 1983 the petitioner published a book in Arabic and in English titled *Non-Violent Resistance: A Strategy for the Occupied Territories.* In January 1985, the petitioner established an institute in Jerusalem headed by him, and called the 'Center for the Study of Non-Violence'. The nature and views of this Center are in dispute. The petitioner argues that he opposes Israeli rule in the occupied "territories" but that he advocates taking action against it only through nonviolent means. *Inter alia* the petitioner pointed to various nonviolent resistance methods, such as boycotting goods, refusal to work within Israeli frameworks, refusal to pay taxes or to complete forms. However, all aforesaid resistance measures should be exercised, according to the petitioner, on one condition: no act involving physical violence shall be taken. The petitioner supports the sovereign existence of the State of Israel alongside the existence of a sovereign Palestinian political entity. And these two states, according to his views and belief, are liable in the future to exist side by side in peace and harmony. The petitioner even went as far as to suggest on Israeli television (in the beginning of April) that "we should strive for full reconciliation including negotiations with the refugees to compensate them for their abandoned property and for turning over a new leaf in the relations between the Jewish and the Palestinian peoples."
    >
    > The petitioner considers himself as one of the most moderate opinion holders among the Palestinian leaders. According to his principles "one must condemn violent retaliation – including the throwing of stones and Molotov cocktails – which happens right now in the 'occupied

territories', and even more so actions more violent than these. As opposed to these statements, it has been noted by 'Yossi' – who serves in the Israeli Security Agency in the Division for Prevention of Sabotage and Hostile Terror Activities in the Jerusalem and Judea and Samaria Area, whose affidavit is attached to respondent's reply – that the "ostensible moderate image that the petitioner has attempted to project for himself is merely a ruse that is incompatible with his true objectives"**.** The petitioner's political goal, according to 'Yossi' is the "liberation of the territories from Israeli rule and thereafter the establishment of a bi-national Israeli-Palestinian State having Palestinian characteristics". According to 'Yossi' the petitioner advocates civil disobedience, and calls for and advocates, among other things, the boycotting of Israeli goods and services, refusal to pay taxes, organized desertion of Israeli workplaces, and the failure to carry an identity certificates, the excommunication of collaborators, and similar forms of action. At first petitioner's activities were not greeted with approval in the Arab street. But as soon as the uprising began in the territories, in December 1987, his ideas started to receive tangible expression in proclamations that were issued by the uprising's headquarters, which resulted in practical activity, which was carried out on scene by the residents of the territories. These activities included, *inter alia*, abstention of workers from the territories from working in Israel, failure to pay taxes, resignations of policemen, injuring collaborators, calls to mayors to resign, etc. 'Yossi' points out that the "petitioner himself took part in the publishing of the proclamations which contained, *inter alia*, a call to take up violent and hostile action against the State on the part of residents of the territories". In 'Yossi's opinion "the petitioner's activities at the height of that period cause real harm to security and public order, and his ideas and objectives have an immediate ramification on the occurrences in the territories. The petitioner's continued residence in Israel poses actual danger to security and public order". 'Yossi''s expert opinion was before the respondent, when he ordered to deport the petitioner from Israel (**Awad** case, 427-428).

23. It should be reminded: this was back in the beginnings of the first intifada, a time that predated the Oslo accords and predated the establishment of the Palestinian Authority. At that time Israel has not yet recognized the right of the Palestinian People in the West Bank and the Gaza Strip to have its own government (as stated in Oslo Accords A and B). Against the background of this reality the decision by the Minister of Interior in the **Awad** case was examined.

24. In its judgment the court dealt with three questions:

Firstly, does the Entry into Israel Law apply to petitioner's permanent residency in Israel; secondly, is the Minister of Interior authorized to

> deport the petitioner pursuant to the Entry into Israel Law, if this Law is applicable; thirdly, was the authority to deport lawfully exercised (*ibid*. 429).

25. As to the first question the court held that the annexation of East Jerusalem "created synchronization between the State's law, jurisdiction and administration and between East Jerusalem and those located in it". (*Ibid*., page 429). In order to give "effect to this standpoint" and to entrench it "as much as possible" in the language of the Law (*Ibid*., page 430), the court accepted the State's argument according to which Each Jerusalem was subordinated to the provisions of section 1(b) of the Entry into Israel Law which state as follows:

> The residence of a person, other than an Israeli national or the holder of an *oleh* visa or of an *oleh* certificate, in Israel shall be by residency permit, under this Law.

In this context the court held:

> This enshrinement does not raise any difficulty, since one may view residents of East Jerusalem as if they have received a permanent residency status. True, as a general rule, the status is granted by a formal document, but it is not necessarily required. Status may be given without any formal document, and the status may be implied from the circumstances of the matter. Indeed, by virtue of the recognition of East Jerusalem residents, who were counted in the population census that was carried out in 1967, as individuals who were lawfully and permanently residing therein, they were registered in the Population Registry, and they were provided with identity documents. (*Ibid*. page 430)

26. The court rejected petitioner's argument that he had a "quasi citizenship" status in Jerusalem, while noting that:

> As is well known, for reasons related to the interests of East Jerusalem residents, Israeli citizenship was not granted to them without their consent, but each one of them was granted the opportunity to apply for and receive Israeli citizenship, if he so desired. Some residents applied for and received Israeli citizenship. The petitioner, and many like him, did not do so. Since they refrained from receiving Israeli citizenship, it is difficult to accept their argument concerning "quasi citizenship", which entails only rights, rather than duties… In this context counsel to the petitioner argued that the application of the Entry into Israel Law to the permanent residency of East Jerusalem residents was inconceivable, since it implied that the Minister of Interior could, by mere words, deport all of East Jerusalem residents by revoking their permanent residency permits. This argument has no merit. The

> authority to revoke vested with the Minister of Interior does not turn permanent residency into *ex-gratia* residency. Permanent residency is established by the law, and the Minister may exercise this authority for pertinent considerations only. It goes without say that the exercise of this authority is, in fact, subject to judicial review. (*Ibid.*, pages 430-431).

27. Following the above said, the court discussed the issue of whether the Minister of 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 consist of any explicit provision according to which a permanent residency permit expires if the permit holder leaves Israel and settles in a country outside Israel. Provisions to that effect may be found in the Entry into Israel Regulations (hereinafter the **Entry Regulations**), which were promulgated by virtue of the Entry into Israel Law. Regulation 11(c) of the Entry Regulations stipulates that "the validity of a permanent residency permit shall expire… if the permit holder left Israel and settled in a country outside Israel". Regulation 11A stipulates:
>
> … a person shall be deemed to have left Israel and to have settled in a country outside Israel if one of the following applies to him:
>
> (1) He resided outside Israel for a period of at least seven years…;
> (2) He received a permanent residency permit in that country;
> (3) He received the citizenship of that country through naturalization.
>
> There is no doubt that the appellant falls within the framework of Regulation 11A of the Entry Regulations, since he satisfies each one of the three conditions stipulated therein - each one of which, in and of itself, is sufficient to revoke his permanent residency permit…
>
> The Entry into Israel Law explicitly authorizes the Minister of Interior to "prescribe in the visa or in the residency permit conditions the fulfillment of which constitute a condition for the validity of the visa or of the residency permit" (section 6(2)). These "suspending" conditions may be of an individual nature, and may also be of a general nature. Regulations 11(c) and 11A should be regarded as prescribing suspending conditions of a general nature…
>
> In my opinion it is possible to arrive at this conclusion concerning the expiration of the validity of the permanent residency permit even without the Regulations and by virtue of an interpretation of the Entry into Israel Law. As aforesaid, the Entry into Israel Law authorizes the Minister of Interior to grant a residency permit. This permit may be for

the period prescribed therein (up to a period of five days, up to three months, up to three years) and may be for permanent residency.

Obviously, a permit for a fixed period contains its own expiry date upon the termination of the period, and an 'external' act of revocation is not required. Can a permanent residency permit expire “in and of itself”, without any act of revocation by the Minister of Interior? In my opinion, the answer to this is in the affirmative. A permit for permanent residency, when given, is based on a reality of permanent residency. Once this reality no longer exists, the permit expires in and of itself. Indeed, a permanent residency permit – as distinguished from an act of naturalization – is a hybrid creature. On the one hand it has a constitutive nature, which grants the right for permanent residency; on the other hand it has a declarative nature, which expresses the fact of permanent residency. When this fact no longer exists, the permit has nothing to rely on and it therefore expires in and of itself, without any need to take a formal act of revocation (compare HCJ 81/62 **Golan v. The Minister of the Interior et al.**, IsrSC 16, 1969). Indeed, “permanent residency”, by its very nature implies a reality of life. The permit, once granted, gives said reality lawful effect. However, when this reality no longer exists, the permit loses its meaning, and *ipso facto* expires (*Ibid.*, pages 431-433).

28. How did Awad’s residency permit expire? The court answers:

A person who left the country for a very long period of time (in our case since 1970) and received a permanent residency status in another country… and even received citizenship in said country, by his own volition, after having taken all required steps in the United States for the attainment of American citizenship – is no longer a permanent resident of Israel. This new reality shows that the petitioner uprooted himself from Israel and replanted himself in the United States. His center of life is no longer in Israel but rather in the United Sates. Needless to say that it is often times difficult to point to the exact moment when a person ceases to permanently reside in a country, and there is certainly a period of time during which the center of a person’s life "hovers" between his previous abode and his new one. This is not the situation in the case at hand. Petitioner's conduct points at his desire to sever his permanent residency connection with Israel state and create a new and strong connection - permanent residency to begin with, which eventually evolves into citizenship – with the United States. It may very well be true that the motive for his said desire pertained to certain relaxations in the United States. It is possible that deep in his heart he has always aspired to return to this country. But the decisive test is the reality of life, as it actually occurred. According to this test, at a certain stage the petitioner relocated his center of life to the United

> States, and he can no longer be regarded as a permanent Israeli resident (*Ibid*. page 433).

29. Based on these determinations the court ruled that the authority to deport was lawfully exercised:

> As we have seen, respondent's discretion is premised on the recognition that the activities of the petitioner harm the security and public order, in view of the fact that he openly and intensively acts against Israeli rule over Judea, Samaria and the Gaza Strip. We do not have to resolve the factual dispute between the parties in this case, in view of the fact that even according to the appellant himself, he acts against Israeli rule over Judea, Samaria and the Gaza Strip. We see no unlawfulness in the position of the Minister of Interior, according to which a person who is not an Israeli citizen, who unlawfully stays therein and acts against state interests – should be deported from Israel (*Ibid*. page 434).

30. As we shall see, over the years, the respondent extracted an abstract, mathematic-like formula from the **Awad** judgment. Instead of letting the judgment evolve, taking into consideration the change of times and real life test, it was reduced into a rigid calculation - to be implemented regardless of the circumstances of the matter. The judgment, which is merely an attempt to entrench law in reality, was turned into a tool for changing the reality of life in East Jerusalem.

III. The Authorities' alienation of East Jerusalem residents

31. The rule deduced by the respondent from the **Awad** case had harsh and unbearable consequences. The implementation of the **Awad** case showed yet another facet of a transparent policy which has been applied by the governments of Israel throughout the years, the main purpose of which is to attain a Jewish majority in Jerusalem and to push its Palestinian residents away from the city. In order to achieve this goal, Israel has taken, for years, a policy which deprives the residents of East Jerusalem of their civil rights (for instance, by imposing many restrictions on the family unification procedures and on registration of children, and also – as in the issue being the subject matter of the appeal at hand – revocation of the residency status of residents of the city) and a policy of deliberate discrimination in various areas. Thus, the residents of the eastern part of the city are discriminated against in all matters related to building and planning policy, land expropriation policy, investment in physical infrastructures and in government and municipal services which are provided to them. Indeed, the policy derived by the respondent from the **Awad** rule is not implemented in a vacuum. For this reason, before turning to the consequences of the implementation of the **Awad** judgment, as interpreted by the respondent, we would like to present the reality in which these things take place – a reality which turns the lives of East Jerusalem residents into an intolerable existence and pushes them away from Jerusalem.

32. According to the law in Israel, permanent residents are entitled to almost all rights which are afforded to citizens. The formal set of rights of permanent residents is similar to that of citizens, and their rights are only different in a limited number of areas. Thus, for instance, permanent residents cannot elect or be elected to the Knesset (sections 5 and 6 of the **Basic Law: The Knesset**). And they are not entitled to receive an Israeli passport (section 2 of the **Passports law,** 5712-1952). However**,** other than that, as aforesaid, the formal set of rights of residents is similar to that of citizens. Residency permits which were given to Palestinian residents have regulated (at least by law) their eligibility to work in Israel, to receive emergency services and socio-economic resources. They granted these residents identifying documents (section 24 of the **Population Registration Law,** 5725-1965) and social rights (National Insurance pensions are paid according to the **National Insurance Law** [Consolidated Version] 5755-1995, to an Israeli resident. The **State Health Insurance Law,** 5754-1994 applies to Israeli residents as this term is defined the **National Insurance Law**), etc.

33. Despite the provisions of Israeli law, which in many spheres and for all practical purposes equate the system of rights of East Jerusalem residents with those of Israeli citizens, there is a deep 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 planning and construction issues are concerned; this is the case when the shameful standard of government and municipal services to which they are entitled are concerned, and this is the case when the status of residents and the protection thereof is concerned.

34. It is no secret that East Jerusalem is one of the poorest and most neglected amongst the places in which Israeli law applies. For many years the State Authorities have avoided investing in, and developing East Jerusalem. As a result thereof, the population suffers poverty and dire need, serious deficiencies in the provision of public services, poor infrastructures and harsh living conditions. The Jerusalem municipality consistently avoids massive and serious investment in infrastructures and services in the Palestinian neighborhoods in Jerusalem, including roads, pedestrian sidewalks, and water and sewage systems. Ever since the annexation of East Jerusalem, the municipality has built almost no new schools, public buildings or clinics, and the vast majority of the investments were made in the Jewish areas of the city. Below are some data, which demonstrate the severity of the situation (for a detailed account of the data described below see, *inter alia*: East Jerusalem in Numbers (the Association for Civil Rights in Israel, May 2014), available at: http://www.acri.org.il/education/wp-content/uploads/2014/05/east-jerusalem-2014.pdf).

35. By the end of 2012 the Palestinian population in Jerusalem was estimated at 371,844 inhabitants, constituting 39% of the city's population. **The poverty rate in East Jerusalem is the harshest in Israe**l. About 70% of the families in East Jerusalem, about 75% of the adults in East Jerusalem and about 84% of the children in East Jerusalem are below the poverty line. The depth of poverty in East Jerusalem is also the harshest in Israel, in view of the fact that the average income of families in East Jerusalem is about 50% below the poverty line (for the data see: **Scope of Poverty and Social gaps – 2013 Annual Report** (National Insurance Institute, November 2014)).

36. **The living conditions in East Jerusalem are overcrowded and harsh.** Ever since 1967, as opposed to wide range construction and huge investments in Jewish neighborhoods, construction for the Arab population in Jerusalem has been depressed. The Jerusalem municipality has refused for years to prepare future zoning plans for the Palestinian neighborhoods in East Jerusalem. Currently, despite the fact that most of these plans have been completed, few are in the stages of preparation and approval. Even amongst the plans which were approved up until the beginning of the 2000's, only about 14% of the East Jerusalem area is in fact available for construction, only 7.8% of the entire municipal area of Jerusalem. Wide areas were designated as “open country landscape area”, where construction is prohibited. The Jerusalem Institute data indicate that in 2011 the population density in East Jerusalem was almost double than its density in the western parts of the city: 1.9 persons per room as opposed to one person per room in the western parts of the city. According to estimates of "Bimkom" - Planners for Planning Rights, currently there is a shortage of about 10,000 residential units for the Palestinian population living in East Jerusalem. The shortage is expected to grow by about 1,500 units per year according to the population increase and the numbers of marriageable young people. On the other hand, the scope of house demolitions in East Jerusalem is unprecedented. According to official data, from 2000 through 2004, 988 buildings were demolished, fully or partially, in East Jerusalem.

37. The discrimination in **the welfare area** is manifested, among other things, in the manpower standards allocated for the rendering of services to the residents of East Jerusalem. Despite the fact that the East Jerusalem population comprises one third of the entire population of Jerusalem, only 19% of the entire manpower standards allocated to the welfare system in the city provide services to the residents of East Jerusalem. In addition the number of welfare offices in the eastern part of the city is low as compared to the number of welfare offices in the other parts of the city (4 as opposed to 18). This fact makes it even harder to have an adequate distribution of welfare services and reduces their accessibility, as a result of which many of those who need the services are unable to obtain them. Consequently, the burden imposed upon the social workers is unbearable. And indeed, despite the fact that the vast majority of residents of East Jerusalem live below the poverty line, only 10.3% of the residents of East Jerusalem receive welfare services. According to data from June 2013, one social worker from the welfare offices located in the western part of the city handled 101 households on the average, while in the offices located in East Jerusalem each social worker had to cope with 120 households on the average.

38. Another example is the discrimination and neglect in the **education area.** Only 53% of the Palestinian pupils study in the formal municipal schools as a result of a protracted shortage of about 2000 classrooms in the municipal education system. In some schools teaching takes place in shifts. Other schools are located in overcrowded residential buildings. In some of the schools there are no computers, libraries, laboratories, gymnasium, and not even a teachers’ staff room. Approximately 94% of 15,000 children aged 3 and 4 are not integrated into the municipal kindergartens. About 12,000 school age children are not enrolled in any educational institution.

The **Compulsory Education Law, 5709-1949** applies to every school age child who lives in Israel, regardless of his status in the Populations Registry run by the Ministry of Interior (see: **Circular of Director General 5760/10 (a): The Application of the Education Law on Children of Foreign Workers,** (Ministry of Education, June, 2000)). In other words, the Law does not distinguish between children having the status of citizens and children having a permanent residency status or any other status, and stipulates that compulsory free education applies to every child or youth aged 5-16. Nevertheless, and despite HCJ judgment which held that children of compulsory school age in East Jerusalem should be given the opportunity to register for compulsory 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 being currently implemented only partially, and the education system in the eastern part of the city suffers severe problems, which require immediate and special treatment. At the center of the current problems in this field stands the problem of a serious shortage of classrooms (see: HCJ 5378/08 **Abu Labada v. Minister of Education** (judgment dated February 6, 2011) (hereinafter: **Abu Labada**)). According to the State comptroller, in the 5768 school year the shortage of classrooms in East Jerusalem amounted to about 1,000 classrooms. Only 33 new classrooms were built in 2012, despite HCJ judgment according to which the protracted gap of about 1,100 classrooms should be bridged until 2016. Out of 106,534 Palestinian children aged 6-18 who are registered as Jerusalem residents, only 88,845 children of these ages are registered with the Jerusalem Education Administration, of whom only 86,018 attended school in 2012. This means that 20,516 children aged 6-18 did not an educational institution known to the Jerusalem Education Administration. In addition, 3,806 children aged five, the compulsory nursery school age, did not attend any education institution known to the Jerusalem Education Administration as well. This means that the Jerusalem municipality and the Ministry of Education do not know whether and where 24,000 pupils, residents of the city, study, and this gap has far reaching ramifications on the budgeting and overall investment in education in East Jerusalem.

The direct result of said neglect is the dropout rate in the seventh through twelfth grades, which amounts to 17.3% - the highest dropout percentages in Israel – and amongst the twelfth grade pupils the dropout rate reaches 40%. Despite said severe data, the municipality does not allocate adequate resources to solve this phenomenon and discriminates the East neighborhoods of the city as compared to the neighborhood in the western part of the city in budgets and infrastructures. The pupil population density in the classrooms is higher by 30% than the pupil population density in the western parts of the city and about 720 classrooms in the official schools do not meet the standard.

39. The **medical system** in East Jerusalem also suffers great shortages. Out of 29 family health centers in Jerusalem, only four operate in East Jerusalem, where about one third of the city's population resides. Out of 15,053 Jerusalemite children registered with the family health centers only 2,709 are Arabs. More than 80% of the adults and about 90% of the minors who need psychological care do not receive it. The rendering of emergency medical services and ambulance services in East Jerusalem is also limited, in view of the fact that the entry of ambulances is conditioned upon police escort, which on many occasions does arrive on time.

40. **Many infrastructures in East Jerusalem are in a bad state and suffer many deficiencies, such as the water and sewage infrastructures as well as the road infrastructures**. The eastern part of the city also suffers from **serious sanitation problems**. According to the State comptroller's findings in 2008, the cleaning services provided by the municipality to East Jerusalem were continuously neglected. In hundreds of streets in the eastern part of the city no garbage collection services were provided by the municipality and where such services were provided they were partial and deficient. The **planning and building system** suffers from continuous budgetary constraints, which created a huge gap between the needs of the population and the solutions provided to it. As a result of this lack of investment, the situation of the infrastructures in East Jerusalem is grave. Thus, for instance, entire Palestinian neighborhoods are not connected to the sewage and water system. According to an estimate based on the data of "Hagichon" company, the water and sewage corporation of Jerusalem, more than half of the population, about 160,000 inhabitants, does not receive lawful water supply. According to the official estimate of "Hagichon", there is a shortage of about 30 kilometers of sewage lines in Jerusalem. This matter was raised, *inter alia*, in HCJ 2235/14 **Sandoka v. the Water and Sewage Governmental Agency**, a petition which is still pending, and which was filed after the water supply to the Jerusalemite neighborhoods located on the other side of the fence and of the Shufat refugee camp crossing was completely stopped in March 2014. The water supply was partially renewed after the petition was filed and the hearing is currently pending before the court in an attempt to find a solution for the severe water problem of said neighborhoods, which are located on the other side of the fence.

41. There are also **serious deficiencies in the provision of a wide range of public services, such as employment services and postal services.** Thus, for instance, eight postal unit provide services to a population of about 370,000, as compared to 42 postal units which provide services to a population of about 580,000 in the western part of the city (on this issue a petition is also pending – HCJ 4414/10 **Abidat v. Israel Postal Company Ltd**),

42. 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 situation also lead to a host **of harsh social phenomena** which include: impingement on the family system; a rise in the level of family violence; a decline in the functioning of the children in the family which is manifested in the dropout rate from high schools and their subsequent entry into the “black” labor market at a young age; a slide into delinquency and drugs; health and nutrition problems, and more.

43. In all of the above, the state has not only breached its basic obligations towards its residents. It marked the residents of Jerusalem as unwanted in their own country. Behind the established neglect of East Jerusalem is an aspiration that the residents of the city will seek their future elsewhere, which in turn will serve the official goal of maintaining the demographic balance in the city. And indeed many found accommodation solutions in the outskirts of the city, instead of in the overcrowded and crime-hit neighborhoods that are situated within the boundaries in which Israeli law applies, or left to seek their livelihood and higher education abroad.

IV. The alienation in the field of the Population Authority's services

44. All of the above is coupled by the fact that the residents of East Jerusalem are treated as foreigners, whose status may be routinely revoked. The State of Israel established a special office for the Ministry of Interior for the purpose of handling the residents of East Jerusalem. This is the only city in the country in which there are two Population Authority offices. "East Jerusalem" includes neighborhoods located in the northern parts of the city, in the eastern parts of the city as well as in the southern parts of the city. Jewish residents who live in the area which was annexed by Israel receive services from the Population Authority office located in central Jerusalem (see: HCJ 6884/01 **Atik v. Minister of Interior** (Judgment dated December 16, 2002)). The Palestinian residents of East Jerusalem – from the north, from the east and from the south – are referred to the East Jerusalem office. This inaccessible office has become notorious for its inferior and unbearable service, which runs contrary to the fundamental principles of good governance (see HCJ 2783/03 **Jabra v. Minister of the Interior**, IsrSC 58(2) 437 (2003); AP (Jerusalem) 754/04 **Bedewi v. Director of the Regional Office of the Population Administration**, (Judgment dated October 10, 2004)). Indeed, following the petition of HaMoked: Center for the Defence of the Individual in HCJ 176/12 **al-Batash v. Senior Department Director at the Population Authority** the situation has somewhat improved, but also to date it is still far from being satisfactory.

45. The workload at the East Jerusalem Population Authority office is enormous, and the handling of applications lingers over many months and in many cases, over many years. The residents are forced to wait on a long queue (despite the fact that the office was moved to a new building) and often even those who succeed to enter the office are sent away without receiving any service. For basic services such as the arrangement of the status of children, fees amounting to hundreds of New Israeli Shekels are collected, and the applicants are required to produce numerous documents. Many applicants are forced to seek the assistance of attorneys, and many are forced to reluctantly turn to the courts, in order to receive the requested remedy Despite their severe economic condition and despite the fact that the numerous complex and expensive procedures which pertain to the maintenance of their status and the grant thereof to their family members were designed by the respondent, the residents of East Jerusalem are not entitled for representation by the legal aid department in these proceedings. The residents of East Jerusalem are forced to use the services of private attorneys or human rights organizations which represent them for no consideration. Those who cannot afford it or who cannot obtain the assistance of the human rights organizations due to the heavy load – will not receive legal aid.

46. The residents of East Jerusalem are forced to prove time and time again their residency in the city before the Ministry of Interior and before the National Insurance Institute, which conduct investigations and inspections, the entire purpose of which is to revoke their residency because they live outside the demarcated areas in which "the law, jurisdiction, and administration of the state" apply, and deprive them of their status. The revocation of status takes place, not infrequently, in an arbitrary fashion, without a hearing, and is disclosed only *ex post facto*, upon the submission of an application to receive services. See: Temporary Order? Life in East Jerusalem under the Shadow of the Citizenship and Entry into Israel

Law (HaMoked: Center for the Defence of the Individual, September 2014), available at: http://www.hamoked.org.il/Document.aspx?dID=Documents2473

All of the above is a direct outcome arising from respondent's interpretation of the **Awad** judgment. We will discuss this issue more broadly below.

V. East Jerusalem residents like all other residents of the OPT: The Open Bridges Policy

47. Over a few decades following the annexation of East Jerusalem, Israel has meticulously applied to both East Jerusalem residents and all other residents of the West Bank the same arrangements concerning travelling abroad, returning to Israel and to the West Bank and civil status upon their return. Underlying these arrangements was the "open bridges policy" which was implemented by the Government of Israel as of 1967. The "open bridges policy" was designed to encourage the free passage of East Jerusalem residents and residents of the OPT via the Jordanian bridges, subject to security considerations. This policy recognized the needs of East Jerusalem residents and residents of the OPT to stay in Jordan and other Arab countries, not only for temporary or short term purposes, such as visits or business trips, but also for purposes involving protracted stay and residence abroad, including studying, employment and family relations.

48. The travel of these residents was conditioned on an exit permit. Any resident who fulfilled the exit permit conditions (exit card, which also constituted a return visa) was permitted to return, and immediately upon his return he received his rights as a resident. Upon the return of the resident to East Jerusalem (or to the OPT, as the case may be), he was permitted to once again travel abroad equipped with a new exit card. The exit card was not a travelling document like a passport or a *laissez-passer*. Rather, it constituted proof of having exited via the Jordanian bridges, and of a permission to return via the same route for as long as it was valid. This was a unique document which served the residents of OPT, which were occupied in 1967 (including East Jerusalem) within the framework of the open bridges policy.

49. This policy enabled 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 conducted family life over there, to travel back and forth without having their rights prejudiced. The Israeli authorities recognized, as aforesaid, the many constraints, which caused East Jerusalem residents to seek their livelihood in Arab countries, to complete their education there and even conduct their family life over there.

    See, on this issue, for instance, the speech of the then Minister of Defense, Mr. Moshe Dayan in the Knesset (*Knesset Minutes*, volume 12, 5730, 697-699).

50. The application of the open bridges policy to East Jerusalem residents, without distinguishing them from all other OPT residents, reflected an Israeli recognition of the dual nature of their status: on the one hand permanent residents of Israel who are subject to Israeli

law which was applied to their place of residence, and on the other hand protected residents in a territory controlled by Israel as of 1967.

51. This policy did not only take into account the needs and nexuses of the residents. It also served Israeli interests, because it compensated for the lack of infrastructures in East Jerusalem and for the restrictions imposed on building and family unification in the city. Respondent's policy, which enabled residents to maintain their status in the city if they lived in the OPT, and even if they went abroad, for as long as they extended the validity of the exit card in their possession, facilitated this approach and even encouraged it.

VI. Implementing the Awad rule as of the mid- nineties: wholesale revocation of status

52. From the second half of the nineties, the respondent embarked on a strict policy, as a result of which East Jerusalem residents were prevented from returning to the city and were expelled from their homes if they have meanwhile returned thereto. This policy was based on a broad interpretation of the **Awad** rule – an interpretation which brought the formula established in **Awad** *ad absurdum*.

53. From the beginning of the second half of the nineties, many of the residents of East Jerusalem, who applied to the Ministry of Interior with various requests were met with a refusal to provide the requested service, and were handed a brief standard letter, which informed them that their permanent residency permits expired, and this, as argued by the Ministry of Interior, due to the fact that they had established their center of life outside Israel. This "expiration of residency" included, quite often, the expiration of the residency of the resident's children as well. The notice ended with an instruction directed at the resident and his family members to return their identity documents and leave the country, usually within 15 days.

54. This policy – which eventually became known as the "silent transfer" – was implemented against those who at that time resided in Jerusalem, but whose center of life was established, according to the Ministry of Interior, outside Israel, as well as against those who were living abroad at that time and were completely unaware of the fact that their residency had "expired". Living in the West Bank and the Gaza Strip was also considered for this purpose as living "abroad", contrary to the policy which was applied beforehand, according to which a person who moved to the territories in order to live there had not forfeited his status. It should be noted that according to the previous policy, for as long as East Jerusalem residents who lived abroad came to Jerusalem and renewed their exit permits before they expired, their residency was not revoked. Moreover, those residents who lived abroad could, according to said policy, extend their exit card through family members who were lived in East Jerusalem.

55. Despite the fact that a radical change of policy is concerned which involves an overall interference in the lifestyle which had been maintained by the residents for many years pursuant to the old and familiar policy, the Ministry of Interior did not find it appropriate to publicize its new policy. Additionally, the policy was applied retroactively, despite the fact that as aforesaid, many of those residents lived abroad based on the previous policy,

according to which their status was not revoked as a result thereof. The retroactive application of this policy took on an especially extreme twist, in view of the fact that status was also revoked from those residents whose center of life during that period was in East Jerusalem. The Ministry of Interior was well aware of the fact that their center of life was in East Jerusalem – *inter alia* based on the determinations of the National Insurance Institute – but nonetheless revoked their residency. See **The Silent Transfer – Revocation of the Residency Status of Palestinians in East Jerusalem** (HoMoked: Center for the Defence of the Individual and Btselem, April 1997), available at: http://www.hamoked.org.il/items/10200.pdf

56. The Ministry of Interior argued that this policy derived from the **Awad** judgment. According to the approach adopted by the Ministry of Interior, the only logical conclusion arising from the **Awad** judgment is that the residency of all these persons expired *ipso facto*, and in fact the Ministry of Interior has no discretion concerning its expiration. According to this argument, the Ministry of Interior merely accepts the legal norm which was established by the court and acts accordingly. The residency expired "without any human interference" and the Ministry of Interior has no alternative but to treat these individuals as people who have no status in East Jerusalem. Consequently, the Ministry is obliged – without any discretion – to confiscate the identity documents of these people and remove them from the state.

57. Thus, for instance, in the State's response to a petition which was filed by a resident of Jerusalem who lived with her husband in Jordan over the course of many years, and returned to live in Jerusalem in 1995, it was stated:

> According to the aforesaid and likewise in our case, the reality of life indicates that the petitioner's permanent residency in Israel for all practical purposes terminated at the end of the 1970s… and the residency status that she had in Israel, which was based on the reality of her being a permanent resident in Israel, had lost all meaning and as such had expired and terminated by itself (Section 14 of the State's Response in HCJ 9499/96 **Atarash v. Minister of Interior**).

58. Furthermore, according to the Ministry of Interior, if it is not obligated to exercise discretion, but rather acts solely based on the abstract principles, which according to it were established in the **Awad** case, there is no place for conducting a hearing to residents whose residency status "expired". In a parliamentary question which was submitted in 1997 by the then Member of Knesset Professor Amnon Rubenstein to the Minister of Interior, the Minister was requested to explain how could one be assured that "such revocation of identity documents is lawfully carried out after a hearing and compliance with the principles of natural justice". The Minister of Interior replied:

> As to the matter of a hearing, in view of the fact that the Law stipulates and the HCJ held that the residency expires *ipso facto*, I do not think that there is room also from a legal perspective to conduct a hearing…(Knesset Minutes, Shvat 21, 5757 (January 29, 1997)).

Indeed, apparently in view of the understanding that such a reading of the judgment cannot be reconciled with general legal norms, the respondent decided to conduct hearing proceedings (see on this issue, for instance: respondent's response in HCJ 3122/97 **Darwish v. Minister of Interior**; judgment in HCJ 3120/97 **McCarry v. Minister of Interior** (judgment dated June 10, 1997).
Nonetheless, in practice, this is done in very few cases. Thus, for instance, in 2007, out of 229 cases in which residency revocation notices were sent, only eleven hearings were conducted and also only to "appellants and petitioners". This means that even in these cases, the hearings were conducted only *post facto*.

See: copy of the response of respondent's counsel dated April 13, 2010, according to the parties' consent in AAA 8476/08 **HaMoked: Center for the Defence of the Individual v. Minister of Interior**, available at: www.hamoked.org.il/files/2010/112360.pdf.

59. HaMoked: Center for the Defence of the Individual and the Association for Civil Rights together with other civil rights organizations and East Jerusalem residents who were injured by said policy, filed in 1998 a petition to the High Court of Justice against the "Silent Transfer" policy (HCJ 2227/98 **HaMoked: Center for the Defence of the Individual v. Minister of Interior**). During the proceedings in this petition the then Minister of Interior, Natan Sharansky submitted an affidavit which "softened" the aforementioned policy to some degree. According to the affidavit, any individual whose residency was so revoked would be able to have his status reinstated should he satisfy certain conditions.

60. Hence, the "Sharansky Affidavit" softened the harsh consequences of the **Awad** judgment. The absurd outcome according to which residency was revoked from thousands of people who acted in accordance with the procedures laid out by the Ministry of Interior and who maintained a connection with Israel was overturned by the fact that the Minister of Interior regarded them as persons who preserved their status. The need to abolish this residency revocation policy, and the manner by which it was done in the Sharansky Affidavit, point at the need to make essential adjustments in respondent's interpretation of the **Awad judgment,** so as to prevent its absurd reading on which the "Silent Transfer" policy was based.

61. Following the petition and the "Sharansky Affidavit", which was submitted within the framework of this hearing, the mass residency revocation policy was "restrained" for a certain period. Nonetheless, the arrangement outlined in the affidavit did not solve the problem of all persons whose residency was revoked during that period. Only those whose residency was revoked after 1995 and visited Israel within the validity term of 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 for even a few days before 1995 will not find relief in the provisions of the procedure. The same applies to a person whose residency was revoked while he was abroad, and the Ministry of Interior does not enable his return to Israel. It should also be noted that this procedure applies only to those whose status was revoked due to the fact that they have ostensibly stayed for a period exceeding seven years outside Israel. The possibility of reinstate one's status, according to the procedure, is not available

for those who obtained permanent residency status in another country or who received foreign citizenship.

62. Moreover – the revocation of residency of East Jerusalem residents has not ceased for even one moment, even if it was "restrained" to a certain extent commencing from the beginning of the 2000's. In fact, it seems that it was a temporary lull only. According to data which originate from the Ministry of Interior, which were gathered and compiled by the *Btselem* organization and HaMoked, in 2006, the Ministry of Interior revoked the residency of 1,363 persons, and in 2008 it revoked the residency of 4,577 persons. In other words – during the last three years with respect of which data were provided, the Ministry of Interior revoked almost half of the residency permits which were revoked by it from 1967 until this day:

Year	**Number of Palestinian Residents whose residencies were revoked**
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 (until the end of April, 2001)
2002	No data
2003	272
2004	16
2005	222
2006	1,363
2007	229
2008	4,577
2009	720
2010	191
2011	101
2012	116
2013	106
2014	107
Total	**14,416**

See the data in the following addresses:
http://www.btselem.org/hebrew/jerusalem/revocation_statistics.asp
www.hamoked.org.il/items/110582.pdf
www.hamoked.org.il/items/110584.pdf
www.hamoked.org.il/files/2010/112360.pdf
www.hamoked.org.il/items/110587.pdf
www.hamoked.org.il/files/2013/1157710.pdf
http://www.hamoked.org.il/files/2013/1158231.pdf
http://www.hamoked.org.il/files/2015/1159352.pdf

63. When the *Btselem* organization applied to the person in charge of freedom of information at the Ministry of Interior in order to investigate the reason behind the dramatic rise in the scope of residency revocations in 2006 (over 600% as compared to 2005), it received the following answer:

> …the rise in the latest number of updates of residency revocations in the registry, results from **an improvement in the work and control procedures of the Ministry**, including Israel's border crossings. (Emphasis added)

The Ministry of Interior advised HaMoked that the huge increase which occurred in 2008 (4,577 residency revocations – over 35% of the total number of residency revocations since 1967 until this day) derived from an "initiated examination".

64. If any further proof was required for the Ministry of the Interior's treatment of the permanent residents of East Jerusalem as foreigners - the above quotes demonstrate it once again. In a governmental ministry which is responsible for the provision of services to the citizens and residents of the country, the purpose of "improvement of work and control procedures" and "efficiency" is directed at the welfare of the applicants and at providing better service. According to the Ministry of Interior, when the beneficiaries of the service are residents of East Jerusalem, "efficiency" means trapping as many people as possible in the net of its residency revocation policy.

VII. The gender aspect in the current implementation of the Awad judgment

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

66. The vast majority of East Jerusalem residents establish a family with Arab spouses; these spouses include East Jerusalem residents or Israeli residents, but many of them are naturally residents of the OPT or residents of Arab countries.

    As is well known, up until the mid nineties Israel completely failed to handle family unification applications which were submitted by women, East Jerusalem **residents** for their spouses, as a direct result of a discriminatory policy applied by the respondent, according to which only family unification applications which were submitted by men, East Jerusalem **residents** were handled. 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 the male spouse who is a resident of the territories or is a foreign resident. Consequently, women were put in a cruel situation in which living together with their husbands and children, meant a possible loss of status and severance of ties with their families in Jerusalem. And indeed, many women have lost their status in this manner, due to a long stay "outside of Israel". In 1994, following a petition to the HCJ which was filed by ACRI (HCJ 2797/93 **Gerbit v. Minister of Interior**) this discriminatory policy was abolished and since then female residents can submit family unification applications for their spouses.

67. However the harm to permanent female residents – as women – is not confined to this aspect alone. In a traditional society (and the East Jerusalem residents may definitely be described, in general, as living in a society with traditional characteristics), the entire world of the woman, the wife, revolves around her family. If the ties between the spouses are severed and the family unit dissolves, the wife has no real choice but to return to her family – to her parents' home or to live near her brothers and sisters – in her hometown, East Jerusalem. The status of the wife is tenuous from the outset, but if the security net of being able to return to her home and town is also taken away from her, her dependency on her husband and his family becomes absolute. Hence, if the marital connection runs into difficulties, a woman whose status has been revoked has no real solution, and in many cases she is forced to stay with a battering or abusive husband. By revoking the status of Jerusalem female residents the anchor for a life with some dignity, stability and support is removed.

68. Discrimination against women may be manifested by law, regulation, custom, and the like, **the purpose** of which is to discriminate against women, as well as by situation which results in a **de facto** discrimination against women. This position is clearly reflected in both Israeli Law – section B of the Women's Equal Rights Law, 5711-1951 provides that "[…] it makes no difference whether the action which resulted in discrimination was premised on an intent to discriminate, or not" – and International Law, especially the Convention on the Elimination of All Forms of Discrimination against Women (1971) (*Conventions* 1035, volume 31, 179), which was signed and ratified by Israel. As aforesaid, Israel is obligated to refrain from the encouragement of direct or indirect discrimination against women and to examine the degree of harm inflicted on women, as it actually took place.

69. Hence, the respondent's policy does not only improperly discriminate between East Jerusalem permanent residents and Israeli society at large. It also creates a distinction amongst the permanent residents, so that the primary "targets" of the residency revocation policy are female residents – who from the outset constitute an impoverished group. Thus, in the guise of a policy which the respondent derived from the **Awad** case, Israel has intensified the harm inflicted on women, and has perpetuated their oppression.

VIII. Revoking residency – the people behind the numbers

70. Described below are a number of cases which illustrate the severe harm embedded in the revocation of residency. These cases were handled in recent years by HaMoked: Center for the Defence of the Individual.

Mrs. _____ Abu Heikhal

71. An especially heart breaking example, which illustrates the severe impact embedded in the act of revocation of residency, is the case of Mrs. _____ Abu Heikhal. Mrs. Abu Heikhal, a permanent resident of East Jerusalem, married a Jordanian resident in 1978. In 1979 Mrs. Abu Heikhal left Israel, and returned to East Jerusalem in 1994. Throughout the years that she resided abroad, Mrs. Abu Heikhal strictly maintained a very close connection with East Jerusalem, where she also gave birth to three of her children. Throughout the entire period Mrs. Abu Heikhal acted in accordance with the rules which were applied by the respondent at that time: namely, that the residency of a person remains with him so long as he returns to the country while his exit card is still valid. And indeed, throughout those years, the respondent regarded her as a resident for all intents and purposes, and did not revoke her status.

72. At a certain stage fierce disputes erupted between Mrs. Abu Heikhal and her spouse. Mrs. Abu Heikhal wanted to return to her hometown. In the summer of 1994, after she had returned to East Jerusalem and even enrolled her children in the local schools in the city, Mrs. Abu Heikhal travelled with her children to Jordan for a visit. Her spouse, who was not satisfied with her decision to return to East Jerusalem, prevented her from returning thereto until 1997. Eventually Mrs. Abu Heikhal succeeded to get free of her spouse and returned to East Jerusalem with her children. She received an official divorce from her husband in 2000. As of 1997 Mrs. Abu Heikhal lived in the city, and only left Israel for a few days.

Since then East Jerusalem constituted, in every possible sense, the center of her life – her home was here, she worked here as a kindergarten teacher and even studied towards a degree in order to become a fully qualified kindergarten teacher, and it was here where her children resided together with her.

73. It was only in 1999 that Mrs. Abu Heikhal became aware of the fact that the respondent had revoked her residency. When the decision to revoke her status was made, on December 19, 1994, Mrs. Abu Heikhal was living in Jordan. She could not return to East Jerusalem at that time and it did not occur to her that her status, which she had so strictly maintained throughout the years, was deprived of her. She even left Israel and re-entered it during the years 1997 and 1998, in her capacity as resident for all intents and purposes. Ever since she became aware of the respondent's decision in her case, she did whatever she could to have her status and the status of her children reinstated. She applied to the respondent on numerous occasions – personally and through various attorneys – but the respondent refused to reinstate her residency. The respondent reiterated his claim that her status had been lawfully revoked, and refused to relate to the circumstances of Mrs. Abu Heikhal's life ever since her return to East Jerusalem.

74. Respondent's decision in the case of Mrs. Abu Heikhal stems from a simplistic implementation of the **Awad** judgment, as if human life was a set of mathematical formulas: the residency of this woman automatically expired "without a human touch" at some time between 1978 and 1994. This "fact" was not the result of any action taken by the respondent but was, so to speak, forced upon him against his will. From the time 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, her entry into Israel (according to this simplistic analysis) was made without authorization. The change of circumstances which took place thereafter is also irrelevant, in view of the fact that the respondent is unable to revive a permanent residency permit which was ostensibly revoked by a *force majeure*. At the same time Mrs. Abu Heikhal is not entitled to a "new" residency permit, since she does not fall within the criteria that would allow her to immigrate to Israel.

75. It should be noted that according to the "Sharansky Affidavit", it is possible to reinstate the status of a resident, if it was revoked from 1995 onwards. It is a date which was arbitrarily selected, and which approximately marked the commencement of the massive residency revocation policy. It was clear that Mrs. Abu Heikhal, whose status was revoked only 12 days before the beginning of 1995, was injured as a result of that very policy. HaMoked argued in that case that even if the respondent relied, for the purpose of setting its policy, on a date which had a very arbitrary dimension, it was inconceivable to implement extremely different policies, in the sense of "black and white", concerning cases which fell on this or the other side of the established date. However the respondent did not accept this argument either.

76. Having exhausted all remedies, Mrs. Abu Heikhal petitioned the Court for Administrative Affairs (AP (Jerusalem) 186/07). Following the petition, the respondent has indeed agreed to transfer her case for the examination of the Inter-Ministerial Committee for Humanitarian

Affairs, where she encountered another bitter disappointment. The committee members refused to refer to the main arguments of Mrs. Abu Heikhal and dismissed her again based on an explanation which consisted of no more than a few written lines. Even after all those years in which she established her home in East Jerusalem, the respondent continued to cling to his argument that her residency had lawfully expired. Her arguments concerning the application of the "Sharansky Affidavit" to her case were completely ignored by the respondent as if they had no validity whatsoever.

77. At this stage Mrs. Abu Heikhal's mental energies started to drain out. At that time Mrs. Abu Heikhal was working in Jerusalem, but her home was located in Kfar Akeb – a neighborhood, which despite being part of Jerusalem is located on the other side of the separation barrier, and the passage there-from into the city requires, at the very least, a stay permit. Consequently, Mrs. Abu Heikhal stopped working and her economic situation has gradually deteriorated.

Desperate, Mrs. Abu Heikhal decided to pack her belongings and relocate to Jordan with her children.

78. Mrs. Abu Heikhal returned to the home of her former spouse, the father of her children. In her desperation, she tried to convince herself that it would be possible to bridge the deep gap between herself and her spouse, in view of the fact that other than her former spouse she had no real connection to Jordan. However this attempt was doomed to fail. As expected, the relationships between the spouses have deteriorated again.

79. At that point HaMoked submitted yet another administrative petition on her behalf (AP 8612/08 **Abu Heikhal v. Minister of Interior**). Only following said petition the harsh story of Mrs. Abu Heikhal came to an end. The respondent agreed "*ex gratia*", as he put it, to reinstate her status. The respondent approved the return of Mrs. Abu Heikhal to East Jerusalem and on March 17, 2009, she was granted a temporary status. As agreed in the petition, Mrs. Abu Heikhal received on May 15, 2011 a permanent residency status.

Hence, the long and exhausting excursion of Mrs. Abu Heikhal ended on a happy note. However, as indicated by the above specified data, this result (which according to the respondent was obtained "*ex gratia*") is not shared by many of the residents of East Jerusalem, whose status was revoked by the respondent.

Mr. _______ Redwan

80. Mr. Khaled Redwan was born in Jerusalem in 1960, and later on received a permanent residency status. Mr. Redwan left the country for the first time in 1981, for the purpose of acquiring higher education in the United States. In order to make it easier for him to stay in the USA and study over there, Mr. Redwan applied for a "green card", and afterwards for an American citizenship. During the years 1991 - 1992 he returned for a certain period to Jerusalem, and married a woman who was also a permanent resident. Over the course of his stay in Jerusalem, Mr. Redwan sought employment, with the intent to stay in the city with his spouse, but to no avail. Therefore, and in view of the spouses' desire to establish

themselves financially so that they would be able to establish a family and earn a living in a dignified manner, the spouses left for the United States for a restricted period in order to realize their ambitions. During their stay in the United States, the spouses continued to maintain close ties with East Jerusalem. Mrs. Redwan visited Jerusalem almost every year for a few months. After about five years, following the improvement of their financial condition and when their firstborn child, ______, reached the age of compulsory nursery school, the spouses returned to Jerusalem to establish their home there, as many young spouses do. Mrs. Redwan and the spouses' children returned to Jerusalem in July 1997. Mr. Redwan joined them in January 1998.

81. It should be noted that Mr. Redwan entered Israel not as a tourist but rather on the basis of his status as a permanent resident of Israel. His American passport was not stamped with a tourist visa, but rather with a regular entry stamp (of the same type stamped on travel documents of Israeli residents who enter the country) after a search which was conducted on the computer terminal revealed that Mr. Redwan was a resident of the country. His identity number as it appears in the population registry was ascribed alongside the stamp. Mr. Redwan has not even been referred to any type of clarification concerning his status or the like.

82. Hence, on that date the authorities were aware of the periods during which Mr. Redwan stayed abroad (as indicated by the data of the border police) as well as of the fact that he was an American citizen. Having been fully aware of these data, the authorities allowed his entry into Israel as a resident, while specifying his identity number in his American passport. No hint was given at that time which could point at the different perspective that the authorities wished to adopt in that regard two years later.

83. And indeed, on May 16, 2000, a letter was sent to Mr. Redwan by the Ministry of Interior, which informed him that his residency and the residency of his family were revoked, on the grounds that he had acquired American citizenship and that the center of his life and the life of his wife and children, was in the United States until 1998. Therefore, the application submitted by him for the registration of his daughter Arin with the population registry was dismissed too, and he was informed that he and his family were regarded as persons who were no longer residents.

84. From the day he was informed of the decision, Mr. Redwan tried to do whatever he could to change said unfortunate command. He applied on numerous occasions to the office of the Population Administration in East Jerusalem. Each time he was requested to produce additional documents which attested to the fact that the center of his life was in Jerusalem, but his application was not approved. It should be noted that over the course of these applications it became clear to Mr. Redwan that the Ministry of Interior had changed its mind with respect to the revocation of the residency status of his wife and family. Nonetheless, as far as his personal matter was concerned, the Ministry of Interior continued to insist on its refusal.

85. In 2005, the Ministry of Interior enabled Mr. Redwan to submit an application for the reinstatement of his residency, which is referred to by Ministry of Interior as an

"independent family unification". This application involves payment of fees. As expected, this application was also denied on the grounds that the revocation of residency was lawful. In his distress, Mr. Redwan petitioned the Jerusalem Court for Administrative Affairs (AP (Jerusalem) 751/06). In his petition, Mr. Redwan claimed that the Ministry of Interior has not only failed to warn him that he was staying in Israel unlawfully, but that the opposite was true: the message which was conveyed to him was that neither his American citizenship nor his protracted stay in the United States posed any problem. This was the case upon his return and this was the case ever since he landed in Israel. In its conduct the Ministry of Interior lead Mr. Redwan to rely upon the fact that his presence in Jerusalem was lawful and that there was no impediment which barred his re-establishment in his city.

86. The petition included a detailed description of the entire circumstances of Mr. Redwan's life from the day that he returned to Jerusalem until that day. It was noted that from 1998 until that day Mr. Redwan has been living with his family members in Jerusalem. It was noted that Mr. Redwan was working in Jerusalem, and that his children were studying there. In fact, it is difficult to imagine a more intimate connection of a person to any place. Mr. Redwan attached to his applications to the Ministry of Interior all documents which attested to the fact that his center of life was in Jerusalem. The Ministry of Interior did not take this fact into account while making its decision. The decision of the Ministry of Interior which bases the refusal to reinstate his residency on the same grounds which were given for the ostensible expiration of his status, proves that the respondent did not take into account while making his decision, the circumstances of Mr. Redwan's life and his overall connections from the day of his return.

87. Mr. Redwan did not receive the expected relief from the court either. His claims were not accepted, and the petition was dismissed. Fortunately, the status of Mr. Redwan's wife was not revoked, which enabled her to submit a family unification application for him. And so they did. The family unification application was approved and in December 2007, Mr. Redwan embarked on the graduated procedure for the purpose of obtaining status in his capacity as a spouse of a permanent resident. On June 5, 2013, about six years after Mr. Redwan embarked on the graduated procedure, he received a permanent residency status.

88. The above indicates that the policy of the Ministry of Interior is not only arbitrary with regard to the manner in which a decision is made to revoke a person's status – blindly relying upon the "settlement presumptions" which are set forth in the Regulations, it was also made without taking into consideration the circumstances behind the temporary period during which he resided abroad, and his desire to return to Jerusalem and settle down therein. The Ministry of Interior outdoes itself, in that after it enables those residents to return and settle down in Jerusalem – it ignores the circumstances of their lives and bases its decision exclusively on the argument that the residency was originally, *prima facie,* revoked lawfully.

Mrs. _______ Mustafa

89. In many cases the decision to revoke the residency status injures not only the resident himself, but also his family members. This was the case in Mrs. ______ Mustafa's matter. Mrs. Mustafa and her spouse married in 1978 and until 1995 they lived in Jordan and Saudi Arabia in view of the fact that her spouse was working over there. In 1995 the spouses

returned with their children to Jerusalem, where they lived for about one year. During the three years which followed they lived in Kalandia and as of 2000 they established their home in Jerusalem.

90. In 1996 Mrs. Mustafa became aware of the fact that although she carefully maintained the validity of her travel documents while she was staying abroad, as she was instructed to do in order to maintain her status, her Israeli status was nonetheless revoked. Mrs. Mustafa applied to the Ministry of Interior for the purpose of reinstating her residency. Following HaMoked's handling, her status was reinstated in 2003.

91. After her status was reinstated Mrs. Mustafa submitted a family unification application for her spouse and an application to register her children in the Israeli Population Registry. However, at that time some of her children were already adults, and therefore the applications in their cases were classified as “not meeting the criteria”. The applications were therefore submitted only for Mrs. Mustafa’s spouse and her minor children. The Ministry of Interior did not rush to handle these applications, and they were only approved by the end of 2006, and only following a petition to the Court for Administrative Affairs (AP 917/06).

92. The position of the Ministry of Interior was that if an application was submitted for the adult children, it would be denied for “not meeting the criteria”. Nevertheless, the Ministry of Interior enabled Mrs. Mustafa to submit her application, so that it would be handled in the same manner by which applications "for humanitarian reasons" are handled. In the application which was submitted the special circumstances of the adult children were emphasized. It was noted that they fell victims to a tragic chain of events as far as they were concerned, and that events on which they had no control – the date of the reinstatement of their mother’s status and their age on the dated on which the application for their registration was submitted – sealed their fate. In the application it was further argued that the fact that the adult children are barred from receiving any type of status in Israel practically splits the family in two, and that the adult children have no connection to any other place other than Jerusalem. The applicants also emphasized the fact that the family greatly depended on the income of the adult children and on their assistance to the family, especially in view of the fact that their parents were chronically ill, and were therefore unable to financially support themselves and needed medication on a regular basis.

93. The Ministry of Interior refused to regard this case, in which three of the family members would be forced to separate from their parents and siblings, as a humanitarian case. The Ministry of Interior refused to take into consideration the fact that Mrs. Mustafa’s children had nowhere to go, since they had no connection to any place in the world other than Jerusalem. The Ministry of Interior refused to take into consideration the fact that an entire family depended on its adult children. In its reply to the application, the Ministry of Interior determined that “no humanitarian reasons were found to justify the grant of status in these cases”, and refused to transfer the cases of Mrs. Mustafa’s children for the examination by the Inter Ministerial Committee for Humanitarian Affairs, which is responsible for granting status in such cases. In view of the above a petition was also filed in this case with the Court for Administrative Affairs (AP 1028/07 **Herbatawi v. Minister of Interior**). The court,

which did not see any reason to intervene with the "wide range of discretion which is available to the respondent", denied the petition which was filed by the family members and an order for costs was issued 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 (AAA 6410/08). The appeal was deleted in May 2010, based on the parties' consent to transfer Mrs. Mustafa's application to the Inter-Ministerial Committee for Humanitarian Affairs.

94. A whole year after the judgment of the Supreme Court was given, the humanitarian committee laconically denied the application and left the children without any status in Israel. In August 2011, HaMoked appealed the decision of the humanitarian committee. An additional period of nine months has elapsed before the Ministry of Interior denied the appeal as well. HaMoked filed another petition with the Court for Administrative Affairs (AP 11667-07-12 **Herbatawi v. Minister of Interior – Ministry of Interior – Population and Immigration Authority**). Following the petition the Minister of Interior retracted his previous decision and transferred the children's case for a second deliberation by the Inter-Ministerial Committee for Humanitarian Affairs. Has this put an end to said saga? Definitely not. Once again the humanitarian committee denied the family's request to grant status to the adult children, again without a real reason.

95. HaMoked pursued its petition and two additional hearings and very explicit comments of the court were required before the Ministry of Interior has finally decided – a decade after the original application had been submitted and almost two decades after their parents had returned to Israel(!) – to grant the three adult children temporary status in Israel for two years, following which they would receive permanent residency status. The court ordered the state to pay petitioners' trial costs in the sum of 10,000 ILS.

96. So we see: only a protracted and decisive legal battle succeeded to prevent the state from breaking up a family and to compel the Ministry of Interior to grant residency status in Israel to the children, who were living in their home for many years without any status.

97. Hence, the decision to revoke the status of a permanent resident also has an "environmental" impact, an impact which affects more than just the resident himself. Even after the Ministry of Interior reversed its decision, and decided to reinstate the status of Mrs. Mustafa, the decision which was made in the past - to revoke her residency - continued to haunt her and her children. Mrs. Mustafa's children – who undoubtedly had no say in the decision to go and live abroad for a while – paid for many years the price of the sweeping residency revocation policy. They paid the price for the fact that their mother dared to wish to return and live together with her family in Jerusalem – her hometown.

IX. Interim summary

98. The **Awad** judgment was given two decades ago. The judgment was given against the backdrop of the outbreak of the first intifada, and the decision of the Minister of Interior to deport from Israel an East Jerusalem resident, who over the course of the years lived in the United States, where he obtained status, and where he organized political activity for the termination of Israeli occupation in the territories. The court held that the annexation of East

Jerusalem to Israel turned the residents of East Jerusalem into permanent residents of Israel. This residency, according to the judgment, expires when a person's center of life is relocated. It was therefore held that the Minister of Interior was authorized to deport Awad, who was residing in Israel without a permit and was "acting against the interests of the State".

99. The respondent, who throughout the years enabled East Jerusalem residents to leave the city and return to it for work, studies and family purposes, changed his policy following the judgment and applied a policy of massive revocations of residency permits in East Jerusalem. 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 exposed to this policy and its ramifications; however the injury inflicted by it on the female residents is especially severe.

100. Over two decades after the **Awad** judgment it should be reconsidered against the backdrop of its ramifications. The rulings of the **Awad** judgment should also be reconsidered against the backdrop of other legal norms, and especially against the norms which apply to East Jerusalem.

101. The "synchronization" which the court requested to draw between the laws which apply to East Jerusalem and its residents disregarded other normative aspects which apply to East Jerusalem. Moreover. Over the course of the years which passed since this judgment was given additional normative aspects were added which can no longer be ignored. **East Jerusalem is not just another region in Israel and its residents are not like all other Israeli residents**.

102. Before the applicants fully describe the normative framework, they wish to pin point the dispute and clarify their position with respect to the judgment in the **Awad** case and the status of East Jerusalem residents:

The applicants are prepared to assume that according to Israeli law, ever since East Jerusalem was annexed, the residents of East Jerusalem are permanent residents who hold permanent residency permits which were given to them according to the Entry into Israel Law. Indeed, as was held in the **Awad** case, said status was given to them lawfully and nor *ex gratia*. However, the status of East Jerusalem residents is a special status, which includes by its very nature a condition according to which their permits never expire. In other words, a condition should be added to the permanent residency of East Jerusalem residents according to which the residency does not expire as a result of a departure from the country or as a result of a relocation of the center of one's life.

The applicants are willing to accept that the tests concerning the expiration of residency which were established in the **Awad** case, and the provisions of the Entry into Israel Regulations concerning the expiration of residency, can apply to **immigrants** who voluntarily entered Israel and obtained permanent residency status therein at their request, and for this purpose: **to anyone who obtained permanent residency status <u>other than</u> by the annexation of his place of residence to Israel following a military occupation.**

The application of identical rules to the expiration of residency of immigrants who voluntarily obtained their status, and to the expiration of residency of East Jerusalem residents who received their status following the annexation of East Jerusalem after its occupation, unlawfully disregards the special situation of East Jerusalem residents. It forces upon East Jerusalem residents ghetto life, which they cannot leave so as not to have their status revoked, or unlawfully exerts upon them pressure to become Israeli citizens. It was not without reason that East Jerusalem residents did not become Israeli citizens whose status is protected from arbitrary revocation. The State of Israel cannot force citizenship upon them, and can neither urge them to naturalize nor force them to pledge allegiance to it.

This does not concern the overturning of the **Awad** rule but rather its essential expansion. The **Awad** judgment itself recognized the possibility that Israeli residency permits would include general conditions, and that these conditions, like the permits themselves, would not be explicitly specified in the permits, but would be implied there-from. The **Awad** judgment itself required that the features of the Israeli residency status would conform with the reality of life and would not disrupt it.

Below we shall describe our position in detail.

X. The special status of East Jerusalem residents and the prohibition to revoke their residency

Introduction

103. The normative status of East Jerusalem and the status of its residents is composed of several layers. International law views the area as an occupied territory, which is held under belligerent occupation. Therefore, according to international law, the Palestinian residents of East Jerusalem are protected persons who are entitled to protection by virtue of international humanitarian law. Israel, on its part, unilaterally applied the "law, jurisdiction and administration of the State" to the area and determined in its domestic law that the area formed part of the city of Jerusalem. Palestinian residents were given permanent residency status in Israel.

104. The residency status ostensibly grants Palestinian residents protections which are similar in many aspects to those enjoyed by Israeli citizens. In practice such protections are given by Israel scantily, and in fact – Israel alienates the Palestinian residents of East Jerusalem and has encourages their connections to the OPT. Over the years Israel has, in many aspects, treated East Jerusalem residents as it has treated the residents of the West Bank. As of its execution of the Oslo Accords Israel has recognized the fact that East Jerusalem is a region which is located at the heart of the dispute, and that the Palestinian residents of East Jerusalem are part and parcel of the Palestinian people in the West Bank and the Gaza Strip. Israeli legislation was adapted so as to facilitate this connection between East Jerusalem residents and the Palestinian people and the OPT.

105. Due to the importance of the normative arrangements and political treaties for the understanding of the special status of East Jerusalem residents; for the outlining of their set of rights; and for the outlining of the obligations of the State of Israel towards them – we would like to elaborate below on the legal status of East Jerusalem; on the status of East Jerusalem residents; and on the purpose of the residency which was granted to East Jerusalem residents.

The legal status of East Jerusalem

106. In June 1967 the State of Israel conquered the West Bank. Immediately after the war the Government of Israel decided to annex to Israel about 70,500 dunam of the occupied territory located to the north, east and south of Jerusalem ("**East Jerusalem**"). According to a government bill, an amendment to the **Law and Administration Ordinance** was passed in the Knesset on 27 June, 1967, in the framework of which section 11B was added which provides: "The law, jurisdiction and administration of the State shall apply to all areas of the Land of Israel which the government has determined by Order." On the following day, June 28, 1967, the government issued the **Law and Administration Order (No. 1), 5767-1967,** which applies the "law, jurisdiction and administration of the State", to East Jerusalem. In a proclamation made on the same day according to Municipalities Ordinance, the annexed territory was included in the municipal area of Jerusalem (See: **Abu Labada**, section 22 of the judgment).

107. The **Basic Law: Jerusalem, Capital of Israel,** which was enacted in 1980, stipulated further, in section 1 thereof that "Jerusalem, complete and united, is the capital of Israel". In 2000, the Basic Law was amended and section 5 thereof stipulates that the "The jurisdiction of Jerusalem includes, for the purposes of this basic law, among other things, all of the area which is described in the appendix of the proclamation expanding the municipal area of Jerusalem dated Sivan 3, 5727 (June 28, 1967), as given according to the Municipalities' Ordinance". Section 6 of the Basic Law stipulated that "no authority which is lawfully vested with the State of Israel or with the Jerusalem Municipality and which pertains to the municipal area of Jerusalem shall be transferred to any foreign body, political or governmental or any other similar foreign body, either permanently or for a defined period of time." Section 7 of the Basic Law stipulates 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 Rubenstein and Barak Medina, *The Constitutional Law of the State of Israel* (sixth edition, Schoken, 5765) 926-927, 932-935 (hereinafter: **Rubenstein and Medina)).**

108. Hence, according to **Israeli domestic law**, Israeli law applies to the territory of East Jerusalem. However, "the territory of a State, or its sovereign jurisdiction, are a matter to be decided by International Law", rather than by the domestic law of the state (Rubenstein and Medina, 924). According to international law sovereignty is acquired in two ways: by entering an agreement with the bordering states, or by acquiring sovereignty over a territory in which there is no political sovereign of any kind (*Ibid.*). The unilateral application of the "law, jurisdiction, and administration" upon a territory which was occupied is not recognized by international law as a way for applying sovereignty.

109. Moreover, the rule according to which 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.)

110. This principle is also included in the following three fundamental principles, a combination of which guides the laws of occupation: A. The principle according to which the use of force or occupation do not acquire sovereignty and cannot lead to or case any kind of transfer or change of sovereignty over a specific 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)

111. Indeed, **international law** does not recognize the unilateral annexation of East Jerusalem or the legal validity of the normative steps adopted by Israel for the application of its sovereignty over East Jerusalem. In a host of pointed decisions the international community and the international institutions have repeatedly stressed that the practical and normative steps adopted by Israel in its annexation of East Jerusalem ran contrary to the rules of international law, and that East Jerusalem was an occupied territory (see, *inter alia*: United Nations General Assembly Resolution 2253 (ES-V) and 2254 (ES-V) (both of July, 1967); United Nations General Assembly Resolution 35/169E (December 1980), United Nations General Assembly Resolution A/61/408 (December 2006); United Nations 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)).

112. The International Court of Justice (**ICJ)** adopted the Security Council Resolutions of the United Nations and held in its Advisory Opinion to the General Assembly of the United Nations of 2004 with respect to the Separation Barrier that East Jerusalem is an occupied territory like all other West Bank Gaza Strip territories, and that the steps taken by Israel had no force 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)(paragraphs 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." (Paragraph 78 of the opinion)

113. This position of international law is shared by the states all over the world. All states which maintain 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 embassies to be housed in Jerusalem, have left Jerusalem).

See also: Rubenstein and Medina 924-927, and page 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 residents according to International Law

114. A longstanding rule of this honorable court holds that residents of the territories which were occupied by Israel in 1967 have the status of "protected persons" according to the Fourth Geneva Convention, and are entitled to the protections afforded to protected persons them by international law (see in this regard, for example: HCJ 1661/05 **The Regional Council Hof Aza 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 **Affu v. Commander of the IDF Forces**, IsrSC 42 (2), 4, 77-78 (1988)).

115. The powers of the military commander appointed by the state in the territories, even when enshrined in military legislation, are subject to the rules of international law which enshrine the rights of protected persons (see: HCJ 393/82 **Al-masuliya v. Commander of IDF Forces in the Judea and Samaria Area**, IsrSC 37 (4), 785, 790-791)(1983) (hereinafter:

Al-masuliya). And what is the law which pertains to East Jerusalem residents? This honorable court has never examined the question of whether or not they enjoy the status of "protected persons" alongside their status as Israeli residents. The answer to this question derives from the provisions of international humanitarian law.

116. International humanitarian law, which is concerned with protecting citizens during times of conflict, takes a pragmatic approach when it implements the basic principle according to which the 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 of the institutions in the occupied territory are legal, or whether the annexation is legal. The purpose of the Article is to protect those citizens, who, as a result of a war, found themselves under the rule of a foreign power, with which they do not identify, and which in turn does not identify with them.

In view of the fact that pragmatically it is clear that any annexing country will defend the lawfulness of the annexation, the draftsmen of the Convention ensured that even if such claim is made, it may not be used to deprive the protected persons of their rights as defined by international humanitarian law.

This is the approach which the applicants humbly request the honorable court to adopt: the court is not requested to hold that Israeli law does not apply to East Jerusalem, but that the application of Israeli law does not deprive the residents of the eastern part of the city of their special rights as protected persons.

117. Obviously, the court is required to rule according to Israeli law. This includes both Knesset legislation as well as customary international law, which was absorbed into domestic law. While the provisions of Israeli law are the product of the interpretation of Knesset legislation – and indeed the **Awad** judgment is entirely based on interpretation in the absence of special legislative provisions concerning the status of East Jerusalem (**Awad**, pages 429-430) – this interpretation should be consistent, to the maximum extent possible, with the provisions of international law.

118. The position of international law was not mentioned in the **Awad** case, yet it should still have some impact today. The opinion of the International Court of Justice (the ICJ opinion) "constitutes interpretation of international law, made by the highest judicial body in

international law", and therefore, "the interpretation that this court gives to international law should be accorded the maximum consideration that befits it". (HCJ 7957/04 **Mara'abe v. The Prime Minister of Israel**) (judgment dated September 15, 2005, paragraph 56 of the judgment given by President Barak, and see also paragraphs 73 and 74 of the judgment. (Emphasis added) (hereinafter: **Mara'abe**)). Said proper consideration must therefore be expressed in the *de facto* 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 the legal rules

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

120. Case law interpreted said positive obligation of the occupying power as an obligation which imposes on it the duty to protect the rights and quality of life of residents of the occupied territory (see **Al-masulyia** pages 797-798; HCJ 202/81 **Tabib v. Minister of Defence**, 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. The Regional Commander of Judea and Samaria**, IsrSC 37(2) 197, 309-310 (1983)).

121. In addition to the rules of international law the State as an occupying power, must also abide by the basic principles of Administrative Law (**Al-masuliya**, page 810; HCJ 5627/02 **Sayef v. Government Press Office**, IsrSC 58(5) 70, 75 (1994); HCJ 10536/02 **Hass v. Commander of IDF Forces in the West Bank**, IsrSC 58(3) 443, 455 (2004); **Mara'abe**, paragraph 14 of the judgment). In addition, certain commitments of the State of Israel according to international human rights law also apply (see **the ICJ opinion,** paragraphs 102-113).

122. International law recognizes the sensitive nature of the relations between the occupying power and the protected persons under its rule, and establishes guidelines. Thus, *inter alia*, **Regulation 45 of the Hague Regulations prohibits 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.

123. **Article 49 of the Geneva Convention prohibits the occupying power from carrying out any type of "forcible transfer" of protected persons.** It is an absolute prohibition, and is in force regardless of the motive underlying the intention to carry out a forcible transfer.

Indeed, Article 78 of the Geneva Convention recognizes the right of the occupying power to take the measure of "assigned residence" with respect to protected persons within the boundaries of the occupied territory, but only as an exceptional and necessary step for security considerations. According to case law, such measures may not be taken unless the security risk posed by the person against whom they are taken, may not be otherwise removed. In any event this measure should not be taken for punitive purposes but only for deterring purposes (see HCJ 7015/02 **Ajouri v. IDF Commander in the West Bank**, IsrSC 74(6) 352 (2002)).

124. The application of **Israeli law** to East Jerusalem and its residents does not derogate from the protections afforded residents by international humanitarian law. To the extent the State of Israel seeks to view East Jerusalem and its residents as part of Israel, it chooses to apply to East Jerusalem and its residents additional layers of normative protection, the force of which is not lesser than the force of international humanitarian law. Israeli law carries its own constitutional protections, as well as Israel's commitments according to the provisions of international human rights law. Thus, the application of Israeli law to East Jerusalem, in as much as the State of Israel insists on its application to East Jerusalem and its residents, means that Israel by its own admission applies the basic rights which are enshrined in Israeli law, as well as Israel's commitments under International Human Rights Law.

125. All of the above directly affect the status of East Jerusalem residents. The status which was given to the Palestinian residents of East Jerusalem was given to them against their will. A resident who refused to accept that status was deprived of the right to continue to live in his home and faced the risk of forcible deportation. Indeed, first and foremost, the residency permit grants Palestinian residents of East Jerusalem the right to permanently reside in their homes and gives them immunity from deportation. It is not merely an entry visa, which is given to immigrants who have recently arrived in Israel (**Awad,** pages 429-430) but it is rather a permit that attests to the reality of life and gives it legal force (*Ibid.,* page 433). Precisely for this reason the **permit, in the words of the HCJ, is given to the Palestinian residents of East Jerusalem by law and not *ex gratia*** (*Ibid*., page 431). The above statement of the court in the **Awad** case is consistent with the special status of East Jerusalem residents.

126. However the additional step taken by the court in **Awad** – in holding that East Jerusalem residents are like all other residents, who may naturalize at will, and should they fail to do so they may lose their status – undermines that special status. Although East Jerusalem residents may request to naturalize in Israel (provided they are able to overcome the bureaucratic hurdles) very few of them actually do so. Though most of them satisfy the conditions of naturalization that are laid out in section 5 of the **Citizenship Law 5712-1952** (excluding, perhaps some knowledge of the Hebrew language), they see themselves, and this is perfectly justified in terms of international law, as residents of an occupied territory, whose status in Israel was forced upon them. They feel connected to the West Bank, and therefore have no desire to become Israeli citizens. Moreover, the acquisition of Israeli citizenship by way of naturalization requires swearing allegiance to the State of Israel (section 5(c) of the Law), and very few are willing to do so. **The State of Israel, as aforesaid, is prohibited from forcing it upon them**.

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

127. In the absence of an obligation to naturalize, it is clear that the status given to East Jerusalem residents cannot imprison them in East Jerusalem or in Israel, as a condition for the preservation of 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 jeopardy that any travel abroad or to the OPT, and even the acquisition of status in another country, will lead to the revocation of their right to return to their homeland.

128. The reality of life often calls upon people to move to foreign countries and to live there, for various periods of time and for various motives. It does not necessarily indicate that in all instances the connection with their country of origin was 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. And see also P. Gustafson, "International Migration and National Belonging in the Swedish Debate on Dual Citizenship", *Acta Sociologica* 2005; 5; 48.

129. The provisions of international law in this regard support the right of persons to return to their country, even if they are not citizens of that country.

130. 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 to the concept of "arbitrariness", the **United Nations Human Rights Committee** stated in its official interpretation of the Covenant as follows:

> 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. (The Human Rights Committee's General Comment 27, CCPR/C/21/Rev.1/Add.9 of 2 November1999, para.21). (Hereinafter: "**General Comment 27**").

131. In the case at hand, the interpretation that was given to the words "his own country" is especially important as it will be noted, that it was not merely by chance that this term was chosen (namely, copied *verbatim* from the Universal Declaration on Human Rights). Attempts which were made to limit this term, so that the right would only apply to those persons who were citizens of the country to which they wish to return, were dismissed, so as not to prevent persons, who are not citizens of the country according to its domestic law, from returning to it.

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

The scholar **Bossuyt** adds on this issue that the decision to deliberately choose the term "his own country", rather than the term "a country of which he is a national" was accepted in light of the desire of many countries to grant the right to return to one's country not only to citizens but also to permanent residents

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

The use of this broad term, namely, "his own country" also reconciles with Article 2(1) of the Covenant on Civil and Political Rights, according to which any State party to the Covenant undertakes to grant to all individuals within its territory and subject to its jurisdiction the rights recognized in said Covenant, without discrimination of any kind.

The Human Rights Committee of the United Nations, the authorized interpreter of the Covenant, also stated that the right to return to one's country according to Article 12(4) to the Covenant was not available exclusively to those who were citizens of that country. It most certainly applies, as stated by the Committee, to those who due to their special ties to that country, cannot be considered an "alien". The Committee notes, as an example, that this right shall also be available to residents of territories which were occupied by a foreign state 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)

132. For the avoidance of any doubt it should be noted in this context, that the prevailing opinion among scholars is that the right to return according to Article 12(4) of the Covenant, is a right which is available to individuals. We are not concerned with the right of 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 Movement, in L. Henkin (ed.) The International Bill **of** Rights, New York, Colombia University Press, 180 (1981)).

See also **Hannum**, page 59.

The special status of East Jerusalem residents since the Oslo Accords

133. As aforesaid. the **Awad** judgment disregarded the normative aspects which apply to East Jerusalem. These aspects require a reconsideration of the judgment as it relates to East Jerusalem residents. Moreover – over the years which have passed since the judgment in the **Awad** case was given, additional normative layers were added with regard to East Jerusalem residents, which also demonstrate the need to reconsider the judgment as it applies to East Jerusalem residents and make us wonder whether Israeli law can still present a demand for

a "synchronization" of their civilian status, in a manner which disregards the special situation that pertains to East Jerusalem.

134. The State of Israel does not want the Palestinian inhabitants of East Jerusalem to be its residents, and even more so – its citizens. Israel recognizes the fact that the residents of East Jerusalem are no different than the residents of the West Bank, and even encourages the former's ties to the OPT and to the Palestinian Authority. They in turn, generally speaking, do not view themselves as Israelis, but as Palestinians who are connected to the OPT. Despite the fact that East Jerusalem residents comprise about one third of the city's population, and despite the fact that they are entitled to participate in the elections for the Jerusalem Municipal Council and for the city's mayor (see Section 13 of the **Local Authorities (Elections) Law 5725-1965),** as a general rule they do not participate in the elections. The Jerusalem Municipal Council does not consist of even one Palestinian representative.

135. An example of the fact that the State of Israel treats East Jerusalem residents in the same manner that it treats all other residents of the OPT is found in Israel's decision to impose on Eastern Jerusalem residents the same arrangements which were imposed by it on the other residents of the West Bank with respect to travelling abroad, return to Israel and the West Bank, and their status upon their return (the "open bridges policy" which was discussed above). This policy recognized, as aforesaid, the need of the residents of East Jerusalem and of the residents of the OPT to live in Jordan and other Arab countries, not only for temporary and short term purposes, like visits or commerce, but also for purposes associated with protracted residence abroad, including for studies, work, and family relations. Since 1967 until today travelling abroad may only be done with an exit card which also constitutes a return visa. This applies equally to Eastern Jerusalem residents as well as to the residents of the West Bank. The former as well as the latter leave and return in the same manner.

136. The alienation by the State of Israel of the Palestinian residents of East Jerusalem and the encouragement of their forging ties with the OPT was given concrete expression in the Oslo Accords, in the legislation for their implementation and in the manner by which they were actually implemented. Within the framework of the Oslo Accords which were signed between the State of Israel and the PLO, Israel explicitly recognized the fact that East Jerusalem was at the core of the dispute, and that the Palestinian residents of East Jerusalem formed part of all other Palestinian residents of the West Bank and the Gaza Strip.

137. In the **Oslo I Accord**, dated September 13, 1993, Israel undertook to discuss the status of Jerusalem in the framework of permanent status negotiations, and agreed that the "Palestinians from Jerusalem who live there shall have the right to participate in the election process" to the Palestinian Council, "according to the agreement between the two sides". In **Oslo II Accord** dated September 28, 1995, the rules concerning the Palestinian parliamentary elections and presidential elections 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 they are not citizens of Israel. In Appendix II to the Agreement, voting arrangements in East Jerusalem were established. After the execution of 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 (Jurisdiction and other provisions) (Legislative Amendments) Law, 5756-1996.** Israel's undertaking to hold elections in East Jerusalem and to enable the participation of East Jerusalem residents in the elections were enshrined in legislation. The legislation stipulates that these provisions would be implemented at the government's discretion, with its consent and notwithstanding anything stated in any other law.

138. Since the first Implementation Law, elections in the Palestinian Authority took place three times: in 1996, 2005 and 2006. The residents of East Jerusalem took part in these elections with the consent of the Government of Israel and with its support. 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. The Government of Israel** (judgment dated January 14, 1996): HCJ 550/06 **Ze'evi v. The Government of Israel** (judgment dated January 23, 2006, with reasons for the judgment dated February 9, 2006).

139. As aforesaid, the residents of East Jerusalem also took part in the most recent elections, which took place in the beginning of 2006. On January 17, 2006, the then Acting 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 in the website of the Prime Minister' Office:

> I want to remind you that in 1996 and 2005, elections were held in Jerusalem. The responsible approach that I supported both in 1996 and in 2005 was 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' nexus to a Palestinian state and not to the State of Israel. We never thought that the interest of the State of Israel was that all East Jerusalem Arabs would be its citizens and participate in its election process. Indeed, they cannot be denied of the right to vote in the Palestinian Authority elections. Since we are not interested that they would take part in the elections in Israel, we should have certainly agreed that they would participate in the Palestinian Authority elections and therefore said decision was correct then and it is still correct today […]. I assume that most Israelis prefer that East Jerusalem Arabs would not participate in the elections within the State of Israel but rather in the elections of the state with which they identify, namely, the Palestinian state."

See: http://www.pmo.gov.il/PMO/Archive/Events/2006/01/eventpre170106.htm

140. The implementation laws of the Oslo Accords – the actual implementation of which was approved, as aforesaid, by the HCJ – introduced into the law a distinction between the status of East Jerusalem residents and the status of all other Israeli residents. Said distinction ties the residents of East Jerusalem to the Palestinian people in the West Bank, and regards them as forming an intrinsic part thereof. Is it conceivable that in the current situation, where

Israel views East Jerusalem residents as forming an intrinsic part of the Palestinian people and encourages their nexus with the independent Palestinian Administration – an independent Palestinian Administration, which apparently was something which even Mubarak Awad strived to establish in 1988 - the **Awad** rule, as interpreted by the respondent, would remain intact? Is it conceivable to still insist on "synchronization" between East Jerusalem and its residents on the one hand and Israel on the other, as interpreted by the court based on legislation from 1988? It is clear that the changes which were introduced to the law and the changes which took place in the factual circumstances can no longer justify the same attitude towards the status of East Jerusalem residents which regards them as having been "swallowed" by the laws of status of Israel, as if they were immigrants just like all other immigrants.

XI. Summary: Change of policy in view of the reality of life and the normative changes

141. The residency revocation policy may not be considered without taking into account the normative and factual aspects which we have discussed above. We have shown that the **Awad** rule should be expanded so that it may be reconciled with other norms of Israeli law, which imbibe from the principles of human rights and international humanitarian law. The expansion of the **Awad** rule is also required within the framework of drawing lessons from its implementation until this day and within the framework of its tailoring to the lifestyles of the modern world.

142. The court based its judgment in the **Awad** case on a reality in which a person relocates his center of life from one country to the other. For a certain interim period the center of his life "sort of hovers between his old place of abode and his new one", but upon the termination of this interim period the ties are severed. This assumption does not always meet the test of reality.

As we have seen in the examples which were cited above, a woman in a traditional society who moves with her spouse to another country does not severe her relations with her homeland. It is her only natural refuge if the relations between the spouses go sour.

We have also seen in said examples, how going abroad for studies and livelihood purposes, even if for an extended period, usually comes to an end when children are born and reach the age of formal education The bond with the country of origin, even if weakened over the course of the years, is revealed in all its force when one has to send one's child to the educational system.

In a modern world where humans interact in a global village, an extended stay abroad is a frequent phenomenon. It does not run contrary to the constant and deep connection between man and his homeland. In times of crisis, or on the opposite end of the spectrum, when a person establishes a family or reaches retirement age, the urge to "come back home" re-awakens in full force.

143. In the years which passed since the **Awad** judgment it has become clear that the simplistic implementation of the **Awad** rule does not lead to the exclusive removal from East Jerusalem

of those people who have no real nexus to it, or who came to the city as mere political agents. The people who paid the price of the technical application of the **Awad** rule were those for whom Jerusalem was their home to return to.

144. And perhaps even more serious than this: the **Awad** rule entails dangerous ramifications for the future. Already as early as 1967 Israel recognized, within the framework of the open bridges policy, that it was necessary for East Jerusalem residents to stay abroad for extended periods of time in order to acquire education and livelihood that were not available in Jerusalem, and to maintain their social and family relations with Arab States. Israel even regarded the fact that these residents may realize themselves abroad as a clear Israeli interest. Currently, when the entire world is, in fact, one global village, the self realization of human beings increasingly depends on their mobility across international borders.

145. The implementation of the **Awad** rule by the respondent placed East Jerusalem residents between the rock and the hard place: their right to leave their homes for a limited time for the purpose of self realization, education, livelihood and participation in the life of modern society was juxtaposed against their right to a home and homeland. The **Awad** rule turned into a judicial cage which imprisons the residents of East Jerusalem prevents them from being mobile like everyone else, and confines them to the narrow and neglected space in which they were born. The sanction 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 to return to the homeland.

146. In view of these harsh consequences of the **Awad** rule, and in order to adapt it to the legal rules which apply to East Jerusalem residents, it should be developed. There is no need to change the ruling that East Jerusalem residents live in Israel by virtue of permanent residency permits which were impliedly granted to them, pursuant to the Entry into Israel law. There is no need to change the ruling that Israeli permanent residency permits, to the extent given to immigrants from a foreign country, include an implicit stipulation that the validity of the permit depends on permanent residency, *de facto*. However, as far as East Jerusalem residents are concerned, for whom this piece of land is their home, and who enjoy the status of protected persons according to international humanitarian law, it must be held that their residency in Israel includes an implicit stipulation according to which the residency does not expire even following a protracted stay abroad or the acquisition of status in another country. In other words, as stated in the **Awad** judgment, the respondent may conditions for granting residency permits subject to conditions (Section 6 of the Entry into Israel Law). However, the condition that must be read into the residency permits which the respondent grants to East Jerusalem residents is that such permits may not be revoked as a result of protracted stay abroad or the acquisition of status in another country.

147. This is the case in general, and this also the case in appellant's matter. The permanent residency status of the appellant was given to him following the annexation of East Jerusalem. Hence, it is a special status, in which immunity from forced deportation is embedded. The State of Israel may not demand from the appellant - and likewise from any other East Jerusalem resident - to become a citizen of the state and to swear allegiance to it, so as not to be deported, and it may not force him – or any other East Jerusalem resident for

that matter – to stay in East Jerusalem so as not to lose his status. The appellant is entitled to leave the country, to go out of East Jerusalem and return to it without any fear that his status will be revoked and that he will be deported. The revoked status should be reinstated.

The litigants' position concerning applicants' application to join as amicus curiae.

148. Counsel to the appellant, Adv. Adi Lustigman, gave her consent for the filing of the application.

149. Counsel to the respondent, Adv. Itzhak Bart, advised that to the extent necessary, he would respond to the application according to the decision of the court.

June 25, 2015

(Signed)

___________________________	___________________________
Benjamin Agsteribbe, Advocate	Oded Feller, Advocate

Counsels to the applicants