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## FAMILIES TORN APART SEPARATION OF PALESTINIAN FAMILIES IN THE OCCUPIED TERRITORIES



**המוקד להגנת הפרט**  
**HAMOKED** Center for the Defence of the Individual  
המוקד - مركز الدفاع عن الفرد

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**בִּיִּטְסֵלֵם**

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# Table of Contents

<b>Summary of Findings</b>	11
<b>Introduction</b>	15
<b>Chapter One : Creation of the Problem of Family Separation in the Occupied Territories</b>	17
<b>Chapter Two : Israel's Position on Family Unification in the Occupied Territories</b>	22
<b>Chapter Three : Family Unification in the Occupied Territories, 1967 to 1995</b>	29
1. Israeli Policy over the Years	29
A. 1967 to 1973 – Family Unification for War Refugees	29
B. 1973 to 1993 – Increasingly Harsh Policy	30
C. 1990 to 1993 – The High Court of Justice Agreements	39
D. August 1993 – Setting Quotas for Family Unification	48
2. Bureaucratic Obstacles in the Family-Unification Process	59
A. Criteria for Approving Family-Unification Requests are Unknown	59
B. Procedures for Family Unification	61
C. Civil Administration Breaches of the High Court of Justice Agreements	69
<b>Chapter Four : Family Unification in the Occupied Territories after the Oslo Accords</b>	77
1. Family Unification According to the Oslo Accords	77
A. Family Unification	77
B. Family Visits	78
C. Population Registry	78
D. Procedure for Handling Civil Affairs	79

2. Implementation of the Agreements as Regards Family Unification	80
A. The Family-Unification Process	80
B. Visitor's Permits – Extreme Restrictions	87
C. Bureaucracy-Related Problems	96
<b>Chapter Five : Registration of Children</b>	<b>103</b>
1. Registration of Children before the Oslo Accords	103
2. Registration of Children after the Oslo Accords	105
A. Registration of Children under Age Sixteen	105
B. Registration of Children Aged Sixteen to Eighteen	106
3. Consequences of the Family-Unification and Registration-of-Children Policies	107
<b>Chapter Six : The Legal Aspect</b>	<b>110</b>
1. International Law on the Right to a Family Life	110
2. Rights of the Child under International Law	113
3. Right to Family Unification in Regional Law on Human Rights	116
A. The European Convention for the Protection of Human Rights and Fundamental Freedoms	116
B. The Helsinki Agreement	116
4. State Laws Related to Family Unification	118
A. State Laws	118
B. Israeli Law	119
5. High Court of Justice Rulings on Family Unification in the Occupied Territories	122
A. The Right Infringed	123
B. The Public/Security Need	125
C. Balancing the Public/Security Need and the Right Infringed	126
D. Reviewing Discretion in Specific Cases	127
E. Function and Performance of the High Court of Justice on Matters of Family Unification in the Occupied Territories	129
<b>Conclusions</b>	<b>132</b>



<b>Recommendations</b>	134
<b>Appendixes</b>	137
Appendix 1: Requests for Family Unification between 1985 and 1990	139
Appendix 2: Violation of the High Court of Justice Agreements (Based on Complaints to HaMoked)	140
Appendix 3: BTselem's Project in Bani Na'im	145
Appendix 4: The European Convention on Human Rights	149
Appendix 5: High Court of Justice Judgments on Family Unification in the Occupied Territories	151
Appendix 6: Response of the Coordinator of Government Operations in the Occupied Territories	153



Mustafa Natur and his wife, Muna Salman, with their daughters Athmar and Noar, celebrating Athmar's third birthday. The photo was taken during Mustafa Natur's visit to Jordan in September 1998.

*I live with my wife by telephone. I call, she calls, and that also costs money. My wife and daughters being far away makes it impossible for me to be a husband and father. I don't have the joy of coming home after a day of work with a small present for my wife, to surprise her with something that she likes. I dream about coming home and my daughters running to me and jumping into my arms, and giving them a piece of candy from my pocket. I work in the market and see people living normal lives, doing their shopping and going home with bags in their arms, and I am alone. This is something I should never have to experience.*

From the testimony of Mustafa Shahadeh Natur, resident of the Jenin refugee camp. His wife, Muna Musa Salman, resides in Jordan with their two daughters, one a year old and the other three years old. The Israeli authorities have refused to allow Muna Natur to live with her husband in the Occupied Territories and have even prohibited her from visiting him.

HaMoked is handling the family's case. The testimony was given to B'Tselem researcher Najib Abu-Rokaya on 10 July 1998.

## Summary of Findings

- The right of persons to marry and live with their family is recognized in international law. The immigration laws of most nations, Israel included, enable the immigration of close relatives of citizens for the purpose of family unification and provide the immigrants with a legal status in the state.
- Israel has never recognized the right of Palestinian residents of the Occupied Territories to family unification, i.e., the right of their spouses and children to receive the legal status of resident. Israel's policy has compelled tens of thousands of Palestinians to live apart from their spouses, leaving children separated for prolonged periods from one of their parents. This separation causes emotional and economic hardship, precludes parents from raising their children jointly, and makes it difficult to develop proper family relationships.
- Israel's policy on family unification is based on political considerations, an illegitimate basis for decision-making under international law relating to occupied territory. The policy's underlying objective is to alter the demography of the Occupied Territories. The means used is the refusal to allow spouses of Palestinian residents to immigrate there and encouragement of divided Palestinian families to leave the Occupied Territories and settle in other countries.
- Marriage within the extended family is widespread among Palestinians of the Occupied Territories. These marriage patterns, which continued after 1967 and remain in practice, have led to a large number of marriages between residents of the Occupied Territories and Palestinians residing in other countries, among them refugees from the Six-Day War, of 1967, and the descendants of refugees from the 1948 war. Israel has chosen to ignore this reality, imposing a rigid family unification policy that conflicts with the normal pattern of life within Palestinian society.
- In implementing its rigid family unification policy, Israel offers three possibilities to Palestinian residents of the Occupied Territories who are married to non-residents:
  - living separately, where the spouses live apart and the children reside with one of the parents;
  - maintaining a truncated family life and spending time with their spouses only during the spouses' short visits to the Occupied Territories, which are subject to Israeli approval;

- moving elsewhere, abandoning their homes, parents, and homeland.

Because of the obstacles inherent in each of these possibilities, many non-resident spouses chose to remain in the Occupied Territories illegally after their visitor's permits expired. Remaining there compels them to live an underground existence, forever fearful of fines and deportation.

- Over the years, Israel has modified its policy regarding family unification in the Occupied Territories:
  - 1967 to 1973: limited allowance of family unification for war refugees;
  - 1973 to 1993: almost total refusal to approve requests for family unification, and deportation and threats against non-resident spouses who remained in the Occupied Territories without a valid visitor's permit;
  - August 1993 to November 1995: family unification allowed for spouses up to a quota of 2,000 families a year, while compelling the families to remain separated during the prolonged period prior to receiving approval;
  - November 1995 to the end of 1997: the family unification procedure was frozen because of Israel's refusal to meet the demand of the Palestinian Authority to either increase or revoke the annual quota;
  - 1998 to the present: reimplementation of the family unification procedure, applying the same quota as that of 1993.
- Following intensive legal activity by human rights organizations, most notably HaMoked: Center for the Defence of the Individual, in the early 1990s, the authorities allowed – by granting long-term visitor's permits to the non-resident relatives – thousands of Palestinians to live together in the Occupied Territories. The authorities applied this arrangement arbitrarily only to a limited number of families, thereby maintaining the overall policy denying the right of family unification to Palestinians in the Occupied Territories. Furthermore, the authorities frequently breached the arrangement.
- In spite of the undertakings mentioned in the Interim Agreement "to promote and upgrade family reunification" in order to "reflect the spirit of the peace process," the Oslo Accords did not significantly alleviate the problem of family separation in the Occupied Territories. Even following implementation of the agreements, Israel retains ultimate decision-making authority over unification and separation of every family in the Occupied Territories. Israel

unilaterally determined that family unification in the Occupied Territories would continue to be subject to the annual quota set prior to the Interim Agreement, even though the quota is woefully inadequate.

- Israel and the Palestinian Authority currently have more than 13,000 pending requests for family unification in the West Bank. If the quota remains as is, it will take until the year 2006 to meet these requests. Requests filed now will take almost a decade to be approved. Consequently, a Palestinian who marries a non-resident today will only be able to live with his or her spouse in the West Bank ten years from now, if ever.
- Over the years, the bureaucratic procedure for handling requests for family unification has been convoluted, prolonged, secretive, and replete with harassment and high financial cost. The authorities have never taken the trouble to solve these problems, leading to the suspicion that this failure is part of the policy to place every possible obstacle before persons requesting family unification, in order to reduce the number of applicants.
- Until November 1995, Israel refused to register in the population registry Palestinian children whose mother is not a resident of the Occupied Territories, even if the father is a resident. The only avenue available for fathers to register their children was by requesting family unification on their behalf, requests that were rarely approved. Since November 1995, the Palestinian Authority has been allowed to register every child up to the age of sixteen one of whose parents is a resident of the Occupied Territories. However, there is no procedure for registering children between sixteen to eighteen, requiring parents to submit a request for family unification on their behalf.
- The Supreme Court has rejected the vast majority of petitions concerning family unification in the Occupied Territories. The High Court of Justice wholly accepted the State's position and ruled that the petitioners are not entitled to family unification. The Court totally ignored the fact that the government's policy, which denies family unification for spouses, severely infringes a basic human right, valid also in occupied territory, to maintain a family life. The Court took for granted the State's contention that approving entry of foreign spouses into the region entails security ramifications, without examining the relevant security considerations or their significance. The Court did not expose, or even try to expose, the actual objective of Israel's policy – to change the long-term demographic balance between Palestinians and Jews in the Occupied Territories.

- The relationship between the residents [of the Occupied Territories] and the Occupied Territories is like that between citizens and their country, even though the resident do not have the status of citizens of the Occupied Territories. They grew up there or lived there for many years after arriving as refugees; most are not citizens or residents of another state and are not immigrants who came to the Occupied Territories from another country, so they have no other homeland to which they can go to live with their family. Their right to maintain a proper family life in the Occupied Territories is a basic right, which Israel may not deny.

# Introduction

Israel has never recognized the right of Palestinian residents of the Occupied Territories to family unification, i.e. to have residents' spouses and children receive the legal status of resident. Over the years, the authorities have approved family unification infrequently and according to undisclosed criteria.

This situation did not change after the Oslo Accords, which provide that Israel continues to have control over the decision of which families may live together in the Occupied Territories and which must live apart. During the lengthy period of waiting to receive an answer to the request for family unification, the family is not permitted by law to live together in the Occupied Territories. Separated families have no choice but to settle for short, truncated visits dependent on the approval of Israeli authorities, which is not always granted.

Because marriage between residents of the Occupied Territories and non-resident Palestinians is widespread, tens of thousands of Palestinians have been compelled to live apart from their spouses, leaving their children to live for long periods without one of their parents. In the vast majority of cases, the only way residents of the Occupied Territories married to non-residents may live together lawfully is to leave the Occupied Territories, thereby abandoning their house, parents, and homeland.

This report describes the historic, social, and legal aspects of the separation of Palestinian families in the Occupied Territories and of Israel's policy concerning family unification. The report relies on military regulations, official documents, court judgments, extensive correspondence with the Israel Defense Force, the Ministry of Defense, and the Ministry of Justice, professional literature, and documentation of human rights organizations relating to the thousands of separated families they endeavored to assist.

Over the years, many Palestinians from throughout the West Bank turned to HaMoked: Center for the Defence of the Individual for assistance. HaMoked operated through administrative and legal channels to solve problems related to family unification. This report is based on data collected on 1,573 requests for assistance that Palestinians submitted to HaMoked between 1991 and 1996. Some ninety percent relate to separation of spouses. The report presents statistical data culled from these requests. We shall also present data from a sample of one hundred separated families from Bani Na'im, a village in the Hebron District, whom B'Tselem is assisting. The report

will illustrate various family unification problems by describing individual cases handled by HaMoked and B'Tselem.

The report begins with background to the problem of family separation in the Occupied Territories since 1967 and Israel's fundamental position, which holds that allowing family unification to Palestinian residents of the Occupied Territories is an act of benevolence and not a right. The report also describes the development of Israel's policy on family unification over the years, and examines Israel's use of legal and administrative mechanisms to achieve its demographic objectives.

The last part of the report presents the legal background of the phenomenon: international law relating to family rights and family unification, Israeli law relating to family unification, and the laws of other states on this subject.

Two comments concerning terminology used in this report:

1. "Children" in this report means minors under the age of eighteen, which conforms to the definition set forth in the Convention on the Rights of the Child.
2. Under international law, East Jerusalem is occupied territory identical to the rest of the West Bank. However, this report will not discuss the matter of separated families in East Jerusalem. The reason is that, since Israel's illegal annexation of the eastern part of the city and application of Israeli law there, the procedures for family unification of its residents are handled separately according to a different legal basis than that applying in the rest of the Occupied Territories.<sup>1</sup>

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1. Concerning the status of East Jerusalem under international law, see HaMoked: Center for the Defence of the Individual and B'Tselem, *The Quiet Deportation Continues* (Jerusalem, September 1998).



# Chapter One: Creation of the Problem of Family Separation in the Occupied Territories

After the Six-Day War, in 1967, Israel declared the West Bank and the Gaza Strip closed areas, with entry into and exit from these areas requiring the approval of the military commander.<sup>2</sup> During August and September 1967, Israel took a census of the Occupied Territories. Every person above sixteen living and present there at the time of the census was recorded in the population registry of the Occupied Territories, received the status of permanent resident of the Occupied Territories, and was issued an identity card.<sup>3</sup> Children under sixteen were recorded on their parents' identity cards.<sup>4</sup> The status of permanent resident entitled the holder to reside in the Occupied Territories and work, own, and bequeath property there.

Israel denied these rights to residents of the Occupied Territories who were not present during the taking of the census. Some 240,000 Palestinians had been expelled from the Occupied Territories or had left them during, or immediately after, the Six-Day War, most of them going to Jordan.<sup>5</sup> In addition, another 60,000 Palestinian residents of the Occupied Territories were living in other countries during the war.<sup>6</sup>

Persons with permanent residency status were liable to lose it. Israel revoked the residency status of residents who stayed abroad for more than six years, or for more than three years if they did not extend their

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2. Order Relating to Closed Areas (West Bank Region) (No. 5), 5727-1967, of 8 June 1967. A similar order was issued for the Gaza Strip. These orders were made pursuant to sec. 70 of the Order Relating to Emergency Defense Regulations, 5727-1967, of 7 June 1967, pursuant to which the military commander may close areas and allow, in writing, entry into or exit from them.

3. Pursuant to the Order Relating to Identity Cards and Population Registry (Judea and Samaria) (No. 234), 5728 1968, of 17 March 1968. A similar order was issued for the Gaza Strip.

4. Pursuant to the Order Relating to Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5729-1969, sec. 11. A similar order was issued for the Gaza Strip.

5. See *Guide to UNRWA* (Vienna, April 1992) 6.

6. According to the estimate of Dr. Taysir Amru, Palestinian representative to the discussions on returning persons uprooted in 1967, presented at a conference on the subject, held in Ramallah on 18 November 1995, at the Shamel Center for Palestinian Refugees and Dispersed Persons.

exit permit during the ensuing three years.<sup>7</sup> Over the years, Israel revoked the residency rights of almost 100,000 persons, most of whom now live in Jordan.<sup>8</sup>

Palestinians whose residency rights had been revoked could appeal, through relatives who had remained in the Occupied Territories, to the Civil Administration's Latecomers [former residents] Committee. This committee was authorized to review cases in which residency status had been revoked.<sup>9</sup> If the committee denied the application, relatives could then submit a request for family unification on their relative's behalf. The likelihood that the request would be approved was minimal. With the transfer of civil and administrative powers to the PA in November 1995, Israel lost the power to revoke residency status of residents of the Occupied Territories.<sup>10</sup> The Latecomers Committee

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7. Becoming a citizen or permanent resident of another country was also a basis for revoking permanent residency status in the Occupied Territories, although Israel rarely revoked permanent residency status on these grounds. See HCJ 106/86, *Tabateh 'Odeh v. Civil Administration Commander for Ramallah District et al.*, *Piskei Din* 40(3) 645.

8. Brig. Gen. Ariyeh Ramot (Shifman), then-deputy Coordinator of Government Operations in the Occupied Territories, indicated in 1994 that according to data provided by Jordanian officials, there are only 89,000 "latecomers" [former residents of the Occupied Territories, those who did not renew their exit permits or return to the Territories on time, and thus lost their residency status] in Jordan (the information was provided in an affidavit submitted by the State [hereafter: Ramot affidavit] in response to a petition brought by HaMoked in HCJ 5606,5810/93, *Nazyeh Muhammad Ahmad et al. v. Commander of IDF Forces in the West Bank*). On 19 June 1996, Khalid Salim, executive director of the Supreme Committee for Civil Liaison, of the Palestinian Authority (PA), informed human rights organizations' representatives that Israel had revoked the residency rights of 100,000 Palestinians. Israel has never published official figures on the number of revocations. The PA Interior Ministry informed B'Tselem, in May 1997, that Israel even refuses to provide these figures to the PA, although the Oslo Accords require Israel to provide the PA with all the data related to the population registry of the Occupied Territories.

9. The committee's procedures were incorporated in the internal operating procedures of the Civil Administration and were confidential. Some of these procedures were provided to the High Court of Justice in the Ramot affidavit. Neither the applicant nor his attorney was allowed to be present during the committee hearings, or to argue the matter. HaMoked filed a petition in 1993 concerning the right to be heard in cases before the committee. The petition, referred to in the previous footnote, was not heard by the High Court of Justice prior to dissolution of the committee, at the end of 1995. See, also, Al-Haq, *The Right to Unite – The Family Reunification Question in the Palestinian Occupied Territories: Law and Practice* (Ramallah, 1990) 12.

10. See below, p. 95.

was dissolved at the same time, and it was agreed that the subject would be handled within the context of the Israeli-Palestinian joint committee. The parties have not yet reached agreement on the matter, and there has been no change in the status of Palestinians whose right to reside in the Occupied Territories had been revoked.

Revocation of the right of hundreds of thousands of Palestinians to reside in the Occupied Territories led to the division of many Palestinian families. Because Palestinians often marry within the extended family, revocation of residency rights created a particularly complex situation.<sup>11</sup> Dr. 'Aziz Khaider, an expert on Palestinian society, notes that these marriages are entered into according to a rigid hierarchy in selecting a wife: the preferred and most common choice is where a male marries his first cousin, and the lesser preference is marriage within the extended family, within the *hamula*, or between persons from the same village. Dr. Khaider contends that these marriage rules are "extremely powerful and are anchored in social tradition and religion, regardless of state or other borders. It is customary to send the bride from country to country."<sup>12</sup>

The Israeli-Palestinian conflict affected, therefore, the Palestinian social fabric. Members of the extended family became separated by international borders. Maintaining close family ties, like contact between siblings and between parents and children, was made difficult by almost impenetrable border crossings, military orders, and permit requirements. Traditional Palestinian marriage patterns continued, despite the political obstacles, after 1967 and still continue, leading to a large number of marriages between residents of the Occupied Territories and Palestinians living abroad, among them refugees from

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11. According to a 1995 demographic survey conducted by the Palestinian Central Bureau of Statistics, almost thirty percent of married Palestinian women in the Occupied Territories had married their cousins, and another thirty-seven percent had married other relatives. Palestinian Central Bureau of Statistics, *The Demographic Survey, Preliminary Report* (Ramallah, March 1996) 126, Table 3.4.7.

12. The expert opinion of Dr. Khaider was annexed to the petition for family unification filed by The Association for Civil Rights in Israel in HCJ 1979/90, *'Awashreh et al. v. Commander of IDF Forces in Judea and Samaria*. These customs also exist in Palestinian villages within Israel, and also existed in the West Bank when it was under Jordanian control. See Richard Antoun, *Arab Village* (Bloomington, Indiana: Indiana University Press, 1972) 118; 'Abdallah Lutfiyyeh, *Baytin. A Jordanian Village* (London: Mouton & Co., 1966) 129-130; Henry Rosenfeld, "Social and Economic Factors in Explanation of the Increased Rate of Patrilineal Endogamy in the Arab Village in Israel," in J.G. Peristiany (ed.), *Mediterranean Family Structure* (Cambridge: Cambridge University Press, 1976) 115, 119.

the 1967 war and descendants of the refugees from the 1948 war. Such marriages are routine among almost every family in the Occupied Territories.

Bani Na'im, located east of Hebron, is a Palestinian village of some 13,000 residents. Since 1994, B'Tselem has been following the cases of one hundred separated families in the village. Among these families, the spouses are separated in eighty cases. In all of the families, the non-resident spouses are Palestinians.<sup>13</sup> Of them,

- thirty-five were born in Bani Na'im (three of whom are refugees from the 1967 war). The others lost their rights to residency in the Occupied Territories following stays abroad;
- twenty-seven were born abroad (principally in Jordan) to families from Bani Na'im;
- eighteen are Palestinians about whom B'Tselem has no other information concerning their place of origin.

Ordinarily, these marital relations should have created two-way immigration, with some couples deciding to live in the Occupied Territories, and others in the country of residence of the foreign spouse. Two-way immigration is also a result of the widespread custom in Palestinian society whereby the bride joins her husband's family.<sup>14</sup>

Israel ignored this reality and employed over the years a rigid family-unification policy that conflicted with the normal pattern of life in Palestinian society. Since Israel rarely approved applications for family unification of Palestinian residents of the Occupied Territories married to non-residents, Israel left these couples with three options. One possibility was for the couple to live apart, with the children residing with the father or mother and little likelihood that an application for family unification would be granted. The second possibility was to maintain a fragmented family life, with the foreign-resident spouse frequently entering and leaving the Occupied Territories pursuant to visitor's permits of short duration. This option precluded the stability required for raising children and maintaining normal family life. The third option was to live abroad, which was liable to result in revocation of residency status of the resident spouse.

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13. Regarding B'Tselem's handling of family separation in Bani Na'im, see Appendix III.

14. Khaider affidavit in 'Awashreh. See, also, Henry Rosenfeld, "Change, Barriers to Change, and Contradictions in the Arab Village Family," 70 *American Anthropologist* 4 (August 1968) 734.



*Amaneh Mahmad Mahmud a-Traireh, a resident of Bani Na'im village, and her two-year-old daughter, Zinab. Amaneh a-Traireh's husband is a Jordanian resident. She raises their daughter by herself, with her husband visiting them from time to time pursuant to limited-duration visitor's permits.*

Because of the difficulties inherent in each of these three options, many couples decided to remain in the Occupied Territories illegally by not exiting when their visitor's permits expired. In doing so, they were forced to live underground, constantly fearing deportation or fines.

## Chapter Two: Israel's Position on Family Unification in the Occupied Territories

As the occupying power, Israel undoubtedly has the authority to close, and determine who may enter, the Occupied Territories. However, exercise of this authority is permissible only where it is necessary for the security of the region or the needs of proper administration. Israel exercised this power to prevent family unification of residents of the Occupied Territories with their spouses and children.

The position of the military government, presented by the State Attorney's Office before the Israeli High Court of Justice, is that "family unification is not a vested right" nor an "acquired personal right whose fulfillment may be demanded at any time."<sup>15</sup> Therefore, approval of a request for family unification is "a special benevolent act of the Israeli authorities," and Israel is not obligated to approve such requests:

It is no longer acceptable that any male resident of one of the regions who so desires may marry a woman from abroad and bring her into the region, or that every female resident... may marry a foreign resident and bring him into the region.... The decision who enters and who settles in one of the regions (Judea and Samaria or the Gaza Strip) is a decision to be made by the authorities, and no resident, male or female, may compel the authorities to accept his or her private determination in this matter.<sup>16</sup>

State representatives argued that approval of requests for family unification constitutes a problem "with security ramifications,"<sup>17</sup> but have never detailed the specific ramifications. In addition, only in a handful of cases did the military authorities justify the rejection of family unification requests on security grounds.<sup>18</sup> In many cases where the

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15. Par. 6 of the State Attorney's Office's statement, of 18 November 1992, in HCJ 4494/91, *Sarhan et al. v. Commander of IDF Forces in Judea and Samaria et al.*, filed by The Association for Civil Rights in Israel, and in sixty-three other petitions, most of which were filed by HaMoked. Despite the subsequent changes in policy, Israel emphasized that it continues to hold this fundamental position.

16. *Ibid.*, par. 7.

17. See, for example, the State Attorney's Office's statement in *Sarhan*, par. 6.

18. According to files of HaMoked, only 18.5 percent of the requests for family unification since August 1993 were rejected for security reasons.

requests for family unification on behalf of spouses were denied, the authorities allowed the foreign-resident spouses to enter the Occupied Territories for regular visits, without considering their entry a security threat.

Officials' statements that the policy of rejecting requests for family unification is based on security grounds do not relate to a specific danger, imminent in a Jordanian woman married to a resident of the Occupied Territories and in their child, but rather to some undefined and abstract security risk.

Statements over the years made on behalf of the State indicate that the objective of Israel's policy on family unification is to limit immigration of Palestinian spouses into the Occupied Territories. Brig. Gen. Ephraim Sneh, while head of the Civil Administration in the Gaza Strip, stated in his affidavit submitted to the High Court of Justice in 1986 that, "[The policy on family unification] ultimately became a complex and problematic matter – with political and security aspects – of a means of immigration into the regions."<sup>19</sup> The State Attorney's Office also argued at times before the High Court of Justice that the numerous requests for family unification raise a "complex problem with security, political, and economic ramifications."<sup>20</sup> Israel has never indicated the ramifications to which it refers, has not offered figures on the scope of the immigration, and has not indicated whether the immigration of spouses into the Occupied Territories is greater than the number of emigrating residents.

The State Attorney's Office conceded that the policy of rejecting requests for family unification compels persons wanting to live with their spouses to go abroad. It suggested that those seeking family unification leave the Occupied Territories: "Families in such a situation can unite outside the region... by the local spouse leaving the region and going to where the foreign spouse is residing."<sup>21</sup>

Statements of Israeli officials indicate that the objective in rejecting requests for family unification is purely demographic: to prevent an increase in the Palestinian population in the Occupied Territories, by prohibiting spouses from immigrating to the Occupied Territories, and encouraging separated families to leave the Occupied Territories.

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19. Quoted in H CJ 13.58/86, *Shahin et al. v. Commander of IDF Forces in Judea and Samaria et al.*, *Piskei Din* 41(1) 197, 214.

20. See, for example, the State Attorney's Office's statement in *Sarhan*, par. 6.

21. Statement of the State Attorney's Office in *Sarhan*, par. 10. emphasis in the original. See, also, H CJ 618.724.728/85, *Khalil et al. v. Commander of Judea and Samaria Region*, *Takdin* 86(2) 84; H CJ 673/86, *Al-Saudi et al. v. Head of the Civil Administration in the Gaza Strip*, *Piskei Din* 41(3) 138, 140.

Israel does not seek to conceal that the political-demographic consideration is one of the considerations dictating its family unification policy. For example, in 1980, the State Attorney's Office stated that approval of requests for family unification "is granted according to criteria based on security considerations, which... include political considerations relating to the international relations of the State."<sup>22</sup> In 1988, the U.S. State Department maintained that "Israeli officials admit that family unification is limited for demographic and political reasons...."<sup>23</sup> Colonel Ahaz Ben-Ari, while serving as legal advisor of the Civil Administration in the West Bank in 1990, was asked about the importance of demographics in Israeli policy on family unification in the Occupied Territories. He responded that, "It is impossible to deny that demographics is part of the dispute, and is part of the political problem."<sup>24</sup>

## Criticism

### 1. Disregard for Welfare of the Palestinians

Under customary international law, the occupying power may only act in occupied territory according to two considerations: the welfare of the local population, and the occupying power's military needs. Other considerations, such as political considerations, are strictly prohibited.<sup>25</sup> The Supreme Court emphasized this principle:

The military commander may not weigh the national, economic, or social interest of his own country insofar as they have no ramifications on his security interest in the area, or on the interest of the local population. Even military needs are his needs [i.e., the

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22. The State Attorney's Office's response in HCJ 802/79, *Samara et al. v. Commander of the Judea and Samaria Region*, *Piskei Din* 34(4) 1, 3. In 1987, the High Court of Justice determined that the authorities refuse, for political reasons, to issue permanent-residency status to relatives of residents. HCJ 137/86, *Aljera v. Head of the Civil Administration in the Gaza Strip*, *Takdin* 87(2) 1, 2.

23. U.S. Department of State, *Country Reports on Human Rights Practices for 1988*, p. 1394.

24. *Hadashot*, Magazine, 9 April 1990.

25. See, for example, Yoram Dinstein, "Legislative Power in the Occupied Territories" (in Hebrew), 2 *Iyunei Mishpat* (1977) 505; Georg Schwarzenberger, *International Law as Applied by International Courts and Tribunals*, vol. II – *The Law of Armed Conflict* (London: Stevens & Sons Ltd., 1968) 193.



military commander of the Occupied Territories] and not national security needs in their broad sense.<sup>26</sup>

Weighing the local population's welfare includes the duty of the occupying power to ensure the continuation of normal public life, in all its aspects, in the occupied territory.<sup>27</sup> This duty intensifies as the length of the occupation increases.<sup>28</sup> The occupying power may harm the welfare of the local population only where there is significant military necessity, and never where the motivation is otherwise.

Israeli control of the Occupied Territories has continued for more than thirty years. During this time, persons were born, grew up, and married under occupation. In employing procedures leading to prolonged separation of families wanting to live in the Occupied Territories, with no defined security basis, Israel contravenes its duty under international law to act for the welfare of the local population and to enable life to develop under prolonged belligerent occupation.

By adopting a position of denying family unification, despite the cultural reality in which marriage between residents and relatives from outside the Occupied Territories is extremely common, Israel totally ignores a natural human need and forces residents to choose between shattering family unity and uprooting themselves from their homeland. The Israeli authorities in the Occupied Territories knowingly elected to cause ongoing suffering to the private lives of many, to harm the development of children entitled to be with both of their parents, and to create widespread family instability. These severe blows to human

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26. HCJ 393/82, *Jam'iyat Iskan al-Mu'aliman al-Muhddudat al-Mas'uliyah, Teacher's Housing Cooperative Society, Duly Registered at Judea and Samaria Headquarters v. Commander of IDF Forces in Judea and Samaria et al.*, *Piskei Din* 37(4) 785, 794-795.

27. See Edmund Schwenck, "Legislative Power of the Military Occupant under Article 43, Hague Regulations," 54 *Yale Law Journal* (1944-1945) 393, 398. See, also, *Teacher's Society*, p. 798; HCJ 202/81, *Tabib et al. v. Minister of Defense et al.*, *Piskei Din* 36(2) 622, 629; HCJ 660/88, *Insh-al-'Usra Society v. Commander of IDF Forces in Judea and Samaria*, *Piskei Din* 43(3) 673, 674.

28. In this context, the High Court of Justice has noted that, "The life of a population, like the life of an individual, does not remain static, but is in constant movement, in which there is development, growth, and change. A military government cannot ignore all this. It is not allowed to bring life to a standstill." *Teacher's Society*, p. 804. See, also, Yoram Dinstein, *Law of War* (in Hebrew) (Tel-Aviv: Schocken Publishing Company and Tel-Aviv University, 1983) 216-217; Eyal Benvenisti, "The Applicability of Human Rights Conventions to Israel and to the Occupied Territories," 26 *Israel Law Review* (1992) 24, 30.

dignity were inflicted without any defined security need, while waving an accusing finger at those residents who decided to marry persons from outside the Occupied Territories.

## **2. Violation of the Temporary Nature of Occupation**

Commentators on the laws of war point out that the occupying power does not have even an "atom of sovereignty" over the occupied territory,<sup>29</sup> and that "the occupation of territory in wartime is essentially a temporary, *de facto* situation."<sup>30</sup> Therefore, the military commander may not create permanent changes in the occupied territory, unless they are necessary for the welfare of the local population.<sup>31</sup>

The demographic consideration naturally takes into account long-term consequences, because it is intended to affect the composition of the future population in the Occupied Territories, and through that, the future arrangements that will apply there. In adopting a policy based on demographics, Israel acts as the sovereign of the Occupied Territories, and not as the party temporarily occupying the territory.

Furthermore, a policy whose objective is to bring about the emigration of residents and alter the demographic balance in the occupied territory is inconsistent with article 49 of the Fourth Geneva Convention, which strictly prohibits the forcible transfer of residents of the occupied territory to the territory of another country.<sup>32</sup>

## **3. Discrimination Between Palestinians and Israelis in the Occupied Territories**

The West Bank and the Gaza Strip are closed areas: under military law, every person, including Israeli citizens, wanting to enter the Occupied

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29. Lassa Oppenheim, "The Legal Relations between an Occupying Power and the Inhabitants," 33 *Law Quarterly Review* (1945) 363, at pp. 363-364.

30. Jean Pictet (ed.), *Commentary: The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958) 175. The High Court of Justice also recognized this fact: see HCJ 351/80, *The Electric Company for the Jerusalem District v. Minister of Energy et al.*, *Piskei Din* 35(2) 673, 693.

31. Gerhard Von Glahn, *The Occupation of Enemy Territory* (Minneapolis: University of Minnesota Press, 1958) 186. See, also, *Teacher's Society*, p. 805.

32. J. Quigley, "Family Reunion and the Right to Return to Occupied Territory," 6 *Georgetown Immigration Law Journal* (1992) 223, 230.

Territories for a period exceeding forty-eight hours must obtain the authorization of the military commander.<sup>33</sup>

In practice, the military administration discriminates in exercising its power to allow entry into the Occupied Territories to persons wanting to reside there: Israeli citizens are allowed to cross into the Occupied Territories to live there and bring their relatives into the area, even if the relatives are foreign citizens, in order to live with them permanently, without bureaucratic proceedings or opposition of the military government. Furthermore, over the years, Israeli governments have even encouraged Israelis to move into the Occupied Territories by granting economic benefits. On the other hand, Palestinian residents of the Occupied Territories are unable to unify their families in the same manner, even where first-degree relatives are involved.

The principle of equality and the prohibition on discrimination are an integral part of customary international law, and appears in almost every international convention dealing with human rights.<sup>34</sup> This discrimination is also illegal under international humanitarian law, which prohibits the occupying power to discriminate between different populations of residents of occupied territory.<sup>35</sup> Such discrimination is also prohibited under Israeli administrative law, which also applies to Israeli authorities operating in the Occupied Territories.

According to repeated Israeli statements about Soviet Jewry, Israel has always sought to achieve family unification in the country of residence of one of the spouses, based on the choice of the couple; however, Israel does not recognize this principle as regards Palestinian residents of the Occupied Territories. This discrimination is a direct result of the demographic consideration in establishing the family unification policy in the Occupied Territories, whose objective is to reduce the numerical gap between Jews and Palestinians residing there.

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33. For entry into the Occupied Territories via the Jordanian bridges or Rafah terminal, see the Directive on Payment of Fees, 5728, p. 517; for entry into the Occupied Territories from Israel, see General Entry Permit (No. 5) (Israeli Residents and Foreign Residents) (Judea and Samaria), 5730-1970, secs. 6-7.

34. See Yoram Dinstein, *Supra-National International Law* [in Hebrew] (Tel-Aviv: Schocken Publishing Co. and Tel-Aviv University, 1979) 128. Examples of specific references in international conventions are art. 2(1) of the International Covenant on Civil and Political Rights, of 1966, and the International Convention on the Elimination of All Forms of Racial Discrimination, of 1969.

35. See art. 31 of the Convention. For a comprehensive discussion on the applicability of the Fourth Geneva Convention to the Occupied Territories, see B'Tselem, *Israeli Settlement in the Occupied Territories as a Violation of Human Rights: Legal and Conceptual Aspects* (Jerusalem, March 1997).



*The Sharif couple in the al-'Arub refugee camp after Shehinaz Sharif entered the Occupied Territories on a visitor's permit in August 1998.*

*We have been married for almost six years and have not succeeded in having children. We want to take tests and undergo treatment with the hope that we can have children. We will not be able to do this unless my wife is here with me, otherwise we won't be able to start any treatment. My wife is almost thirty, and we are concerned that we'll be too late and lose the great privilege of having a child.*

From the testimony of Khalid 'Abd al-Hadi Sharif, resident of al-'Arub refugee camp.<sup>36</sup> Shehinaz Sharif, his wife, lives in Jordan. Her parents are Palestinian refugees from the 1967 war. Khalid Sharif has been waiting more than two years for a response to his request for family unification with this wife.

For a year, Israel refused to allow Shehinaz Sharif to enter the Occupied Territories and stay continuously with her husband, despite its commitment to grant such requests (see pages 46-47). After HaMoked intervened, Israel granted the request. Shehinaz Sharif entered the Occupied Territories in August 1998.

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36. The testimony was given to B'Tselem researcher Najib Abu-Rokaya on 14 July 1998.

# Chapter Three: Family Unification in the Occupied Territories, 1967 to 1995

Over the years, Israel has changed its policy on family unification in the Occupied Territories. After 1967, Israel allowed family unification of war refugees in limited numbers. In 1973, Israel began to deny almost all requests for family unification. In 1993, Israel granted partial recognition to the right to family unification for spouses, but simultaneously imposed a restrictive policy that in fact compelled prolonged separation. This policy was implemented until power over the population registry was transferred to the PA in November 1995.

## 1. Israeli Policy over the Years

### A. 1967 to 1973 – Family Unification for War Refugees

Shortly after the Six-Day War, Israel initiated a procedure enabling residents of the Occupied Territories to submit requests for family unification for their relatives who had become war refugees. War refugees were defined as Palestinians "who had been permanent residents of Jerusalem and the West Bank until 5 June 1967 and left the West Bank no later than 4 July 1967."<sup>37</sup>

The authorities described the family unification policy during the years just after the war, as follows:

This policy considers family unification to be a phenomenon whose basis was the situation created by the Six-Day War and the developments immediately following it. Occupation of the territories by the IDF and closing them led to some families finding themselves outside the region, and relatives separated from each other. The policy of family unification since then has intended to provide

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37. The decision was reached at a cabinet meeting held on 10 September 1967. See Shlomo Gazit, *The Carrot and the Stick. The Israeli Administration in Judea and Samaria* (in Hebrew) (Tel-Aviv: Zemora Beitan-Modan, 1985) 59. A government decision of 13 September 1967 granted the Minister of the Interior the power to deal with the requests. See HCJ 263/85, *'Awad et al. v. Head of the Civil Administration, Ramallah District, et al.*, Piskei Din 40(2) 281, 283.

a humanitarian response, subject to security considerations and needs of the governing administration in the Occupied Territories.<sup>38</sup>

Israel instituted a procedure whereby family unification would be approved only if a resident submitted a request for his or her spouse, unmarried children under sixteen, orphan grandchildren under sixteen, unmarried sisters, or parents over sixty who have no other relatives.<sup>39</sup>

The authorities implemented this policy for about five years. During this period, it is estimated that, of some 140,000 requests, Israel approved the return of between 45,000 to 50,000 refugees to the Occupied Territories to be united with their families.<sup>40</sup> No data exist as regards the degree of familial relationships in the cases approved.

## **B. 1973 to 1993 – Increasingly Harsh Policy**

### **(1) A More Severe Family Unification Policy**

In the context of the procedure employed since 1967, Palestinian residents of the Occupied Territories also submitted requests for family unification for relatives who did not fall under Israel's definition of "war refugees." Over the years, the proportional share of these requests increased, most of them being for family unification with non-resident spouses. The military government was empowered to handle these requests.<sup>41</sup>

In 1973, new and harsher criteria were established for approval of requests for family unification. The criteria remained confidential because the military government opposed their publication.<sup>42</sup> Because of the stricter criteria, the number of approvals fell sharply. According

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38. Statement of the State Attorney's Office in *Al-Saudi*, p. 139.

39. Meron Benvenisti, *Judea and Samaria Lexicon* (Jerusalem: Cana, 1987) 21.

40. According to Benvenisti's estimate, of 40,000 requests, some 45,000 persons were allowed to return between 1967 and 1972 (*ibid.*). In a speech to the UN General Assembly on 26 October 1977, Haim Herzog, Israel's ambassador to the UN, stated that in the first decade of Israel's control of the Occupied Territories, 48,000 requests for family unification had been approved. According to the Israel National Section of the International Commission of Jurists, the figure is around 50,000. Israel National Section of the International Commission of Jurists, *The Rule of Law in Areas Administered by Israel* (Tel-Aviv, 1981) 86.

41. 'Awad, p. 284.

42. *Samareh*, p. 2.

to Meron Benvenisti, the authorities approved between nine hundred and twelve hundred requests per year from 1973 to 1983.<sup>43</sup>

At the end of 1983, the authorities reevaluated the policy of family unification in the Occupied Territories. They contended that the reevaluation was required because, "over the years, the type of requests for family unification changed significantly, in deviation from the original objectives of the said policy, dealing instead with families that had been created after the war."<sup>44</sup> The authorities used these terms to describe requests for family unification submitted by Palestinians from the Occupied Territories for their non-resident spouses.

Following the reevaluation, the authorities adopted a policy whose declared intention was "to reduce, as much as possible, the approval of requests for family unification."<sup>45</sup> According to Brig. Gen. Ephraim Sneh, at the time head of the Civil Administration for the Gaza Strip, these requests are a "means of immigration into the areas,"<sup>46</sup> although there was a negative immigration balance into the Occupied Territories during those years, i.e. the number of Palestinians leaving the Occupied Territories exceeded the number entering.<sup>47</sup>

After implementation of the stricter policy, approvals for family unification fell by one-third. Israel did not publish official figures on the number of requests for family unification that were submitted and approved each year. Partial figures, published by various sources, indicate that, after 1984, only several hundred requests were approved annually.<sup>48</sup> The Palestinian population at the time amounted to more than 1.3 million persons.

The consequences of the strict policy were aggravated by the order, issued in 1987, stipulating that children born to a father who is a resident of the Occupied Territories and a non-resident mother are not entitled to be registered in the population registry in the Occupied Territories, and they are comparable to illegal immigrants, without status or rights. Thus, in divided families, this change revoked the children's right to live in the Occupied Territories with their parents. The only path available to fathers in these cases was to submit a request

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43. Benvenisti. *Lexicon*, p. 21.

44. Par. 6 of the State Attorney's Office's statement in *Sarhan*.

45. Statement of the State Attorney's Office in *Saudi*, quoted in the judgment, p. 140.

46. From his affidavit, submitted in *Shahin*, quoted in the judgment, p. 215.

47. See Central Bureau of Statistics, 1987 *Statistical Yearbook for Israel*, vol. 38, p. 701.

48. For details, see Appendix I.

for family unification for their children. The likelihood of such requests being granted was minimal.<sup>49</sup>

In early 1990, newspapers published statements of officials in the Ministry of Defense that, "It is not customary to approve family unification. Once, after the Six-Day War, there were clear rules on this matter. Now there are none.... Only in very exceptional and relatively few cases is family unification approved..."<sup>50</sup>

As of August 1993, 586 of the separated families, whose cases were handled by HaMoked, had submitted at least one request for family unification. Some thirty-one percent of them submitted two or more requests, among them persons who submitted ten, eleven, and even seventeen requests. Ninety percent of these requests were submitted for spouses. All of the requests were denied.

## **(2) The Rule Denying Family Unification and its Two Exceptions**

The new policy of 1983 revoked absolutely and completely any possibility for family unification of Occupied Territories residents and their non-resident spouses and children. Under the policy, Occupied Territories residents married to non-residents could not live with their spouses within the Occupied Territories, leaving the residents the option of leading a single life in their homeland or emigrating and establishing their family unit abroad.<sup>51</sup>

This policy had no place for criteria for approval of requests for family unification, but there were two exceptions to the rule of inevitable rejection: requests for family unification would be approved in cases where the government was interested in having the request approved ("governmental interests"), and where the request "*is exceptional and extremely unique in its details, such that a substantial and extremely unique humanitarian aspect is present, which justifies a beneficent gesture.*"<sup>52</sup>

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49. For an extended discussion of Israeli policy on registering children, see below, pp. 103-107.

50. *Ma'ariv*, Weekend Magazine, 12 January 1990.

51. See footnotes 15 and 21, in particular the quotations.

52. *Shahin*, p. 214 (emphasis in the original). See, also, the State Attorney's Office's statement quoted in *al-Saudi*, p. 140: "Only in exceptional and very special cases, for humanitarian or governmental reasons, are requests for family unification approved."



The authorities never explained the "substantial and extremely unique humanitarian aspect" that justifies "a beneficent gesture," except for the repeated response of the State in cases before the High Court that the matter involved must be exceptional and extremely rare. The authorities have repeatedly stated that they do not consider a request for unification of spouses to be an exceptional humanitarian matter, because the objective of their policy is to deny family unification based on the couple's marriage.<sup>53</sup> The State has maintained this position even where the couple presented special facts, including additional humanitarian reasons.

'Akrameh Salim Sharab, resident of Gaza, is married to a native-born Gazan who lives in Kuwait with her family. A child was born to the couple in Gaza. Sharab submitted several requests for family unification with his wife. Each was flatly denied, even though his spouse was not a citizen of any country and had an infant child. Following the denials, Sharab petitioned the High Court of Justice, but the Court denied his petition on the grounds that his case "is no different from many others."<sup>54</sup>

Also in cases of family separation where the relationship was other than husband and wife and included humanitarian elements, Israel rejected the requests on the grounds that they were "non-humanitarian" cases. The authorities have not published a single case in which a resident of the Occupied Territories had been granted family unification for special humanitarian reasons, raising suspicions about the existence of a "special humanitarian case" category for family unification.

The military government defines "governmental interests" for family unification as those where the administration has its own interest – "security, political, economic, or economy-related, and the like."<sup>55</sup> In practice, the military government took advantage of the dependence

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53. "The vast majority of the hundreds and thousands of requests for family unification submitted each year in the two regions are for unification of husband and wife. It is clear, therefore, that the fact that spouses are involved, cannot, in and of itself, become an exceptional and special request within the aforesaid meaning." Statement of the State's Attorney's Office, quoted in *al-Saudi*, p. 140. See, also, *Khalil*, p. 85.

54. HCJ 31/87, *Sharab v. Head of Civil Administration in Gaza et al.*, *Piskei Din* 41(4) 670.

55. Sneh affidavit in *Shahin*, p. 215 of the Court's judgment.

of residents of the Occupied Territories on these approvals, by approving family unification for Palestinians who agreed to collaborate.

Pressuring Palestinians to become collaborators in exchange for family unification clearly violates article 31 of the Fourth Geneva Convention, which stipulates that, "No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties." According to the commentary of the ICRC, the article relates also to cases where indirect or hidden pressure is used.<sup>56</sup> Such pressure also violates article 51 of that convention, which stipulates that, "The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing volunteer enlistment is permitted."<sup>57</sup>

In spite of these prohibitions, the authorities condition the provision of various services and essential permits on collaboration with Israel's security forces. The authorities use this method as a principal means to recruit collaborators in the Occupied Territories.<sup>58</sup>

J.S., 26, a resident of Hebron, married S.S., a Jordanian resident, in August 1990. In 1991, J.S. requested family unification on behalf of his wife. Because much time passed without receiving approval, J.S. requested, in early July 1992, an exit permit to go to Jordan so that he could visit his wife. Following the latter request, the General Security Service [GSS] summoned J.S. In his affidavit to HaMoked, J.S. stated:

*"Captain Adiv" asked me to work with him, after which I would be granted family unification for my wife, and every other permit as well, like an exit permit. I rejected the offer. He told me to think about it, that I know where I can find him... On 20 July 1992, I was told that my request for family unification had been denied. On 23 July 1992, I requested from the [Civil] Administration a visitor's permit for my wife. It was rejected.*

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56. Pictet. *Commentary*, pp. 219-220.

57. According to the ICRC interpretation, the article is absolute, and allows no derogation. See Pictet. *Commentary*, p. 293; art. 147 of the same convention even categorizes "compelling a protected person to service in the forces of a hostile Power" as a grave breach of the convention.

58. For an extended discussion on this phenomenon, see B'Tselem. *Collaborators in the Occupied Territories during the Intifada: Human Rights Abuses and Violations* (Jerusalem, January 1994) 26.

J.S. further informed HaMoked that his request for an exit permit had also been rejected, as were two other requests for a visitor's permit for his wife.<sup>59</sup> To pressure J.S. to collaborate with the GSS, Israel prevented the young couple from seeing each other in the Occupied Territories or elsewhere for more than a year.

Media reports have indicated that the Civil Administration also approved requests for family unification for Palestinians who invested money in the Occupied Territories. In September 1991, *Davar* reported that, "The Military Government will approve 'family unification' for Palestinians who are not permanent residents of the West Bank and who will invest large sums of money in establishing industrial enterprises in the region." The media also reported the decision of the military governor in Nablus, which stated that an individual who raises capital in an amount capable of establishing an industrial enterprise can submit, through the city's Chamber of Commerce, a request for family unification. The Civil Administration stated that the procedure is not new, and that approval for permanent residence is given only after the promoter proves that he or she has in fact established an enterprise and intends to settle in the region permanently. During that same month, *Ha'aretz* reported that, "Civil Administration sources confirmed that a project called 'family unification for investors' indeed exists."<sup>60</sup>

In conditioning approval of family unification on services provided by the resident, such as collaborating or investing, Israel has disregarded its obligation to respect residents' family rights without conditioning them on their wealth or willingness to aid the military government.

In implementing the new policy of 1983, Israel also applied the stricter rules to requests for family unification submitted prior to the new policy, but which had not been handled in those years.<sup>61</sup> Dinstein criticized this practice, and stated that, "This is a situation that is undesirable at a time where humanitarian considerations are involved.

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59. J.S. gave his affidavit to attorney André Rosenthal, of HaMoked, on 4 November 1992. Similar testimonies are presented in al-Haq's report on family unification: Al-Haq, *Application Denied* (Ramallah, 1991) 9-15.

60. *Davar*, 1 September 1991; *Ha'aretz*, 8 September 1991. See, also, *al-Fajar*, 2 September 1991, and *Ha'aretz*, 2 October 1991.

61. For example, the petitioner in 'Awad, Ibrahim Nasri 'Awad, submitted in 1981 an application for family unification. Years passed and the authorities did not handle his request. In 1985, he received notice that his request had been denied after it had been reviewed in accordance with the new, stricter rules.

Why does the individual have to pay such a dear price for the bureaucratic disorder prevailing in the governmental authorities?"<sup>62</sup>

The stricter policy remained in force until August 1993. B'Tselem and HaMoked do not have numerical data on the suffering this policy caused to divided Palestinian families. How many families were compelled to emigrate from the Occupied Territories? How many couples remained separated? How many children were compelled to live without their father or mother?

### **(3) Family Members' Visits to the Occupied Territories**

Because of the small number of approvals for family unification, the divided families wanting to be together in the Occupied Territories were compelled to settle for short visits by the foreign-resident spouse. This possibility, which did not solve the problems of separated families, was utterly closed to some of the families in 1985, when Israel initiated a new regulation, which provided that "visits in the region are not allowed by persons for whom a request for family unification had been submitted, until decision on the request for family unification has been made." The authorities explained this decision on the grounds that, "a visit, particularly during pregnancy, would create consummated facts through which the applicant would seek to bypass the request for family unification and force its approval."<sup>63</sup>

Following this regulation, and because of the extremely remote likelihood that the request for family unification would be approved, many residents did not file family unification requests, and settled for visits in the Occupied Territories with their spouses.

These visits depended on the Israeli authorities' granting a visitor's permit, which was generally given during the summer for a period of up to three months. When the permit expired, the visitor was required to leave the Occupied Territories. Children who entered with their visiting parent were required to leave with them. As regards the West Bank, once the visitor left, he or she had to wait at least three months before being allowed to visit again. In the Gaza Strip, the waiting period was six months.<sup>64</sup> In many instances, the authorities did not approve a new visitor's permit even after the waiting period had passed.

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62. Yoram Dinstein. "Family Unification in the Occupied Territories" (in Hebrew), 13 *Iyunei Mishpat* (April 1988) 221, 225.

63. HCJ 683/85, *Mishtaha v. Military Commander of the Gaza Strip, Piskei Din* 40(1) 309, 310.

64. Sneh affidavit, referred to in *Shahin*, p. 200.

Families living under these regulations had no fixed framework for their lives. Their family life was characterized by constant and repeated separation of the husband and wife, and of the children from one of the parents. This way of life also entailed tiring and difficult journeys and delays at border crossings, which were especially hard on the elderly, pregnant women, small children, and infants.

Family members were compelled to stay in Jordan for extended periods of time, without knowing in advance, in most cases, for how long. In many instances, they stayed with relatives and friends, or at hotels. Most of the non-resident spouses were women, who particularly suffered during the waiting period: according to Dr. Khaider, a woman living alone in Palestinian society has difficulty maintaining a household and integrating socially – even if married – and is considered inferior in status.<sup>65</sup>

Because of these difficulties, and since there was no other way to prevent separation from their families for prolonged periods, in many cases family members remained in the Occupied Territories after their visitor's permits had expired. The military authorities considered these persons to be "lawbreakers," and since 1989 have used various means – from threatening them financially to deporting them from their homes in the middle of the night – to make them leave.

As part of the IDF's struggle against the intifada, in 1989 the military government deported more than two hundred non-resident Palestinians from the West Bank for "staying illegally" in the Occupied Territories. The large majority of these persons were non-resident women married to West Bank residents, who had remained in the Occupied Territories after their visitor's permits had expired, and their unregistered children.<sup>66</sup>

In the cases documented by PHRIC, family unification requests had been filed for sixty-six of the eighty-one men and women prior to their deportation. None of these requests were granted.<sup>67</sup>

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65. From the Khaider affidavit in 'Awashreh.

66. For more information on the deportation, see B'Tselem, *Renewal of Deportation of Women and Children from the West Bank on Account of "Illegal Residency"* (Information Sheet, September-October 1991); B'Tselem, 1989 *Annual Report*, pp. 84-85; PHRIC, *Deportation of "Non-Residents,"* Fieldwork Results, 31 October 1989.

67. *Ibid.* (PHRIC).

Deportation was generally conducted by soldiers who raided homes at night and transported, to the bridges leading into Jordan, persons subject to deportation, thereby removing them from the Occupied Territories. At no point did the authorities enable the deportees to appeal their deportation. The wave of deportations created a daily threat and climate of fear for many families living in the West Bank.

On 12 November 1989, the authorities evicted relatives of residents of 'Abuin, Ramallah District. At night, a curfew was placed on the village and all the men in the village were brought to the village center. At 5:00 A.M., soldiers came to the home of Husam Mazahem, 24, a resident of the village. In 1984, Mazahem had married his cousin 'Asma Abdallah I'araj, a resident of Kuwait. They had a son, 'Issa, in 1985, who was registered in the population registry, and in 1988 another son, Islam, whom they were unable to register.<sup>68</sup>

One of the soldiers informed Ms. I'araj that she and her children must leave the Occupied Territories. He gave them fifteen minutes to organize their departure. Mazahem's brother went to the village center and told him that the army was about to deport his wife and children. Mazahem requested one of the soldiers to allow him to say goodbye to his family. The soldier refused, kicked him, and ordered him to sit down.

I'araj and her two children, four-year-old 'Issa and one-year-old Islam, were taken to the bridge leading into Jordan. 'Issa was deported with his mother, even though he holds the status of resident of the Occupied Territories.<sup>69</sup>

On 30 January 1990, the *Washington Post* published an article on the deportations, resulting in international pressure being placed on Israel.<sup>70</sup> One day after its publication, it was reported that the Minister of Defense, Yitzhak Rabin, decided, "for humanitarian reasons," to delay the "expulsion of foreign persons from the Occupied Territories" until

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68. As mentioned above, commencing in 1987, Israel did not allow children with non-resident mothers to be registered, even where the fathers were residents. See below, Chapter 5, p. 103.

69. The details are taken from the Mazahem family's petition to the High Court of Justice, filed on their behalf by The Association for Civil Rights in Israel ('Awashreh).

70. See *Ha'aretz*, 31 January 1990, 1 February 1990.

further review.<sup>71</sup> This announcement did not relate to the spouses and children who had already been deported, and no decision was made to permit their return.

However, Israel's harsher policy on family unification continued without change. This policy did not leave the divided families any lawful way of living together in the Occupied Territories. Submitting a request for family unification entailed a wait of years, during which the non-resident spouse would be prohibited from visiting in the Occupied Territories. Furthermore, the likelihood of the request being approved was infinitesimal. Visits to the Occupied Territories were allowed only for several months a year, and entailed much bother and prolonged periods of separation.

This situation led, commencing in 1990, to the filing of more than eighty petitions to the High Court of Justice. These petitions were filed on behalf of almost five hundred families, who demanded that Israel enable them to live together in the Occupied Territories. HaMoked filed most of the petitions. Following the filing of these petitions, the State proposed arrangements intended to solve the problems of a limited number of groups among the separated Palestinian families. These arrangements, called "the High Court of Justice Agreements," are described below.

## **C. 1990 to 1993 – The High Court of Justice Agreements**

### **(1) The High Court of Justice Agreement of June 1990**

In May 1990, The Association for Civil Rights in Israel (ACRI) petitioned the High Court of Justice on behalf of fifteen Palestinians who had been deported or whose relatives had been deported in 1989.<sup>72</sup> The petition demanded that the commander of IDF forces in the West Bank approve family unification of the petitioners and of others in similar circumstances, by granting residency to their spouses and children. The petition requested the Court to reexamine the legality of the policy on family unification in the Occupied Territories, insofar as in its previous rulings it had approved the policy.<sup>73</sup>

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71. According to the announcement of the spokesperson of the Ministry of Defense. See *Davar*, *Hadashot*, and *Ha'aretz*, 1 February 1990.

72. *'Awashreh*. Five of the petitioners were married to women who had been deported. Their children, who had been deported with their mothers, were the other ten petitioners. The National Council for the Child also joined the petition.

73. For the High Court of Justice's position on the policy of family unification, see below, pp. 122-131.

In June 1990, just prior to the hearing on the petition, the State Attorney's Office announced that, "A solution has been found to the humanitarian problem of separation of the petitioners and their children and wives who are not residents of the region."<sup>74</sup> Under this solution, Israel would allow the deported women and children to return to the Occupied Territories as "long-term visitors," enabling them to remain in the Occupied Territories legally under the permits, which would be extended periodically. The entry of relatives could be denied on the basis of a "specific security reason." The State Attorney's Office also announced that during the non-resident relative's stay in the Occupied Territories, the resident relatives could submit, on the non-resident family member's behalf, a request for family unification without the non-resident relative having to remain outside the Occupied Territories while waiting for a response. The statement suggested that the arrangement would apply to all couples married in the Occupied Territories where the husband is a resident of the Occupied Territories and the wife is a non-resident, and to their minor children.

After this arrangement had been made, the High Court of Justice rejected the petition. It did not, however, reject outright the petitioners' claim that their relatives are entitled to permanent residency in the Occupied Territories. The Court did not reject the possibility that in the future it would examine its fundamental position on the policy of family unification in the Occupied Territories. However, it noted that, "Without stating an opinion as to whether we should reexamine court rulings on this subject, and even if we assume, without ruling, that such is the case, we are of the opinion that the matter is still not ripe... and we should examine the new policy and the developments that will follow from it in the context of reality."<sup>75</sup> The High Court added that creating a special status of "long-term visitors" cannot achieve a permanent solution: "The question of the status of the petitioners, one way or the other, cannot remain open."

After the High Court gave its judgment, the new arrangement ("the High Court of Justice Agreement") was applied to the women and children covered by it ("the High Court of Justice Population"): previously deported wives and children were allowed to return, and wives and children of residents of the West Bank who had stayed in the Occupied Territories "illegally" were granted extensions of their visitor's permits. Subsequently, the Justice Ministry agreed that the status of wives and children among the High Court of Justice Population would be almost identical to that of residents – they would be granted the

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74. Statement of the State Attorney's Office to the High Court of Justice in *'Awashreh*, 3 June 1990.

75. *'Awashreh*. The Court gave its judgment on 5 June 1990.



same services (e.g., health and education) that residents receive, and their visitor's permits would be extended every six months.<sup>76</sup> During the first year of the agreement's implementation, 550 wives and children were granted the status of "long-term visitor."<sup>77</sup>

Implementation of the new arrangement seemed to provide a response, albeit temporary, to the problems of most of the separated families from the West Bank. Later, however, the hope that a solution had been found disappeared: a year after the agreement was made, the authorities informed ACRI that the agreement applied only to spouses who had married and entered the West Bank prior to announcement of the agreement, i.e., prior to 5 June 1990, even though the arrangement had also been applied to women and children who had entered the Occupied Territories after that date. The authorities stated that the arrangement had been applied to them in error, but that they would continue to benefit from it "as a special consideration to them."<sup>78</sup>

The restriction on application of the agreement contradicted the written and verbal declarations of the State Attorney's Office before the High Court of Justice. At no time did the State Attorney's Office even hint to the Court that applicability of the arrangement depended on the date of marriage or of entry into the Occupied Territories. The arrangement was clearly to be a continuing policy. The judgment approving the agreement, and the comments made at meetings and in correspondence between ACRI and the authorities during the year after the agreement did not mention anything about limitations on the population that would benefit from the arrangement, and gave no significance to the date of the hearing before the High Court of Justice.

In response to the requests of B'Tselem and ACRI, the office of the legal advisor to the Civil Administration for the West Bank gave the State's interpretation of the agreement. According to it, women who married, before June 1990, residents of the West Bank, and their minor children come within the agreement if they meet one of the following conditions:

- a) entered the Occupied Territories prior to June 1990;
- b) in June 1990 were situated outside the Occupied Territories waiting to visit, provided that they had visited the Occupied Territories previously, but no later than the beginning of 1989;

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76. The announcement was made on 28 June 1990 to representatives of ACRI at a meeting with Lt. Col. Moshe Dayan, assistant to the Coordinator of Government Operations in the Occupied Territories.

77. From par. 12 of a statement filed by the State Attorney's Office in *Sarhan*.

78. Stated to ACRI in a letter of 17 June 1991 from Col. Moshe Rosenberg, legal advisor of the Civil Administration in the West Bank.

- c) were deported from the Occupied Territories in 1989;
- d) received visitor's permits for six months after the High Court of Justice Agreement, even though they are not included within the agreement according to the State's position.<sup>79</sup>

Under this interpretation, the High Court of Justice Agreement did not provide a solution for all residents of the Occupied Territories already married to non-residents, and would not provide any solution for Palestinians who would in the future marry non-residents.

## **(2) The High Court of Justice Agreement of November 1992**

In August 1991, the authorities renewed the deportation of persons whose visitor's permit had expired. These deportations were made in accordance with the State's narrow interpretation of the High Court of Justice Agreement, and the deportees were members of families not included in the agreement under this interpretation.<sup>80</sup>

Simultaneously, the authorities imposed harsh restrictions on visits to families in the Occupied Territories, conditioning visitor's permits on the inviting resident signing a NIS 5,000 guaranty that would be collected if the relative did not leave the Occupied Territories upon expiration of the visitor's permit. In addition, requests for a visitor's permit could be made only for parents, siblings, spouses, and children of the applicant, and from 1991 to June 1992, entry of visitors to the Occupied Territories was almost totally prohibited.

The deportations in 1991 were different from those of 1989. This time, the authorities did not forcefully remove persons from their homes. Rather, the Civil Administration summoned residents to its offices and threatened that, if they do not ensure that their relatives without a valid visitor's permit leave the Occupied Territories, the authorities would take measures against the residents. These measures included arrest, collection of the guaranty signed by the resident, and deportation of their relatives by the IDF. The authorities denied residents' requests for extension of the visitor's permits of their spouses and children, threatening deportation and collection of the NIS 5,000 guaranty. Some threats were even directed at women covered by the State's narrow construction of the High Court of Justice Agreement.

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79. According to the letter of 27 August 1991 from Lt. Yehuda Cohen, assistant to the legal advisor of the Civil Administration in the West Bank, to ACRI, and from a telephone conversation between Cohen and attorney Netta Ziv Goldman, of ACRI, on 1 September 1991.

80. For more on this matter, see B'Tselem, *Renewal of the Deportation*.

In 1985, 'Abdallah Shukri a-Najas, resident of Hirbata, Ramallah District, married Tahrir 'Abdallah Namer, a native of Jordan. 'Abdallah was twenty-two and Tahrir seventeen when they married. By the summer of 1991, the couple had three daughters: Meisa, four and a half, who was registered on her father's identity card, Mai, three and a half, and Magdalen, a few weeks old. The request for family unification, which a-Najas had previously submitted, was rejected. In 1989, Tahrir had been deported for a month on the grounds of "illegal stay" in the Occupied Territories.

In his testimony to B'Tselem, 'Abdallah a-Najas stated:

*On 22 June 1990, my wife entered the country by means of a permit valid for ninety days. We have not renewed her permit because we do not have the money. On 12 August 1991, I was summoned by letter via the mukhtar of the village to go to the Hirbata administration.*

*On 13 August 1991, I went to the administration.... "Captain Sami" told me that my wife had to leave the country within seven days. I told him that my little daughter is forty days old, and that she had broken her leg and it was in a cast. I requested that they extend my wife's permit, but "Captain Sami" refused.*

In several cases, the relatives left the Occupied Territories following pressure placed on them and their family. Wives compelled to leave the Occupied Territories, despite being included in the High Court of Justice Population even under the State's narrow interpretation, were allowed to return later.

When tens of thousands of Palestinian refugees from Kuwait requested permission to enter the Occupied Territories, Israel limited application of the High Court of Justice Agreement, threatened deportation, and restricted family visits to the Occupied Territories.

In August 1990, when Iraq occupied Kuwait, more than 350,000 Palestinians were living in Kuwait.<sup>81</sup> Following the occupation of

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81. See Middle East Watch, *A Victory Turned Sour – Human Rights in Kuwait since Liberation* (New York, September 1991) 54; PHRIC, *Coming Home, A Survey on the Socio-Economic Conditions of West Bank and Gaza Strip Returnees after the 1991 Gulf War* (Jerusalem, August 1993) 2.

Kuwait, the Gulf War, and the return of the Kuwaiti government, some 300,000 Palestinians were deported from or left Kuwait, most of them to Jordan.<sup>82</sup> Only some 37,000 of them, whose rights as Occupied Territories residents were preserved, returned to the Occupied Territories.<sup>83</sup>

Israel refused to allow the other refugees from Kuwait to enter the Occupied Territories, even where the refugees were the spouses or were otherwise related to residents of the Occupied Territories. The authorities contended that "Israel has no interest that Palestinians who are refugees from Kuwait, Egypt, or Jordan as a result of the war enter the Occupied Territories. We do not need them, and the tendency is not to let them enter. Family unification will continue, but it will be limited."<sup>84</sup>

In September 1991, HaMoked began to file dozens of petitions to the High Court of Justice on behalf of Palestinians who were compelled to have their relatives leave the Occupied Territories. These petitions demanded that the military commander extend the visitor's permits of the relatives of the petitioner, or, in the alternative, approve their request for family unification.

Simultaneously, ACRI filed, in October 1991, a general petition on the matter of family separation.<sup>85</sup> The petition demanded that the

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82. Some 180,000 of them left Kuwait during the Iraqi occupation. After Iraqi troops retreated from Kuwait, on 26 February 1991, the Kuwaiti government refused to allow many of them to return. The government grossly violated the human rights of those who returned, the violations including deportation, execution, arbitrary detention, and torture (see Middle East Watch, *A Victory Turned Sour*). According to PHRIC, as a result of this treatment, an additional 120,000 Palestinians left Kuwait between March and September 1991 (PHRIC provided this information to B'Tselem in a letter of 14 October 1991). An additional two to three thousand Palestinians were deported from Kuwait, and the Jordanian Ministry of the Interior estimates that some 289,000 persons from the Gulf States went to Jordan from the time of the occupation of Kuwait to the end of August 1991 (PHRIC, *Coming Home*, p. 6). According to PHRIC, some eighty percent of them (230,000 persons) are Palestinians, most of whom came from Kuwait (this information was provided to B'Tselem in the aforementioned letter).

83. Stated by MK Micha'el Bar Zohar, Israeli representative at the meeting of the Committee on Refugees, of the European Council, which discussed, in September 1991 in Paris, the problem of refugees of the Gulf War. See *Ha'aretz* and *Davar* of 16 September 1991.

84. Provided by sources in the Civil Administration, as reported in *Ha'aretz* on 8 September 1991.

85. *Sarhan*. ACRI filed the petition on behalf of eight residents of the West Bank whose wives are non-residents, four of those wives, and four minor children of the resident petitioners. The National Council for the Child joined as a petitioner.

commander of IDF forces in the West Bank approve family unification for every married couple in the Occupied Territories, by granting permanent-residency status to the spouses and children of each resident, or, alternatively, by issuing them a long-term visitor's permit. In making this petition, the petitioners sought to turn the limited High Court of Justice Agreement of 1990 into a comprehensive policy of family unification in the Occupied Territories.

Between September 1991 and June 1992, sixty-four petitions were filed against removal of relatives. The petitions affected 271 adult relatives of Palestinian residents and 350 of their children, who had entered as visitors during the summer of 1991.<sup>86</sup> Nearly half of the family members who were the subject of the petitions were refugees from Kuwait. In each of the petitions, the Court issued, at petitioners' request, an interim order directing the IDF to refrain from deporting the relatives until a decision had been reached on the general petition.

During the same period, the military government began to expel other relatives, who had not yet filed petitions. The authorities rejected the requests of human rights organizations to treat all separated families alike, and not to compel other spouses and children to leave the Occupied Territories as long as the petitions were being heard.

In the autumn of 1992, a new wave of threats of deportation began. These were directed against that summer's visitors who had not left the Occupied Territories after their visitor's permit had expired. The wave of threats, upon the background of the pictures of the violent deportation of 1989, created much distress and fear among many families in the West Bank. From September to November 1992, HaMoked filed eleven additional petitions, on behalf of some two hundred families that had been threatened.

M.A., a resident of Daheishe, married Y.A. in 1987. M was twenty-six at the time, and Y twenty-one. A year later, the couple had a daughter, Bisan. In September 1990, Y entered the Occupied Territories to visit her daughter, and stayed with her husband for a long time after her visitor's permit had expired. A year later, the couple had another child, 'Odeh. In June 1992,

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86. Among the petitioners represented by HaMoked (248, some ninety percent of the petitioners), 195 needed approval for their wives and 246 unregistered children, 47 for their husbands and 27 unregistered children, and 6 for other family members (brothers, parents, and adult children of residents).

M was arrested at the checkpoint near Daheishe, where he was interrogated about his wife, and was required to leave his identity card. The next day, M was summoned to the Civil Administration offices in Bethlehem. In his affidavit to HaMoked, M stated:

*"Captain Yaron" and "Captain Colin" informed me that my wife had to leave the region within a week. They refused to give me back my identity card until she leaves the region. This demand remained in effect even after I explained to them that my wife is about to give birth any day now.... They told me that my name would be passed out among the soldiers, and that they would stop me at every checkpoint. They also threatened to collect the NIS 5,000 for the delay [in leaving the region]. "Captain Yaron" told me that the soldiers would come in a jeep to take my wife from the house. My wife gave birth on 9 June 1992. The next day, I went to "Captain Guy" at the Civil Administration and explained to him that my wife had just given birth. He agreed to let her leave no later than 14 June 1992, that is, five days after she gave birth. On 14 June, I returned to the Civil Administration. They extended her stay to 17 June, but no longer.*

On 18 June 1992, Y.M. left the Occupied Territories with her three children: four-year-old Bisan, one-year-old 'Odeh, and Majid, who was nine days old.

On 18 November 1992, shortly before the scheduled joint hearing on the dozens of petitions, the State Attorney's Office submitted a statement to the Court indicating that the High Court of Justice Agreement of June 1990 would be expanded to include spouses and children of residents of the Gaza Strip and the West Bank who had entered the Occupied Territories, while married, prior to 31 August 1992. Their inclusion in the population covered by the High Court of Justice Agreement would enable them to obtain the status of "long-term visitor" and submit requests for family unification while they were staying in the Occupied Territories.

In addition to extending its application, the State expanded the previous agreement on two additional significant points: inclusion of males married to residents of the Occupied Territories, and the male and female spouses of Gaza Strip residents (the previous arrangement applied only to the wives of West Bank residents).

In light of the State's announcement, the attorneys for the petitioners withdrew their petitions. The State explained that, in the framework of the arrangement, the relatives would receive a visitor's permit renewable every six months and would be entitled to receive health

services and education and to work in the Occupied Territories. It was further agreed that the relatives included in the arrangement who were not then staying in the Occupied Territories would be allowed to apply for a visitor's permit, and their entry would be permitted after their entitlement was checked.<sup>87</sup>

According to the authorities' figures, the expanded High Court of Justice Agreement, of November 1992, enabled some six thousand spouses and children of residents to stay in the Occupied Territories as "long-term visitors."<sup>88</sup>

### (3) Criticism

At the basis of the arrangement in the High Court of Justice agreements lies the recognition of a "humanitarian problem of separation between the petitioners and their children and wives who are not residents of the region." The arrangement was intended to provide a "proper solution" to this problem.<sup>89</sup>

However, the arrangement applied to only a limited group of residents of the Occupied Territories: families in which the husband and wife married before the end of August 1992 and families where the non-resident spouse visited or stayed in the region between the summer of 1990 and the summer of 1992. The arrangement indeed partially solved the problem for this group, enabling them to live together in the Occupied Territories, although without a permanent status.<sup>90</sup>

On the other hand, families in the Occupied Territories suffering from the same "humanitarian problem" who did not have the good fortune of having the non-resident spouse visit the Occupied Territories during the relevant period were not included within the agreement and did not benefit from the partial solution offered. Couples who married after the summer of 1992 were also not included. The

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87. Notice of the Parties Relating to Revocation of the Petition, *Sarhan*, 23 November 1992; Notice of Consent Relating to Revocation of Petition 578/92 and sixty-three other Petitions, 26 November 1992. It was subsequently agreed that the arrangement would also apply to relatives whose visitor's permit had been issued prior to 31 August 1992 and had actually entered the Occupied Territories after that date (approved in the letter, of 31 December 1992, from attorney Menachem Mazuz to ACRI).

88. Statement of the State Attorney's Office, of 22 August 1993, in HCJ 4495/92, *Hadreh et al. v. Commander of IDF Forces in the Gaza Strip et al.*, filed by IlaMoked.

89. Statement of the State Attorney's Office in *'Awashreh*, pars. 6 and 17.

90. The lack of permanent-residency status in the Occupied Territories leads to various restrictions, among them: the impossibility of working in Israel; great difficulty in returning to the Occupied Territories after having left; uncertainty about the right of long-term visitors to remain always in the Occupied Territories, because the authorities refrained from making such a commitment.

agreement did not apply to the future and thus did not relate to residents who would marry non-residents. These groups were not allowed to conduct a family life in the Occupied Territories, and the strict policy of sweeping denial of family unification remained unchanged for them.

The High Court of Justice agreements created a new policy, distinguishing between two groups – one entitled to live as a family unit, and the other not. The two groups were identical except for the arbitrary date on which the spouse entered the Occupied Territories. The dates of entry determining who would be included within the High Court of Justice agreements were set unwittingly and arbitrarily, in accordance with the dates of the hearings on the petitions to the High Court of Justice.

According to principles of Israeli law, such a distinction – without any logical, relevant basis – between two comparable groups constitutes prohibited, unacceptable, and illegal discrimination.<sup>91</sup> Such discrimination is also prohibited under international humanitarian law, which prohibits the occupying country from discriminating between different groups of residents of the occupied territory.<sup>92</sup>

The High Court of Justice agreements advanced the right of a small number of persons to maintain a proper family life, but left the Israeli policy intact, thereby denying this right to the general Palestinian population in the Occupied Territories.

## **D. August 1993 – Setting Quotas for Family Unification**

### **(1) The High Court of Justice Agreement of August 1993**

In December 1992, the authorities again threatened deportation of family members who were not included within the High Court of Justice Population (i.e., those entitled to renewable visitor's permits

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91. The High Court of Justice defined prohibited discrimination, holding that, "For the purpose of the above-mentioned matter, persons should be treated equally where significant differences between them do not exist, where those differences are relevant to the said purpose. If they are not treated equally, then the case before us is one of discrimination" (Additional Hearing 10/69, *Rachel Bronovski v. Chief Rabbis of Israel et al.*, *Piskei Din* 25(1) 5, 35). See, also, the comments of the High Court of Justice regarding the prohibition on discrimination between different groups of persons residing in the Occupied Territories: "Indeed, the military commander must implement equality in the region. The commander is forbidden to discriminate between residents." HCJ 168/91, *Morcus v. Minister of Defense*, *Piskei Din* 45(1) 467, 471.

92. Art. 27 of the Fourth Geneva Convention.



under the High Court of Justice Agreements of June 1990 and November 1992) and did not leave the Occupied Territories after their visitor's permit had expired. Beginning in January 1993, HaMoked filed five petitions to the High Court of Justice on behalf of twenty-eight families with relatives whom the Civil Administration threatened to deport from the Occupied Territories.

On 22 August 1993, the State Attorney's Office announced, in its response to the petitions, that, in the context of the peace talks, Israel had decided "to implement a new, more lenient, policy on requests for family unification in the region."<sup>93</sup> In the framework of this policy, it had been decided to take the following measures:

- (A) All requests for family unification of spouses and children included within the High Court of Justice Population will be approved, and the relatives will be granted the status of permanent residents of the Occupied Territories.
- (B) An annual quota of approvals for family unification will be set. The quota will be divided into two categories: requests for family unification of husband and wife, and requests based on humanitarian reasons. The approvals for permanent residency for the High Court of Justice Population will not be taken into account in filling the annual quota.

The previous High Court of Justice agreements of June 1990 (*'Awashreh*) and November 1992 (*Sarhan*) did not change the government's basic policy, according to which marriage or parentage are not criteria for granting family unification. The State Attorney's Office's notice to the High Court of Justice in August 1993 indicated a significant change of conception, and in adopting the quota policy, Israel recognized for the first time that the marriage relationship justifies family unification: "In the past, marriage in and of itself was not considered a basis to justify granting a permanent-residency permit, while under the new policy, a large proportion of the quota will be allocated within this category." However, the State Attorney's Office made it clear that the new policy did not constitute a waiver or change in the State's fundamental position, which holds that "family unification is not an entitlement," but "a special act of benevolence."<sup>94</sup>

The authorities set the initial annual quota at 2,000 persons, and noted that, "This number is more than twice the annual amount that had previously been approved."<sup>95</sup> The authorities also indicated that the size of the quota would be examined periodically. Israel subsequently

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93. Statement of the State Attorney's Office in *Hadreh*, par. 2.

94. *Ibid.*, pars. 5(b) and 7.

95. *Ibid.*, par. 5(a).

announced that the quota would include 2,000 requests, where each individual request may include both the applicant's spouse and minor children.<sup>96</sup>

The State Attorney's Office's response to the Court stated that,

Requests [for family unification] that are not handled in a specific year because the quota has been met for that year will be placed at the head of the list for the following year, without the necessity of submitting a new request.

The response also emphasized that,

Under the new policy, too, the previous requirement – that requests for permanent residency will be submitted and heard only when the person who is the subject of the request is staying outside the region, and whose entry into the region will be allowed only after the request is granted – would remain in effect.<sup>97</sup>

The quota policy was offered in response to the petitions relating to residents' relatives who entered the Occupied Territories after the beginning of September 1992 and were not included within the High Court of Justice Population. However, this policy did not allow these relatives to remain lawfully in the Occupied Territories with their family until the request was approved. Following the demand of HaMoked, the authorities also agreed, in February 1994, to grant "long-term visitor" status to spouses and children who had visited the Occupied Territories between 1 September 1992 and 31 August 1993.<sup>98</sup>

The High Court of Justice population defined in the High Court of Justice agreement of November 1992, which includes spouses and children who entered, or were entitled to enter, the Occupied Territories from the summer of 1990 until 31 August 1992, will be called below the "High Court of Justice Population I."<sup>99</sup> Members of this class were entitled to the status of permanent residents of

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96. Supplementary Notice of the Respondents and Joint Application to Cancel the Petitions (*Hadreh* and other petitions), 8 February 1994.

97. Statement of the State Attorney's Office in *Hadreh*, pars. 5(c) and 5(d).

98. In light of the agreement ensuring the status of the petitioners, the two parties requested the Court to strike the petitions (Supplementary Notice of the Respondents and Joint Application to Cancel the Petitions, *Hadreh* and other petitions, 8 February 1994). Despite the extensive correspondence of HaMoked in the matter, the authorities have not yet determined unequivocally if the relevant date for inclusion within this population is the date of issuance of the permit or the date the relative entered the Occupied Territories as a visitor.

99. The beginning date set for inclusion in the High Court of Justice Population is unclear, and was not explicitly set by the authorities. The experience of human rights organizations in monitoring thousands of cases of separated families indicates that persons included within this population were spouses who had entered the Occupied Territories from the beginning of 1990.

the Occupied Territories, and were not included within the annual quota.

The population recognized in February 1994 as being entitled to "long-term visitor" status, which included spouses and children who entered the Occupied Territories between 1 September 1992 and 31 August 1993, will be called the "High Court of Justice Population II." As regards these persons, requests for family unification were approved within the annual quota framework.<sup>100</sup>

## **(2) Implementation of the Quota Policy, August 1993 to November 1995**

The annual quota of 2,000 requests for family unification was divided into 1,200 approvals per year for the West Bank and 800 approvals for the Gaza Strip. The quota for the West Bank was broken down into 900 requests in the "spouse quota" category and 300 in the "humanitarian requests" category. These categories were divided among the districts, as follows:<sup>101</sup>

<b>District</b>	<b>Spouse Quota</b>	<b>Humanitarian Quota</b>	<b>Total</b>
<b>Jenin</b>	140	50	190
<b>Nablus</b>	150	50	200
<b>Tulkarem</b>	170	50	220
<b>Ramallah</b>	145	45	190
<b>Bethlehem</b>	110	40	150
<b>Hebron</b>	170	60	230
<b>Jordan Valley</b>	3	2	5
<b>Jericho</b>	12	3	15
<b>Total</b>	<b>900</b>	<b>300</b>	<b>1200</b>

The requests were handled according to their date of submission in the relevant category. When the quota in a specific district was met, subsequent requests from that district were relegated to the following year.

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100. Supplementary Notice of the Respondents and Joint Application to Cancel the Petitions, *Hadreh* and other petitions, 8 February 1994

101. Provided in a letter, of 11 June 1995, from Lt. Col. Henry Levy, head of the administration and services division of the office of the Coordinator of Government Operations in the Occupied Territories, to HaMoked.

B'Tselem received no reply to its request to the authorities for data on the number of Palestinians who had submitted an application for family unification since implementation of the quota system began.<sup>102</sup> However, review of the policy's implementation shows clearly that the quota was too small and did not meet the needs of the population. For example, Tulkarem District received an annual quota of 220 approvals, even though during the year before the quota was set, 640 family unification requests had been submitted in that district.<sup>103</sup> In April 1995, HaMoked was informed that, as regards a request submitted in July 1994 in that district, "The request, in effect, also is not included within the quota for 1995, and will, apparently, be handled only in early 1996."<sup>104</sup>

Israel admitted that the annual quota it had set does not meet the population's needs. In May 1995, the Civil Administration indicated that, "Since the number of requests submitted on the spousal criterion is significantly greater than the annual quota, a situation has been created where the requests are forwarded for handling the following year, and sometimes two years afterwards."<sup>105</sup> In July 1995, the authorities indicated that "there are several thousand requests pursuant to the quota that are waiting [for processing in the West Bank]."<sup>106</sup>

Of the separated families who sought assistance from HaMoked, 279 applied for family unification under the quota framework. The authorities approved 125 applications and rejected twenty-seven. The average delay in receiving a response was more than a year. Approximately one half (137) had not received any response as of November 1995, when the quota system ended. Some had submitted their requests as early as July 1994.

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102. For example, a letter of 21 July 1996 to Lt. Col. Shmuel Ozenboi, assistant to the Coordinator of Government Operations in the Occupied Territories, and a letter of 11 February 1997 to Lt. Col. Henry Levy.

103. State Comptroller, *Annual Report* No. 44, for 1993, p. 1120.

104. Letter of 30 April 1995 from Capt. Yoav Alkayam, assistant to the head of the Civil Administration in the West Bank, to HaMoked.

105. Letter of 7 May 1995 from Capt. Alkayam to HaMoked.

106. Letter of 20 July 1995 from Capt. Yehuda Cohen, assistant to the legal advisor of the Civil Administration in the West Bank, to attorney Leah Tsemel.

The low quotas, resulting in long delays in obtaining answers to requests, greatly affected the separated families. While waiting for a response, which could take an unknown amount of time, the family members who were the subject of the request were prohibited from entering Israel, even for a short visit (except for those persons included within High Court of Justice Population II), and the family had no choice but to remain separated as they waited months or years. Furthermore, the resident could not stay with his or her family outside the Occupied Territories for a prolonged period for fear that the request for family unification would be denied. The fear was justified because Israel customarily denied requests for family unification in such cases, contending that the resident had moved his or her "center of life" to outside the Occupied Territories.

M.A., from Carmel village, Nablus District, married A.T. in September 1994. In January 1995, A left the Occupied Territories, when her visitor's permit expired. In February 1995, M applied for family unification for his wife. The Civil Administration clerk told him to return in about a year. At the time, A was undergoing a pregnancy that endangered her health. She was bleeding and required constant care and supervision. Her parents were dead, and her husband was her only relative.

In April 1995, HaMoked contacted the Civil Administration to determine when a response would be given concerning the request for family unification on behalf of A. The answer was: "Since the quota for this year was already filled in 1994, the request will not be processed this year. Next year, too, there is no guaranty that the request will come up for processing."<sup>107</sup>

Throughout the waiting period, A had to stay in Jordan, separated from her husband.

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107. Letter of 30 May 1995 from Capt. Alkayam to HaMoked.

S.B., a woman from 'Atil village, Tulkarem District, is married to Y.B., a resident of Kuwait. Their five children were born in Kuwait. Their two adult sons are not registered in the population registry of the Occupied Territories.

S applied for family unification for her two sons, 'Iyad and Emad, who were then staying in Jordan with their father. The application was rejected without explanation. HaMoked asked the legal advisor for the West Bank why the request was rejected. The legal advisor's office responded: "One of the main criteria for approving a request for family unification is that the person submitting the request be a resident of the region who is living in the region.... At the time of her request under discussion, [your client] was staying outside the region, for which reason the request was rejected."<sup>108</sup> In this way, the mother's visit to her children led to rejection of her request for family unification on their behalf.

Residents with these difficulties chose not to apply for family unification. In order to see their families in the visitation framework, they were compelled to settle for short, broken visits and repeatedly face separation between visits. The "center of life" criterion was also applied in determining whether to grant permits to visit in the Occupied Territories: residents living outside the Occupied Territories with a non-resident spouse were denied visitor's permits for their spouse, the officials alleging that "they had transferred their center of life" to another location, and that they do not live in the Occupied Territories. This trap caused many relatives to enter the Occupied Territories on a visit and stay there after their visitor's permits had expired.

The authorities continued to deport relatives who stayed in the Occupied Territories without a visitor's permit and had been caught by chance, for example at a documents check at a checkpoint. The Civil Administration continued to issue threats and summonses to appear at their offices. When the individual appeared, the officials at the Civil Administration offices often confiscated documents, such as visitor's permits, passports, and identity cards, and informed the individual that the documents would be returned only when the visitors leave or upon delivery of a monetary guarantee ensuring they will exit the Occupied

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108. Letter of 22 November 1993 from Lt. Cohen to HaMoked.

Territories by a particular date.<sup>109</sup> The Civil Administration also confiscated identity cards of Palestinian residents after issuance of, in the words of the legal advisor for the West Bank, "an unequivocal directive according to which it was strictly forbidden to take an identity card from residents for the purpose of compelling them to remove their visitors from the region."<sup>110</sup>

Following HaMoked's complaint concerning Civil Administration threats, Capt. Yehuda Cohen, assistant to the head of the Civil Administration, stated that, if the authorities succeed in removing the "offenders" by repeatedly summoning them to the Civil Administration offices and by the use of pressure, he "fully welcomes it."<sup>111</sup>

One deportation took place in May-June 1995. According to a testimony given to B'Tselem, soldiers entered the homes of residents of Qablan, a village in the Nablus District, at night. The soldiers removed the men and women and threatened to deport forcefully their spouse to Jordan if the residents did not undertake to remove them immediately from the Occupied Territories. Representatives of the Civil Administration in Hawarah who participated in the action even compelled Ashraf Ghassan Aqra, one of the visitors, to pack his belongings and accompany them. The officials allowed him to remain in his home only after the mukhtar intervened and after he undertook to leave the Occupied Territories within two days. His wife, Asala Hamed Aqra, a resident of the Occupied Territories, told B'Tselem that her husband's documents were taken that night and that he left the Occupied Territories within forty-eight hours.<sup>112</sup>

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109. Confiscation of the identity card greatly affects residents by severely restricting their movement, insofar as military law provides that it is an offense not to carry an identity card at all times (sec. 4 of the Order Relating to Identity Cards and Population Registry (Judea and Samaria) (No. 297) 5729-1969). Palestinians whose identity cards had been confiscated face the risk of detention, delay at checkpoints, and violence.

110. From a letter of 22 February 1995 from Capt. Cohen to HaMoked. For example, in July 1995, the authorities confiscated the identity card of Yaqub Nahla Qisiyah, a resident of Bethlehem, as a means to remove his sister, Mary Nahla al-Qaysi, from the Occupied Territories. B'Tselem handled this case.

111. Comment made in a telephone conversation of 23 November 1994 with Dalia Kerstein, executive director of HaMoked.

112. Aqra gave her testimony to B'Tselem researcher Bassem 'Eid in Qablan village on 4 June 1995.

Samer Mahmud 'Abed, also a resident of Qablan village, was required to sign an undertaking to remove his wife from the Occupied Territories the following morning. The officials required 'Abed to provide an affidavit given before the Islamic court that his wife had been taken to the bridge.<sup>113</sup>

Since the change in policy in August 1993, HaMoked has received ninety-one complaints about deportation or threats to deport relatives of residents not included in the High Court of Justice populations. The complaints related to 383 relatives. In 14.3 percent of the cases, the officials threatened to confiscate documents, like an identity card, passport, or visitor's permit. In six cases, the relatives left the Occupied Territories following the threats.

The quota policy was implemented for more than two years, until transfer of population registry matters to the Palestinian Authority in November 1995. Israel demanded that the policy remain intact, even after the Oslo Accords. A dispute between Israel and the PA led to the freezing of the quota policy in the West Bank until the beginning of 1998.

### **(3) Criticism**

The right to family integrity and the right to a proper family life are individual rights. Setting an arbitrary annual quota does not meet any criterion of the government's duty to respect these rights, which belong to each and every person.

In a comment on the quota that the Soviet Union instituted against Jews leaving that country, Prof. Dinstein wrote that the applicant "was not interested in the statistical calculations and numerical quotas... As far as individual human rights are concerned, each person is considered."<sup>114</sup> Even in countries with immigration quotas, like the United States, no quotas to enter the country or gain citizenship exist where close relatives of citizens or residents are involved.

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113. 'Abed gave his testimony to B'Tselem researcher Bassem 'Eid in Qablan village on 4 June 1995.

114. Yoram Dinstein, "Freedom of Emigration and Soviet Jewry," 4 *Israel Yearbook on Human Rights* (1974) 266, 274.



Although Israel's new policy recognized the marriage relationship of residents of the Occupied Territories as a basis for obtaining family unification, implementing the quota limited the number of families able to exercise their right to family unification and denied this right to every other separated family. Furthermore, Israel set low quotas, which did not meet the needs of the residents of the Occupied Territories, and families had to wait many months, sometimes years, to receive a reply to their request.

Israel's policy prohibited relatives from visiting the Occupied Territories as they waited for a response from the authorities, while compelling residents to remain in the Occupied Territories out of fear that the application would be denied if they left. This led to years of family separation, and children being raised by one parent and denied the possibility of living a normal family life.

### ***Family Unification for Immediate and Extended-Family Members***

As part of the quota policy, Israel recognized only marriage and the parent-child relationship for children under sixteen as a basis for family unification. Consequently, Israel did not recognize a parent-child relationship where the children were between sixteen and eighteen years old, the brother-sister relationship, or the relationship between parents and grown children. This was the case even where the non-resident family members had no other family and were dependent on their relatives residing in the Occupied Territories.

The only chance for approval of family unification for a non-spouse was in a case the authorities defined as "humanitarian" and placed within the specific quota set for this category. Since the criteria for being considered "humanitarian" have never been published, it was impossible to know the basis on which the authorities would approve a request for family unification on these grounds, and the degree of relationship required, if any. The authorities denied many requests for family unification submitted by residents on behalf of their extended family members, stating that the request did not come within the humanitarian rubric.

In June 1984, H.Q., 84, submitted a request for family unification for her son, T.Q., 51. The authorities had revoked the son's residency in the Occupied Territories on the grounds that he had lived in Jordan and Saudia Arabia since 1976. The request

mentioned the advanced age of the applicant, a widow, and her poor health. The request also noted that she requires daily assistance and that T.Q. is her only son. In February 1995, the authorities denied her request.<sup>115</sup>

H.A., a widow born in 1919, resides in Shweika village, Tulkarem District. She submitted a request for family unification on behalf of her sister, M.A., who was born in 1918 in Shweika village and since 1963 had lived with her husband in Kuwait. During the Gulf War, M's husband died, and she wanted to return to her native village to live with her sister. M needed family assistance because of her poor health, specifically high blood pressure and joint-related problems. In March 1993, the authorities denied the application, submitted in December 1992, without explanation. M entered the Occupied Territories under a visitor's permit and remained at her sister's home even after the permit had expired. In July 1993, three military jeeps came to the house and informed H that her sister had to leave the Occupied Territories within a few days. After HaMoked intervened, the threats ceased.

The nuclear family is not the entire family unit in Palestinian society. The most basic socioeconomic unit in this society is the extended family, including the couple, their sons and sons' spouses, and their grandchildren. All these persons traditionally live together or nearby and run a communal household.<sup>116</sup>

In approving family unification only for the nuclear family, Israel ignored the family structure of Palestinian society in the Occupied Territories. Israel thereby failed to meet the criteria set by the Red Cross for defining the family as well as the criteria applied by countries – including Israel – to their citizens.<sup>117</sup>

In forty-three percent of the cases – 163 of the 383 families – handled by HaMoked dealing with separated families not included within the High Court of Justice agreements, extended-family members are separated. Some one-fourth of these relatives live alone and have no other relatives. In many instances, they are elderly or sick and require assistance from their relatives.

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115. HaMoked handled the matter on behalf of the applicant.

116. Affidavit of Dr. 'Aziz Khaider in *'Awashreh*. See, also, *Lutfiyeh*, pp. 142, 143.

117. For details, see below, at pp. 120-121. Some jurists argue that international law requires states to respect family unity, where the concept of family they refer to must be that actually existing in the territory under discussion. See Gerassimos Fourlanos, *Sovereignty and the Ingress of Aliens* (Stockholm: Almqvist & Wiksell, 1986) 92-93.

## **2. Bureaucratic Obstacles in the Family-Unification Process**

The bureaucratic process relating to requests for family unification has consistently been characterized by complexity, delay, secrecy, harassment, and great financial cost. The authorities have never acted to solve these fundamental problems, raising the suspicion that the bureaucratic obstacles are deliberate and intended to reduce the number of applications. These obstacles have, in fact, deterred many Palestinians from submitting requests. The main obstacles in the family-unification process follow.

### **A. Criteria for Approving Family-Unification Requests are Unknown**

The authorities have never published the criteria used in approving requests for family unification or a visitor's permit. Prior to the quota policy, initiated in August 1993, the authorities provided the High Court of Justice with a broad and vague definition of the exception to the general rule that family unification requests are denied.<sup>118</sup> On this point, the State Comptroller's report stated that the authorities did not establish "sufficiently detailed criteria according to which family unification requests could be submitted."<sup>119</sup> During application of the quota policy, begun in August 1993, the authorities also did not publish criteria by which separated families could be included within the "humanitarian" quota.

The authorities also never published the "center of life" criterion, used to deny applications of residents staying abroad while waiting for a response to their application for family unification. In answer to HaMoked, the office of the legal advisor for the West Bank indicated that this criterion is used pursuant to an internal procedure not intended to be made public.<sup>120</sup>

The authorities did not inform Palestinians of changes made over the years in the family unification policy and their rights under the new policy. Civil Administration officials did not even inform persons filing applications about the changes, and, as a result, many Palestinians who would benefit under the High Court of Justice agreements did not even know they existed. Also, young couples, who are not included in these High Court of Justice agreements, did not know that, since August

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118. "Only in exceptional and very special cases, for humanitarian or governmental reasons, are requests for family unification approved" (from the statement provided by the State Attorney's Office, quoted in *al-Saudi*, of 1986, p. 140).

119. State Comptroller. *Annual Report* No. 44, p. 1120.

120. Stated by Capt. Cohen in telephone conversations with HaMoked on 24 August 1993, 19 October 1993, and 2 June 1994.

1993, the authorities implemented a policy of approving requests for family unification for spouses within the quota guidelines. They did not, therefore, request family unification, because their past experience had shown that they had no chance of obtaining approval.

In 1994, B'Tselem found, concerning one hundred separated families in Bani Na'im village, that:

- Seventy-seven percent of the families included within High Court of Justice Population I did not request family unification after August 1993. That date was the time set by the State for granting family unification to all persons within that class.
- Sixty percent of the separated couples not included within High Court of Justice Population I did not request family unification after August 1993, after which date marriage became a basis for justifying approval of those applications.

Several organizations dealing with family unification requested that the authorities disseminate information to the Palestinians about the High Court of Justice agreements and the quota policy. The authorities did not comply with these requests. Consequently, the organizations performed the task, informing Palestinians about their rights under the agreements.<sup>121</sup> In March 1994, the authorities undertook to develop, together with human rights organizations, the particulars that should be published.<sup>122</sup> Despite repeated requests of the human rights organizations, the authorities never implemented its undertaking.<sup>123</sup> The

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121. In 1993, the Palestinian Federation of Women's Organizations conducted a comprehensive information campaign in the northern West Bank concerning the High Court of Justice agreements and the new policy. That same year, Israeli and Palestinian organizations operating in the framework of the Family Unification Coalition also published, through the Alternative Information Center, documents in Arabic setting forth details of the High Court of Justice agreements and the rules of the new policy.

122. Letter of 29 March 1994 from Col. Ahaz Ben-Ari, head of the international law department, office of the Military Advocate General, to ACRI.

123. For example, a letter of 19 June 1994 from ACRI to Col. Moshe Rosenberg, legal advisor of the Civil Administration in the West Bank; ACRI's request of 3 August 1994 to Brig. Gen. Ilan Schiff, Chief Military Prosecutor; HaMoked's request of 14 November 1994 to attorney Menachem Mazuz, Deputy Attorney General.

demand that Israel act according to transparent and clear procedures as to family unification also repeatedly arose during the multiparty peace talks.<sup>124</sup> Here, too, there was no positive response.

## **B. Procedures for Family Unification**

The procedures for family unification and relatives' visits have also never been made public. They have not been issued as military orders, but were internal procedures of the military government and the Civil Administration.<sup>125</sup> Some of the procedures became known primarily through HaMoked's correspondence over many years with the authorities and in the course of providing assistance to many separated families who were involved in these procedures.

### **(1) Submitting a Request for Family Unification**

A resident of the Occupied Territories who wanted to submit a request for family unification had to go to the post office and purchase a submission of request form. Before submitting the request to the Civil Administration, the resident had to receive approvals from various authorities. The authorities have never made known the list of required approvals, but experience of Palestinians indicates that approvals from the income tax and excise tax offices,<sup>126</sup> the municipality or mukhtar, and the Police were required.

Submitting a request was only allowed when the relatives who are the subject of the request were situated outside of the Occupied Territories, except for those persons included within the High Court of Justice populations. At times, residents were even requested, upon submitting the request, to sign a declaration stating, "... I am well aware that from the moment I submit this request, neither the beneficiary nor his family members will be allowed to enter the region... This [prohibition] shall continue as long as the competent authorities are processing the request and until such time that I am notified of the decision of the authorities... Where a request is

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124. According to Salim Tamari, the Palestinian coordinator for the working group on refugees, which operated in the framework of the multilateral peace talks and also dealt with family unification. Salim Tamari, "Residency Rights for Returning Palestinians (Oslo 2)," *Palestine Report*, 1 December 1995.

125. According to the State Comptroller's annual report for 1993 (p. 1119), the procedure for family unification is included in the compilation of standing orders of the IDF.

126. The latter tax, which is imposed in the Occupied Territories, is comparable to the value added tax imposed in Israel.

submitted for a visitor's permit for the beneficiary and/or his family members, whether from me or my family members or from any other person from a foreign or other region or from Israel... the processing of my request will cease and be revoked as if it had never been submitted." Palestinians who submitted a request for family unification for their spouses had to sign a special form, in which they declared that they have no spouse other than the spouse for whom they request family unification.

Application to the Civil Administration to obtain approval for family unification, as in every other matter, often entailed waiting under uncomfortable conditions, humiliating treatment, and bureaucratic harassment.<sup>127</sup> Family unification and visitor's permit procedures involved frequent contact with Civil Administration officials, causing Palestinians numerous problems, such as:

- receiving conflicting information from Civil Administration officials concerning the relevant procedures;
- being summoned frequently to the Civil Administration, often without need, to be given a demand to appear at a later date;
- being requested time and again to bring documents, many of which could not be found, such as a passport that had expired several years earlier;
- loss of time and money as a result of the negligence of Civil Administration officials resulting in the failure to locate forms that had been submitted.

The fees collected by the Civil Administration for submitting a request for family unification or a visitor's permit amounted to hundreds of shekels.

<b>Type of Request</b>	<b>Amount of Fee in 1995</b>
Request for Family Unification	NIS 358
Request for Visitor's Permit <sup>128</sup>	NIS 479 for an adult NIS 95 for a child
One-Month Extension of Visitor's Permit	NIS 240 for an adult NIS 50 for a child

127. See B'Tselem, *Bureaucratic Harassment; Abuse and Maltreatment during Operational Operations in the West Bank in the First Year of the Declaration of Principles* (Jerusalem, September 1994).

128. Ninety percent of the fee for a visitor's permit is reimbursed to the resident if the request is denied.

In 1995, the average daily salary of a worker in the West Bank was NIS 46.90 and in the Gaza Strip NIS 40.30.<sup>129</sup> A West Bank Palestinian resident working six days a week earned an average of NIS 1,219 per month, and a Gaza Strip resident earned NIS 1,047. The fees charged clearly manifested a heavy financial burden on residents of the Occupied Territories.

## **(2) Considering the Request**

Each request was reviewed by a committee of the Civil Administration in the district where the request was submitted and by a committee from Civil Administration headquarters. These committees filed their recommendations with a third committee, which made the decision whether to approve or deny the request.<sup>130</sup>

The applicants did not know who sat on these committees, were not present during their deliberations, and were not allowed to argue their case. Handling applications in this manner violates Israeli administrative-law principles, which require that individuals have a right to argue their case prior to a decision being reached, especially where the violation of a human right is involved.<sup>131</sup>

Israel rejected the request that Palestinians be allowed to appear before the committees or have an attorney appear on their behalf. Israel contended that appearance by the applicant would complicate the procedure and entail substantial cost.<sup>132</sup> However, even though the right to appear was not granted, the committees took a long time to reach a decision. In most instances, several months, and even years, passed before a decision was reached. Throughout this lengthy period, the relatives remained separated while awaiting the decision, a situation that should have led to rapid decision-making by the relevant committees.

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129. Palestinian Central Bureau of Statistics, *Labour Force Survey: Main Findings* (January 1997).

130. This is the procedure for family unification requests as stated in the State Comptroller's annual report for 1993, pp. 1119-1120.

131. See, for example, HCJ 69/81, *Abu 'Itta et al. v. Commander of the Judea and Samaria Region et al.*, *Piskei Din* 37(2) 197, 2321; HCJ 320/80, *Qawasmeh v. Minister of Defense et al.*, *Piskei Din* 35(3) 113; HCJ 358/88, *The Association for Civil Rights in Israel v. OC Central Command*, *Piskei Din* 44(3) 529.

132. The request was made by the French delegation to the Working Group on Refugees at a meeting held in Tunis in October 1993. See Second Report by the French Emissary on Family Reunification, Middle East Peace Process, Multilateral Working Group on Refugees, Tunis, 12-14 October 1993.

In October 1993, following institution of the quota policy, Israel undertook to shorten decision-making on requests for family unification to no more than three months from the time the request was submitted. Israel stated that prior thereto, handling of requests took an average of twelve months.<sup>133</sup>

However, Israel failed to meet its commitment. The quotas led to Palestinians waiting for extended periods, sometimes years, for their requests to be processed. The authorities provided no information concerning the new policy. If they had, it is likely that many more Palestinians would have submitted requests for family unification, the quotas would have been reached quicker, and the waiting period would have been even longer.

Of those who sought HaMoked's assistance after submitting requests for family unification under the quota policy and received an answer (approval or rejection), 142 waited an average of approximately thirteen months to receive the reply. Of them, only ten (seven percent) waited only three months, the period within which Israel had undertaken to process requests.

The authorities also were very delinquent in providing timely responses to requests from High Court of Justice Population I even though annual quotas were not involved. Responses by the authorities to HaMoked indicate that the delay in these cases resulted from the lengthy security checks conducted by the security forces.<sup>134</sup> This explanation is hard to understand since this population had already passed security checks before obtaining the status of "long-term visitors."

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133. The Israeli delegation to the meeting of the Working Group on Refugees, held in Tunis that month, made this commitment. A similar commitment was made by Col. Ben-Ari in a letter of 29 March 1994 to ACRI. After making the commitment, a dispute arose in which some Israeli authorities argued that it only applies to requests for family unification submitted by High Court of Justice Population I. Lt. Yehuda Cohen, assistant to the legal advisor of the Civil Administration in the West Bank, stated this claim on 22 November 1993. The head of the Civil Administration in the West Bank, Brig. Gen. Gadi Zohar, retracted this position in his letter of 17 August 1994 to HaMoked.

134. This explanation was given, for example, in a letter of 30 June 1994 from Lt. Col. Shmuel Ozenboi, assistant to the Coordinator of Government Operations in the Occupied Territories, to HaMoked.



Of the families assisted by HaMoked and included within High Court of Justice Population I, 143 submitted requests for family unification and received responses. They waited an average of eleven months to receive an answer. Only thirteen percent received a response within three months, as promised.

### **(3) The Response Provided**

Until the policy changed in August 1993, in most instances where the authorities denied the request for family unification, they did not inform the applicant. In the early 1980s, the number of unanswered requests that had been submitted since 1967 stood at approximately 150,000.<sup>135</sup> The High Court of Justice ruled that such a phenomenon is "an administrative perversion requiring correction."<sup>136</sup> It often occurred that residents received notice of rejection only following repeated requests to the Civil Administration. When the authorities informed the resident that the request was denied, the notice was generally given orally and almost invariably without explanation.

As of August 1993, separated families being assisted by HaMoked had filed 935 requests that were denied. Of them,

- a. in only two cases were reasons provided;
- b. in 606 cases, the denials contained no explanation for the rejection;
- c. in 327 cases, the applicants never received any information concerning the outcome of their requests.

The authorities contended that, since the principle is that requests for family unification are denied, "it is necessary to give reasons for *approving* family unification, and refusal is only the result of the absence of any reason to deviate from the policy.... I do not have to give any special reason for refusing to deviate from the policy."<sup>137</sup>

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135. M. Benvenisti, *Lexicon*, p. 21.

136. 'Awad, p. 287.

137. From the answer of Brig. Gen. Ephraim Sneh, then head of the Civil Administration in the Gaza Strip, to the High Court of Justice in HCJ 106/86, *Majid Nammer al-Swafiri et al. v. Head of the Civil Administration in Gaza*, *Takdin* 87(1) 48, 49 (our emphasis).

Following implementation of the quota policy in August 1993, the authorities undertook to mention one of the following reasons when rejecting a request for family unification:

- a. rejected because that year's quota had been met, with the request being carried over to the following year;
- b. rejected for security reasons, explaining the specific reason where possible;
- c. rejected for failure to meet the criteria, where the request did not fall within the spouse or humanitarian categories.<sup>138</sup>

Even after making this commitment, the authorities rejected requests without giving reasons. In forty-seven percent of family unification requests handled by HaMoked since August 1993 where the request was rejected, no reasons were given; in most cases where the request was carried over to the following year because the quota had been filled, the applicants were not informed.

In several cases handled by HaMoked, the authorities rejected a resident's request for family unification with his wife "on the grounds of security" unrelated to the wife, but to the resident. Past imprisonment was one of these grounds for rejection. Such actions by the authorities raise the suspicion that refusal in these cases was intended to punish the resident rather than meet a significant security need.<sup>139</sup>

The authorities did not institute any procedure to appeal rejection of family unification requests. The only action available in such cases was to submit another request, which entailed another payment of the high filing fee and another lengthy wait for a response. Until August 1993, resubmission was allowed only after one year had passed since the rejection of the earlier request, "except in special cases where the facts on which the request was based had changed substantially, justifying another request to be submitted within a shorter period."<sup>140</sup>

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138. From the letter of 29 March 1994 from Col. Ahaz Ben-Ari, head of the international law department, office of the Military Advocate General, to ACRI.

139. In other cases of rejection of spousal family unification handled by HaMoked, the authorities based their rejection on polygamy. This reason is not listed among the grounds for rejection, as mentioned by the authorities in their commitment. Furthermore, polygamy is allowed under the municipal law in the Occupied Territories and is not a criminal offense (chap. 6, sec. 36 of the Jordanian Family Rights Law [Law No. 92, of 1951], published in Hebrew in *Compilation of Jordanian Laws*, vol. 33, by the office of the Chief Military Prosecutor).

140. From a letter of 23 November 1990 from Lt. Nurit Hochman, secretary of the Coordinator of Government Operations in the Occupied Territories, to B'Tselem.

Approval of a request for family unification was supposed to result in the granting of permanent-residency status in the Occupied Territories to the person on whose behalf the request was submitted. Israel decided that during the year following the approval, the individual would live in the Occupied Territories and the authorities would examine whether he or she was entitled to permanent residency. At the end of the year, security checks and checks of movement of the individual across the border would be made. If he or she had gone abroad for any time whatsoever during the year ("the entitlement year"), the Civil Administration nullified the individual's entitlement to an identity card, on the grounds that the Occupied Territories were not his or her "center of life," and revoked the family-unification approval. The authorities never publicized this condition for entitlement to permanent residency and to continued family unification.

In several cases, the authorities revoked the family-unification approval even during the "entitlement year." The reason given was that the applicant did not remain in the Occupied Territories continuously during the year. In many instances, even after the year passed, the authorities did not provide an identity card to the person on whose behalf the request was made.

In fifty-three percent of the cases handled by HaMoked where family unification requests were approved, the authorities provided the relevant identity cards within twelve months. In twenty percent of the cases, the recipient had to wait more than eighteen months to obtain the identity card.

In 1993, M.S., who resides in Jordan, wanted to visit his sister, F.S., a Bethlehem resident suffering from arthritis and emotional problems. The authorities denied his request without explanation. In response to HaMoked's inquiry, the office of the legal advisor for the West Bank stated that, "There is no humanitarian element involved for granting the request.... The ill sister is not so disabled that she cannot go to Jordan for a visit."<sup>141</sup>

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141. From a letter of 29 July 1993 from Lt. Cohen to HaMoked.

## ***The Bureaucratic Procedure for Relatives Visiting the Occupied Territories***

As in the case of family unification, to obtain a visitor's permit, Palestinians were required to purchase the request form at the post office, have it signed by various authorities, and then submit it to the Civil Administration. When submitting the request, the applicant had to undertake to ensure that the relative leaves the Occupied Territories at the end of the time permitted for the visit. The applicant also had to sign a guarantee in the amount of NIS 5000, to be collected if the visitor did not leave.

Upon approval, the authorities sent the visitor's permit to the border crossing at the Jordan River bridges or at Rafah for the visitor to pick up. Most permits were for one month, commencing when the visitor entered the Occupied Territories. The permit could be extended only twice, each time for one month. Each extension required payment of a fee,<sup>142</sup> and the signature of the same authorities who had signed previously. The authorities were likely to deny the extension request for "governmental and security reasons."<sup>143</sup>

In most cases, the Civil Administration approved visits only during the summer months (from the beginning of June until the end of August) and ruled that, "Visitor's permits for periods other than during the summer are only granted in exceptional humanitarian circumstances."<sup>144</sup> The authorities did not respond to HaMoked's request for a list of the grounds for allowing non-summer visits.<sup>145</sup>

The Civil Administration rejected without explanation many requests for visitor's permits for spouses. HaMoked's investigation showed that the authorities limited the number of permits granted for spousal visits, arguing that it is very likely that

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142. The fee was one half of the fee charged for obtaining the original visitor's permit. See the Table of Fees, p. 62.

143. This procedure was stated in the answers provided to B'Tselem by Lt. Hochman, of the office of the Coordinator of Government Operations in the Occupied Territories, in November 1990.

144. From a letter of 14 April 1992 from Lt. Cohen to HaMoked.

145. HaMoked sent its letter of request, dated 1 September 1992, to the legal advisor of the Civil Administration in the West Bank.

spouses would not leave when their permit expires.<sup>146</sup> The arbitrary denial of requests for visitor's permits also occurred when requests were made on behalf of other relatives, such as brothers and sisters.

HaMoked made several requests to the authorities for data on the number of requests for visitor's permits that were submitted each year and how many were granted.<sup>147</sup> The requests remained unanswered.

### **C. Civil Administration Breaches of the High Court of Justice Agreements**

Human rights organizations' monitoring of implementation of the High Court of Justice agreements revealed that Civil Administration offices refused to recognize the rights of many families included within the High Court of Justice populations. Some Civil Administration employees were unaware of the agreements, and others deliberately ignored them.

HaMoked and The Association for Civil Rights in Israel often requested the authorities to instruct the Civil Administration personnel in the Occupied Territories to act in accordance with the agreements, but the requests did not help. When it realized that the authorities were ignoring the requests, HaMoked itself sent copies of the High Court of Justice agreements to the Civil Administration branch offices.

In the beginning of 1994, the Coalition for Family Unification met with Col. Ahaz Ben-Ari, head of the international law department of the office of the Military Advocate General. The meeting resulted in the drafting of procedures for requesting family unification and visitor's permits for the High Court of Justice populations.<sup>148</sup>

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146. For example, "It [Bethlehem District] does not intend to approve entry of spouses with visitor's permits where it may reasonably be assumed that they will not leave at the end of the visit" (letter of 1 August 1994 from Second Lt. Rachel Dorenbaum, of the office of the legal advisor of the Civil Administration in the West Bank, to attorney Leah Tsemel).

147. For example, a letter of 21 March 1997 from HaMoked to Lt. Col. Tiki Rotem, of the office of the Coordinator of Government Operations in the Occupied Territories, and of 13 August 1997 to Lt. Col. Daniel Reisner, head of the international law department, of the office of the Military Advocate General.

148. The meeting was held on 3 February 1994. Others who participated were representatives of the Civil Administration and the Ministry of Defense. Col. Ben-Ari sent a letter summarizing the meeting to ACRI on 29 March 1994.

Despite the Ben-Ari Arrangement, in many instances Civil Administration offices continued to deny rights of members of the High Court of Justice populations. After the Ben-Ari Arrangement took effect in March 1994, HaMoked received more than one hundred requests for assistance concerning breach of the High Court of Justice agreements, representing about one-quarter of all the requests for assistance it received on the subject.<sup>149</sup>

The major violations suffered by the High Court of Justice populations, before and after the Ben-Ari Arrangement, were the following.

### **(1) Refusal to Include Families Entitled to be Included Within the High Court of Justice Populations**

Civil Administration officials repeatedly refused to recognize as such Palestinians who were members of the High Court of Justice populations and to allow them to exercise their rights. In many instances, the authorities refused to include within High Court of Justice Population I family members who had entered the Occupied Territories in September 1992 pursuant to visitor's permits issued prior to the relevant date, 31 August 1992. This refusal breached the State's commitment to include them.

The authorities often refused to accept documents provided by the relatives to show that they had stayed in the Occupied Territories during the relevant period under the High Court of Justice Agreements, such as Islamic court testimony, medical documents, or a birth certificate of a child born in the Occupied Territories. According to the Ben-Ari Arrangement, of March 1994, entitlement of the High Court of Justice populations was to be checked on the basis of documents provided by the applicant, and only when there are no such documents, by Civil Administration computers.

Another problem that arose resulted from the way weddings are conducted under Islamic religious law, which applies in the Occupied Territories. Under Islamic law, signing a formal marriage contract creates a lawful marriage of the couple; the marriage ceremony takes place later and has no legal significance.<sup>150</sup> The authorities, on the other hand, determined that the relevant date in determining the High Court of Justice populations was the date of the marriage ceremony. The Ben-Ari Arrangement changed this, providing that a person was considered married as of the date of the marriage contract. Despite the

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149. For a complete review of the cases of violations of the High Court of Justice agreements handled by HaMoked, see Appendix II.

150. *Anton*, p. 116; *Lutfiyeh*, pp. 133, 148.

arrangement, until the end of 1995 HaMoked continued to receive cases of families who were not included within the High Court of Justice populations because the marriage ceremony had taken place after the relevant date although the marriage contract had been signed before it.

Relatives who arrived in the Occupied Territories pursuant to a visitor's permit issued by the Ministry of the Interior or pursuant to an entry permit issued at Ben-Gurion Airport were required to leave the Occupied Territories, cross over to Jordan, and reenter by a visitor's permit issued by the Civil Administration, in order to arrange their status as long-term visitors. The Ben-Ari Arrangement, reached in March 1994, called for the permits of these visitors to be extended without their having to leave the Occupied Territories. In practice, forty-three percent of the complaints to HaMoked on this point were received in and after April 1994.

## **(2) Refusal to Issue or Extend Visitor's Permits**

In several cases, the authorities refused to enable members of the High Court of Justice populations staying outside the Occupied Territories to enter the Occupied Territories pursuant to visitor's permits. The authorities often refused to extend the visitor's permits of relatives already in the Occupied Territories and demanded that they leave, employing different types of pressure on their family. As a result, many members of the High Court of Justice populations subsequently left the Occupied Territories.

Members of the High Court of Justice populations whose status was recognized, and who remained in the Occupied Territories as "long-term visitors," found it difficult to leave the Occupied Territories and return with the same status. In many instances, on reentering the Occupied Territories they received a visitor's permit for only one month, and in some cases were required to remain outside the Occupied Territories for several months before being allowed to visit again. These actions violated the explicit commitment undertaken by the authorities.<sup>151</sup>

## **(3) Refusal to Receive Requests for Family Unification**

In numerous cases, Civil Administration offices refused to allow Palestinian residents to submit family unification requests as long as their relatives included within the High Court of Justice populations remained in the Occupied Territories. Civil Administration personnel

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151. An example is a letter of 6 May 1993 from Lt. Cohen to HaMoked.

demanded that the relatives leave the Occupied Territories and wait abroad until obtaining a favorable response. In other instances, the authorities informed the residents that they would not be allowed to submit the application until their relatives had stayed continuously for six months, and sometimes a year, in the Occupied Territories as visitors.

The Ben-Ari Arrangement, of March 1994, provided that a long-term visitor "may submit a request for permanent residency at any time, and the sooner the better." Despite this provision, seventy-eight percent of the complaints received by HaMoked dealing with this matter were received in and after April 1994.

#### **(4) Unlawful Collection of Fees**

Improper implementation of the High Court of Justice agreements also included the illegal collection by the Civil Administration of fees of hundreds of shekels apiece from many families. When the High Court of Justice agreements took effect, family members staying in the Occupied Territories who wanted to become "long-term visitors" were required to pay retroactively a fee for the visitor's permits for each period that they had stayed in the Occupied Territories without a valid permit. The authorities demanded this payment even though it had been impossible for the family members to extend their permits. As a result of the demand, the authorities collected tens of thousands of shekels.

The Ben-Ari Arrangement provided that families would no longer have to pay these sums, but families who had paid the fee would not be reimbursed. Months after the arrangement, HaMoked was still receiving complaints from Palestinians who were being required to make retroactive payments to the Civil Administration.

Furthermore, Civil Administration officials refused to issue to some members of the High Court of Justice populations six-month visitor's permits, but issued permits for only one month. This action resulted in the illegal collection of fees, because the fee for extending a permit was uniform, and did not depend on whether the extension was for one month or six months.

Following the refusal of the Civil Administration to reimburse the improperly charged fees, HaMoked filed a claim in 1995 in the Magistrate's Court against the Civil Administration.<sup>152</sup> The nine plaintiffs, all of whom belong to the High Court of Justice populations, demanded reimbursement of the sums they had been required to pay

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152. Civ. Com. (Jerusalem) 20522/95, *Maha 'Ali Sarur et al. v. Commander of IDF Forces in the West Bank*.



to extend their visitor's permits for shorter periods than were necessary and for fees charged retroactively.

At first, the Civil Administration's representative admitted in Court that, in most cases, "fees were in fact collected in breach of the procedures" and he recognized "the duty to reimburse [the applicants] for these payments."<sup>153</sup> Despite this, the Civil Administration subsequently refused to pay its debt to the plaintiffs, arguing that because the handling of civil affairs had been transferred to the Palestinian Authority, the plaintiffs had to sue the Palestinian Authority in a Palestinian court to obtain the moneys that had been improperly taken from them by Israeli officials.<sup>154</sup> In making its argument, the Civil Administration relied on the statute implementing the Interim Agreement, pursuant to which an Israeli court may not hear a claim filed by a Palestinian against Israel for an act or omission committed in the area of responsibility or among the powers transferred to the Palestinian Authority.

The Magistrate's Court accepted the Civil Administration's argument and dismissed the complaint in May 1997. The plaintiffs appealed the decision to the Jerusalem District Court. The appeal revolved around interpretation of the statute implementing the Interim Agreement. The plaintiffs argued that the extension of visitor's permits for spouses belonging to the High Court of Justice Population had not been transferred to the Palestinian Authority, and that the Israeli court must hear their complaint.

Following the appeal, the State Attorney's Office agreed to pay the plaintiffs the sums that it had previously admitted had been collected in breach of the procedures. As for the other sums, the parties returned to the Magistrate's Court, where the State consented to pay all the other moneys it had collected from them. In early 1998, nine Palestinian families were reimbursed the fees that had been improperly collected from them in 1994.

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153. Statement of the State Attorney's Office, of 25 January 1996, to the Magistrate's Court.

154. Secs. 7 and 8 of the Implementation of the Interim Agreement on the West Bank and the Gaza Strip (Jurisdiction and other Provisions) (Legislative Amendments) Law, 5756-1996. The law is based on art. XX of the Interim Agreement.

In August 1992, M.A., a man from Beit Jalla, and H.A., a Jordanian resident, were married in Beit Jalla. Both were twenty-one at the time. H.A. entered the Occupied Territories under a visitor's permit to sign the marriage contract, and left the Occupied Territories when the permit expired. In 1993, M.A. submitted two requests to allow his wife to visit. The Civil Administration office in Bethlehem rejected the two requests even though H.A. had been staying in the Occupied Territories in August 1992, thereby becoming a member of High Court of Justice Population I.

M.A. requested the assistance of HaMoked, which wrote to the legal advisor for the West Bank, enclosing documents indicating that H.A. belongs to the High Court of Justice Population (the marriage contract and the Islamic court's confirmation that she was present in the Occupied Territories in August 1992). M.A. again submitted a request to the Civil Administration, but it was rejected. In December 1993, the authorities informed HaMoked that H.A. would receive a visitor's permit if her husband proved, by verified documentation that she was in the region at the relevant time, that she is included within the High Court of Justice Population.<sup>155</sup> The authorities ignored the documents previously submitted by M.A.

In February 1994, HaMoked requested the Civil Administration office in Bethlehem to permit H.A. to enter the Occupied Territories, enclosing the same documents to its request. In April 1994, the Civil Administration issued a visitor's permit, but for one month only, rather than the six-month permit to which she was entitled under the High Court of Justice Agreement. The couple twice paid the NIS 200 fee to extend the visit, each time for one month. The third time that M.A. requested an extension (and paid the NIS 200), the Civil Administration rejected the request, compelling H.A. to leave the Occupied Territories.

H.A. remained at their home in Beit Jalla, her permit having expired. During the summer of 1994, she went to the Civil Administration five times and each time the authorities denied his request that his wife be allowed to live with him in the Occupied Territories, as the High Court of Justice Agreement provides. HaMoked sent the authorities several letter concerning this

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155. Letter of 13 December 1993 from Capt. Cohen, assistant to the legal advisor of the Civil Administration in the West Bank, to HaMoked.

matter. In September 1994, H.A. left her home in Beit Jalla and went to Amman. She was pregnant and feared that the Israeli authorities would forcefully make her leave and would impose a heavy fine. The following month, HaMoked received a reply from the office of the Coordinator of Government Operations in the Occupied Territories that it was handling the complaint, and that "it was necessary to wait patiently." In January 1995, H.A. was granted a visitor's permit for one month. Subsequently, the authorities granted a one-month extension. In March 1995, the couple had a baby girl.

During the following six months, M.A. tried, alone and with HaMoked's assistance, to enable his wife to live with him lawfully at their home in Beit Jalla. The Civil Administration demanded that he show them the stamp in her passport showing that she was visiting in the Occupied Territories in August 1992, even though this information should be in Israel's border-crossing lists. M.A. could not provide the proof because she no longer had her old passport. HaMoked repeatedly sent to the authorities documents showing that she belonged to the High Court of Justice Population – the marriage contract and the confirmation of the Islamic court. The Civil Administration continued to demand that M.A. remove his wife from the Occupied Territories or present her old passport. Her pregnancy and the care she was giving to an infant child did not lead the Civil Administration to forego its demand.

H.A. received a six-month extension of her visitor's permit only in October 1995, although she was entitled to it from the start.

### **Graft and Corruption in the Family Unification Process**

The obstacles that the authorities place on applicants for family unification have led to a wide-ranging system of brokering and influence peddling by lawyers, mukhtars, collaborators, and others. These persons were paid by residents to help them obtain approval of their request for family unification.<sup>156</sup>

According to numerous cases reported in the news media, Civil Administration officials apparently also received bribes to approve family unification requests. For example, at the end of 1992, it was reported that for years a network of Palestinians bribed employees of the Civil Administration to issue various approvals, among them approvals for family unification. The article noted that most of the Palestinians who received approvals as a result of bribes had previously submitted requests to the Civil Administration, but the authorities either denied the requests or failed to reply.<sup>157</sup>

In response to one article, a senior official of the Civil Administration in the Gaza Strip admitted that, "employees of the Civil Administration collect bribes for all services provided, such as refugee rehabilitation, family unification, issuance of various permits..."<sup>158</sup>

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156. See Palestinian Federation of Women's Action Committees, Women's Human Rights Project, "Background Paper: Developments in Emergency Residence Issues," 20 August 1992.

157. See *Hadashot*, 13 October 1992; *Ha'aretz* and *Yediot Aharonot*, 25 November 1992; *Hadashot*, *Ha'aretz*, and *Yediot Aharonot*, 26 November 1992.

158. *Ma'ariv*, 12 February 1993.

# Chapter Four: Family Unification in the Occupied Territories after the Oslo Accords

## 1. Family Unification According to the Oslo Accords

The Cairo Agreement, signed on 4 May 1994, transferred to the Palestinian Authority power over civil matters related to Palestinian residents of the Gaza Strip and the Jericho region. The Interim Agreement, of 28 September 1995, transferred to the PA powers over various civil matters relating to all residents of the Occupied Territories.<sup>159</sup> Among these powers are the handling of requests for family unification and for family visits, maintenance of the population registry in the Occupied Territories, and issuing certificates, permits, and documents for residents of the Occupied Territories.

However, these powers are largely meaningless because the agreements stipulate that Israel retains the authority to make the final determination on requests for family unification, registration in the population registry, or a visitor's permit for relatives. The PA is left to deal only with the formal aspects of these requests.

Although the Interim Agreement states an objective "to promote and upgrade family unification," this objective has not been attained. Furthermore, implementation of the agreement resulted in the freezing of family unification in the West Bank for more than two years.

### A. Family Unification

The Interim Agreement stipulates:

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

- a. ....;
- b. spouses and children of Palestinian residents; and

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159. Except for Palestinian residents of East Jerusalem, over whom the PA has no authority pursuant to the Oslo Accords.

- c. other persons, for humanitarian reasons, *in order to promote and upgrade family unification*.<sup>160</sup>

## **B. Family Visits**

The Oslo Accords provide that residents of the Occupied Territories may submit requests to the Palestinian side for visitor's permits for their relatives "to be issued by the Palestinian side and cleared by Israel."<sup>161</sup>

The agreements state that a visitor's permit is to be issued for a maximum of three months, which the PA may extend to no more than seven months, upon notifying Israel.<sup>162</sup> Every additional extension requires Israel's approval.<sup>163</sup> The agreements also enable visitors from countries having diplomatic relations with Israel to enter the Occupied Territories by means of an entry permit issued by Israel.<sup>164</sup> The agreements further provide that the PA must ensure that visitors do not remain in the Occupied Territories after their visitor's permits expire.<sup>165</sup>

## **C. Population Registry**

The Interim Agreement stipulates that the powers and responsibilities related to population registry and documentation in the Occupied Territories will be transferred to the Palestinian side, which shall "maintain and administer a population registry and issue certificates and documents of all types."<sup>166</sup> However, the Interim Agreement provides that the Palestinian side may grant permanent residency in the Occupied Territories only following Israel's prior approval.<sup>167</sup> It was

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160. Art. 28(11) of Appendix 1 of Annex III of the Interim Agreement (our emphasis).

161. *Ibid.*, art. 28(13)(a), previously art. II(B)27(g)(2) of Annex II of the Cairo Agreement.

162. *Ibid.*, art. 28(13)(a), previously art. X(3)(f) of Annex I of the Cairo Agreement.

163. *Ibid.*, art. 28(13)(b), previously art. II(B)27(g)(2) of Annex II of the Cairo Agreement.

164. *Ibid.*, art. 28(14), previously art. II(B)27(h) of Annex II of the Cairo Agreement.

165. *Ibid.*, art. 28(15), previously art. II(B)27(j) of Annex II of the Cairo Agreement.

166. *Ibid.*, art. 28(1) and (2), previously art. II(B)27(a) of Annex II of the Cairo Agreement.

167. *Ibid.*, art. 28(11)(b), previously art. II(B)27(l) of Annex II of the Cairo Agreement.

agreed that the Palestinian side would update Israel regularly on each change in its population registry, "with a view to enabling Israel to maintain an updated and current registry."<sup>168</sup>

To administer the population registry, the agreement provides that the Palestinian side receive from Israel the population registry of the residents of the Occupied Territories in addition to files and records concerning them, including old handwritten records and computer devices and equipment,<sup>169</sup> and also "other movable and immovable property necessary for its functioning."<sup>170</sup>

## **D. Procedure for Handling Civil Affairs**

The Oslo Accords stipulate that joint committees, composed of Israeli and PA representatives, would be established to coordinate matters related to civil affairs. They also state that policy discussions are to be held in the Joint Civil Affairs Coordination and Cooperation Committee (CAC). The CAC decided to establish a Registry Subcommittee, which would conduct ongoing negotiations between the Israeli and Palestinian sides concerning the population registry and family unification.<sup>171</sup>

Concerning implementation of policy, the Interim Agreement provides that the parties meet daily at the level of the District Civil Liaison Office (DCL) that each side must maintain and operate in each of the former districts of the Civil Administration in the West Bank and in the Gaza Strip.<sup>172</sup>

The agreements do not stipulate the procedures for the submission and processing of requests. The parties agreed that the Palestinian side may use Palestinian revenue stamps for payment of fees in civil affairs and set their amounts.<sup>173</sup>

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168. *Ibid.*, art. 28(10), previously art. II(B)27(b) of Annex II of the Cairo Agreement.

169. *Ibid.*, art. 28(2).

170. Art. III(5) of Annex III of the Interim Agreement.

171. Art. I(1) of Annex III of the Interim Agreement; art. I(A) of Annex II of the Cairo Agreement. The subcommittee was established in accordance with art. 28(17) of Annex III of the Interim Agreement.

172. Art. I(2)(b)(3) of Annex III of the Interim Agreement.

173. Art. 28(16) of Appendix 1, Annex III of the Interim Agreement.

## **2. Implementation of the Agreements as Regards Family Unification**

On 16 November 1995, powers relating to population registry for residents of the Occupied Territories were transferred to the PA as part of the implementation of the Interim Agreement. For more than two years afterwards, the family-unification process in the West Bank was frozen. In early 1998, the process was renewed with the imposition of the limited quota that had been employed prior to the Oslo Accords. Severe restrictions are currently placed on family visits in the Occupied Territories, and their number has fallen sharply.

### **A. The Family-Unification Process**

The Cairo Agreement, of May 1994, did not affect family unification in the Gaza Strip and the Jericho region. Israel continued to handle requests submitted by residents of the autonomous areas, using the same quota and criteria that had preceded the agreement. This was also the case in territories that remained under its total control.

The Interim Agreement, on the other hand, led to other results. The agreement did not state procedures and criteria for family unification, even though the Palestinian side regularly made such demands during the negotiations.<sup>174</sup> Israel decided that the quota policy would remain during implementation of the Interim Agreement, and left the quota at 2,000 approvals a year. Israel transferred to the PA the responsibility for processing requests, with the details of the process to be decided by negotiations between the sides in a Registry Subcommittee.<sup>175</sup>

During the negotiations, the parties agreed that, beginning in 1996, the PA would be allowed to determine which requests would come within the annual quota and their order.<sup>176</sup> The PA decided to meet the annual quota of eight hundred approvals for family unification in the Gaza Strip. In the West Bank, however, in 1996 and 1997, it refused to set with Israel the procedures for handling family

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174. See Salim Tamari, "Residency Rights for Returning Palestinians."

175. Stated, for example, in the letter of 20 March 1996 from Lt. Col. Alice Shazar, head of the international organizations division of the Civil Administration in the West Bank, to HaMoked.

176. Stated in the letter of 6 May 1996 from Lt. Col. Shmuel Ozenboi, assistant to the Coordinator of Government Operations in the Occupied Territories, to B'Tselem. Ahmad Faras and Khalid Salim, representatives of the Palestinian side on the CAC, made a similar statement during their meeting on 18 April 1996 with the Coalition for Family Unification.



unification requests in accordance with the existing quota. It argued that such a quota relates only to "humanitarian cases," and that there should be no limitation on family unification of spouses.<sup>177</sup> Israel has continuously opposed any demand to change the quota, even though it had undertaken to the High Court of Justice that it would periodically review the size of the quota as circumstances require.<sup>178</sup>

As a result, family unification in the West Bank ceased under the Interim Agreement. The 3,500 requests for family unification that had been submitted to the Civil Administration prior to the transfer of powers to the PA were not processed by Israel, which maintained that it could process them only after it and the PA had agreed on the relevant procedures.<sup>179</sup> Most of these requests were submitted in 1994 or 1995, and a few as far back as 1993. The 10,000 or so new requests that were submitted to the PA Ministry of the Interior between the time of the transfer of powers and the end of 1997 were not forwarded to Israel or handled in any way. The only requests for family unification in the West Bank that were processed during this period by the PA and Israel were those submitted by families belonging to High Court of Justice Population I.

According to PA figures, from the time of the transfer of powers, in November 1995, to July 1997, Palestinians in the Ramallah area submitted 1,557 requests for family unification, 1,307 of which were for unification of spouses. In addition, Israel had, as of July 1997, 1,750 requests that were submitted prior to the transfer of powers and remained unanswered. Israel's annual quota for the Ramallah district had been 190.

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177. Senior officials of the PA so informed HaMoked on 19 June 1996.

178. See p. 49 above.

179. This position was taken, for example, in a letter of 25 April 1996 from Lt. Col. Shazar to HaMoked. A senior official of the PA provided to HaMoked on 5 February 1998 the figure on the number of requests.



*Fadweh Hashem Muas with her children: Muhammad, Nizar, Ahlam, Khalil, and Hamzeh.*

Fadweh Hashem Muas, 39, resident of Bani Na'im village, gave her testimony to B'Tselem in late 1997.<sup>180</sup>

I married Mahmud in Brazil in 1982, where we were both born. Mahmud had an identity card at the time, but they [the Israeli authorities] later took it away. He has been living in Brazil, I think, since 1978. He had a clothing shop in the city of Manaus. I met him here and we got married there. Two of our children were born here and three there. We wanted to return, but he does not want to come back without family-unification approval.

I only came here about four years later [1986]. I returned to Brazil in 1991. He would visit every year, including 1990 and 1991. He would come with his Brazilian passport, sometimes via Jordan and sometimes directly via Lod [Ben-Gurion Airport].<sup>181</sup>

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180. The testimony was given to B'Tselem researcher Yuval Ginbar at Ms. Muas's house on 13 November 1997.

181. Even though he was visiting in the Occupied Territories during the relevant period, Israel did not consider him part of the High Court of Justice population since he entered the Occupied Territories with his passport and not a visitor's permit.

The first request for family unification that I submitted was in 1991. I did not receive an answer. In 1994, I submitted another request, as suggested by B'Tselem. I am still waiting for an answer. Whenever I contact the Ministry of the Interior, they tell me there is no answer.

My husband comes to visit, stays for a few months, and then returns to Brazil. All of our children are here with me. He needs family unification so that he can come back permanently, because without an identity card, he can't get the right kind of work.

It is hard to run the house alone, with all the responsibility on my shoulders. The male should have his responsibilities and the female hers, and here I am responsible for it all. It is hard for me to take care of the house, like the electricity, and I find it hard to manage. My eldest child is fourteen, and the youngest is four and a half. It is very hard for the children without their father. They miss him. After two months without their father, they go crazy. Telephone calls are not enough.

It is important to me that the children are raised as Palestinians and not in Brazil, where they are liable to lose their identity.

At the end of 1997, the two sides agreed to renew the family-unification process in the West Bank. A senior PA official informed B'Tselem that the PA had changed its position because it realized that stopping the family-unification process would not bring about the hoped-for results – an increase in the quota or its cancellation.

The sides agreed that in 1998, 3,600 requests for family unification would be approved for the years 1996-1998 (a quota of 1,200 per year), after which the parties would discuss the size of the annual quota.<sup>182</sup> The sides also determined that the PA would set the order of priority in filling the quotas, and would forward to Israel 1,200 requests per year. The responsibility for determining the criteria for filling the quotas lies with the PA, and Israel is allowed to reject a request only for security reasons.

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182. These details and those stated below regarding the agreement reached by the parties were provided on 25 March 1998 to HaMoked by a senior official of the PA.

The PA decided that half of the requests to be approved as part of the annual quota would be applications that had been submitted to the Civil Administration prior to the transfer of powers, and the other half was reserved for requests filed with the PA after the transfer. In all the cases, the PA decided that preference would be given to members of High Court of Justice Population II and to relatives staying in the Occupied Territories. Preference would also be based on the date of submission of the request, the date of marriage, and the number of children.

In early 1998, the PA forwarded to Israel 1,200 requests to fill the 1996 quota. Of these, 580 had been submitted to the Civil Administration, and the others to the PA Ministry of the Interior following the transfer of powers. The PA divided these two categories into districts. Most of the requests that were forwarded to Israel related to family unification of spouses, and the PA classified one hundred of them as "humanitarian." Israel approved these requests and forwarded the approvals to the PA.

In May 1998, the PA forwarded 1,200 requests to fill the 1997 quota, and was to provide, by the end of 1998, another 1,200 requests to meet the quota for 1998.

In 1997, Israel submitted to the UN Committee for the International Covenant on Economic, Social and Cultural Rights an official report on Israel's implementation of the Covenant.<sup>183</sup> In another report submitted to the Committee in 1998, Israel responded to questions that committee members had raised after deliberations on the first report. In this report, Israel contended that "the quota of 2,400 approvals [of family unification] per year was recently set (in comparison to the earlier quota of 2,000 requests)."<sup>184</sup>

In the Committee's discussions held in November 1998, Israel's representative, Micha'el Blass, mentioned the number 2,000 as regards the annual quota for family unification in the Occupied Territories.

Following B'Tselem's request, the spokesperson for the Coordinator of Government Operations in the Occupied Territories, Shlomo Dror, stated, on 17 November 1998, that the quota had not been permanently increased, but that 800 approvals had been added for 1998-1999. These additional approvals of requests for family unification were actually part of the 1997 quota, representing the

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183. State of Israel, "Combined Initial and Second Report of the State of Israel Concerning the Implementation of the United Nations Covenant on Economic, Social and Cultural Rights, 1997."

184. Issues raised by the pre-session working group of the Committee on Economic, Social and Cultural Rights, 1998, p. 26.

number of cases under that quota that had not yet been forwarded by the PA to Israel.

The negotiations also led to agreement that a relative on whose behalf a request was filed would not be compelled to wait outside the Occupied Territories until a decision was reached on the request for family unification. However, the sides did not agree on cases where the relative is living outside of the Occupied Territories; in these cases, Israel was requested to allow the relative to enter the Occupied Territories and live with his or her family while waiting for a response. The parties also did not settle various procedural matters, such as setting the time within which an answer had to be provided, or establishing an appeals procedure for cases where the request was denied.

### ***The High Court of Justice Populations Since the Transfer of Powers***

From November 1995 to August 1996, Israel refused to extend the visitor's permits of persons belonging to the High Court of Justice populations, who are entitled to have their permits extended every six months. The processing of requests for family unification of High Court of Justice Population I were also frozen during this period, although these requests were supposed to be approved without any regard to the annual quota.

In August 1996, Israel acceded to the PA's demand. Since then, Israel has extended the visitor's permits of the High Court of Justice populations, granted permits for family unification for members of High Court of Justice Population I, and issued identity cards to recipients of family-unification approval.<sup>185</sup>

Israel continues to refuse to recognize some families as being members of the High Court of Justice population, even though they meet the criteria. These families do not argue their case directly with the Israeli authorities, but through PA bodies, creating a complex and lengthy process.

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185. Lt. Col. Henry Levy, head of the administration and services division in the office of the Coordinator of Government Operations in the Occupied Territories and head of the Israeli component of the joint Registry Subcommittee, so informed HaMoked in a telephone conversation in August 1996.

Another problem relates to young adults whom Israel considered part of the High Court of Justice populations when they were minors, but no request for family unification had been submitted for them prior to the transfer of powers. Since the transfer, Israel has rejected outright requests submitted, through the PA, by their parents on their behalf. The Israeli authorities argue that, as adults, they are no longer included within the High Court of Justice populations, and because the family-unification process has been frozen, their requests could not be processed.

Following a petition to the High Court of Justice filed by HaMoked, the State indicated, in November 1997, that it would consider approving requests for registration of Palestinians who prior to November 1995 had met the criteria for registration of children.<sup>186</sup>

### ***Granting Residency in Connection with the Elections to the Palestinian Authority***

The Protocol Concerning Elections, Annex II of the Interim Agreement, states that Palestinians staying in the Occupied Territories but not registered in the population registry will be entitled to be registered, the objective being to enable them to vote in the then-upcoming Palestinian elections. Registration was conditional on the application being submitted prior to the date of the elections. Granting of the status depended on proving that the individual had actually lived in the Occupied Territories continuously during the three or four years prior to the signing of the Interim Agreement in 1995.<sup>187</sup>

This provision was insufficient to meet the needs of most spouses of residents of the Occupied Territories, since it applied only to persons who entered the Occupied Territories prior to September 1992 or to spouses who were entitled in any event

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186. Statement of the State Attorney's Office in HCJ 2151/97, *Shaqir et al. v. Commander of IDF Forces in the West Bank Region et al.* (unpublished).

187. Three years in the case of persons forty and older, and four years for persons under forty (art. II(1)(g)(1-2) of Annex II of the Interim Agreement).

to receive permanent residency status in the Occupied Territories based on their belonging to High Court of Justice Population I.

Furthermore, during the negotiations between the sides, they agreed that living in the Occupied Territories would be considered "continuous" for the purpose of this article if the individual did not remain outside the Occupied Territories for an unbroken period of more than two months. This rule disqualified all those visitors who had complied with the rules established by Israel and left the Occupied Territories for three months between visits.

When the Interim Agreement was signed, there were some 10,000 Palestinians, according to Israeli figures, who were living in the Occupied Territories without a valid visitor's permit.<sup>188</sup> According to figures of the PA, 3,640 Palestinians submitted requests to be registered in the population registry in connection with the elections, 3,000 of which were approved prior to the date of the elections, 20 January 1996.<sup>189</sup>

How many of the Palestinians whose applications were approved are relatives of residents of the Occupied Territories, or the degree of the family relationship, is unknown.

## **B. Visitor's Permits – Extreme Restrictions**

Even after the Interim Agreement, Israel continued to enforce the restrictions on relatives' visits to the Occupied Territories, though the restrictions are not mentioned in the Agreement. Israel often issues visitor's permits for only one month, refuses to approve visits for

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188. On 22 October 1995, the prime minister and minister of defense, Yitzhak Rabin, placed the estimate at 12,275 (in response to a question posed by MK Michael Eitan in the Knesset); Brig. Gen. Oren Shahor, Coordinator of Government Operations in the Occupied Territories, estimated that the number fluctuated between eight and ten thousand (*Ha'aretz*, 26 October 1995).

189. Statement of Ahmad Faras, director general of the PA Ministry of the Interior and a member of the CAC, at a meeting held on 31 January 1996 with the Coalition for Family Unification. Faras added that 350 of the requests were still being reviewed by Israel, and that 289 had been rejected. Some 700 other requests were filed late by Palestinians, after the elections were held. Israel has not responded to these applications. The special joint committee set up by the sides to discuss these applications has met three times, but have not yet decided what to do with these applications.

periods other than during the summer, and requires that the relative remain outside the Occupied Territories for many months between visits.<sup>190</sup> According to the PA, the requirement that the relative remain outside the Occupied Territories clearly contradicts the agreement reached by the parties during the negotiations.<sup>191</sup> On the other hand, Israel revoked the prohibition, which had been in force prior to the Interim Agreement, on visits of relatives for whom family unification had been requested.

The PA argued that, following the transfer of powers, Israel placed new conditions on family visits. For example, Israel established that the PA could forward to the Israeli District Coordination and Liaison office (DCL) only one hundred requests a week from each district.<sup>192</sup> This limitation delayed granting of requests by many months.

Furthermore, since the transfer of powers, Israel has required that relatives wanting to visit the Occupied Territories prove they are permanent residents, for at least eight months prior to the date of the requested visit, of the country in which they are living. Israel returns to the Palestinian DCL requests that do not include such proof. According to PA officials, Israel immediately denies requests for visitor's permits for relatives living in Libya, Lebanon, Syria, Algeria, and Iraq, Israel contending that these nations make it difficult for foreigners who leave to return.<sup>193</sup>

In 1996, PA officials informed human rights organizations that Israel denies any request for a visitor's permit that is not submitted on behalf of first-degree relatives, except in humanitarian and emergency cases. The Palestinian officials indicated that the Israeli authorities usually give security considerations as the reason for the rejection.<sup>194</sup> Furthermore, Israel systematically rejects requests of the Palestinian side to renew permits for more than the seven-month period the PA is allowed to approve.

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190. For example, Khalil Faraj, of the Palestinian DCL in Gaza, mentioned these restrictions to B'Tselem in May 1997.

191. Hassan Abu-Hashish, a member of the CAC, so informed B'Tselem on 29 August 1996.

192. Khalid Salim, head of the Palestinian side of the CAC, so informed the Coalition for Family Unification on 3 June 1996.

193. Officials of the PA Ministry of the Interior so informed B'Tselem in May 1997.

194. Among those who provided this information was Khalid Salim, at a meeting on 3 June 1996 with representatives of the Coalition for Family Unification.



The Israeli authorities did not reply to requests by HaMoked and B'Tselem for data on the number of requests for visitor's permits submitted since the transfer of powers and on how many were approved.<sup>195</sup> Sources in the PA Ministry of the Interior in Gaza informed B'Tselem in March 1997 that, of the 22,464 requests for visitor's permits submitted to it during 1996, Israel approved 16,456 (seventy-three percent).<sup>196</sup>

In 1997, Israel drastically restricted summer visits to the Occupied Territories. Of the 250 requests for visitor's permits submitted each day to the Palestinian DCL in Ramallah, only ten to fifteen were approved. Humanitarian cases were among those rejected. The reasons given for rejection were: a) security; b) another visitor, who had previously been invited by the applicant, stayed in the Occupied Territories after the permit had expired; c) the relative invited had previously stayed in the Occupied Territories without a valid visitor's permit. Israel rejected a large majority of the appeals submitted by the PA.<sup>197</sup>

In the summer of 1998, Israel continued to impose the restrictions on visitor's permits. Officials at the Palestinian DCL in Tulkarem informed B'Tselem that most of the requests for visitor's permits were for spouses. According to their figures, between the transfer of powers, in November 1995, and the middle of July 1998, Israel approved forty-three percent of the requests for visitor's permits submitted in the Tulkarem District.

According to PA officials, Israel requires residents of the Occupied Territories to prove that their visitors left the Occupied Territories.<sup>198</sup> Israel makes this demand even though it controls the border crossing and has the relevant records, and summarily rejects requests of residents unable to prove that the relatives they had invited indeed left the Occupied Territories upon expiration of the permit.

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195. Among the requests sent was a request by HaMoked of 12 September 1996 to Lt. Col. Levy and a request by B'Tselem of 4 March 1997 to Lt. Col. Tiki Rotem, assistant to the Coordinator of Government Operations in the Occupied Territories.

196. Sources in the PA Ministry of the Interior provided the data to B'Tselem in March 1997.

197. Jabber Asfor, head of the Palestinian DCL in Ramallah, provided this information to B'Tselem on 3 July 1997.

198. *Ibid.*

In 1994, Mustafa Shahadeh Natur, who lives in the Jenin refugee camp, married his cousin Mona Musa Salman, a Jordanian resident. In November 1994, Salman entered the Occupied Territories on a visitor's permit and lived with her husband. Three months later, her permit expired and she had to return to Jordan. She was pregnant at the time. Following three months of separation, she returned in May 1995 to the Occupied Territories for a visit. When the permit expired in August, she was supposed to go back to Jordan. Because her pregnancy was almost over, she stayed with her spouse in their house. She gave birth to a daughter in September. Only in November 1996, when their daughter was more than a year old, did nineteen-year-old Salman leave for Jordan, taking the infant with her.

In January 1997, Natur submitted a request for a visitor's permit for his wife and daughter. Israel approved the request, and at the end of the month, Salman and her daughter arrived at the Allenby Bridge. The soldiers did not let her pass, on the grounds that she was listed as a person not allowed to cross the border. The same thing happened twice more. In June and October 1997, she and her daughter came to the Allenby Bridge after her husband had obtained a visitor's permit for her. Each time, the soldiers did not let her enter, and she and her daughter returned to Jordan. In June 1997, Salman was almost ready to give birth when she made the difficult journey, hoping that she would be at home with her husband when the child is born. Her hope was not realized, and on 17 June 1998, alone in Jordan, she gave birth to another daughter.

In their response to HaMoked, the Israeli authorities stated that Salman was not allowed to enter the Occupied Territories because she had earlier remained in the Occupied Territories after her visitor's permit had expired.<sup>199</sup> As a result of the refusal to let her enter the Occupied Territories, the twenty-one-year-old Salman stayed alone in Jordan for more than two years, separated from her spouse, with her three-year-old and one-year-old daughters, without knowing when she would be allowed to return to her and her husband's home.

In a testimony he gave to B'Tselem researcher Najib Abu-Rokaya on 10 July 1998, Natur stated:

Since the time that my wife left, in November 1996, I went to Jordan twelve times to see her and my two daughters. I work in housing renovation and painting, and do not have a steady job.

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199. Letter of 25 November 1997 from Lt. Col. Shazar to HaMoked.

Sometimes I have work, and sometimes not. Everything I can save I send to my wife and daughters so they have some money to meet their needs. I also have to bear the travel expenses.

I live with my wife by telephone. I call, she calls, and that also costs money. My wife and daughters being far away makes it impossible for me to be a husband and father. I don't have the joy of coming home after a day of work with a small present for my wife, to surprise her with something that she likes. I dream about coming home and my daughters running to me and jumping into my arms, and giving them a piece of candy from my pocket. I work in the market and see people living normal lives, doing their shopping and going home with bags in their arms, and I am alone. This is something I should never have to experience.

Because of the difficulties in obtaining a visitor's permit from Israel through the PA, many families living in Jordan tried to obtain entry permits through the Israeli embassy in Amman. This placed enormous strain on the embassy, which was not set up to handle so many requests. During the summer, hundreds of Palestinians lined up each day outside the embassy to request a permit, with only about ten percent of them succeeding in entering the building.<sup>200</sup>

Salama Muhammad 'Abd al-Karim Sweiti, 46, from Jordan, wanted to visit his brother, who lives in Dura, Hebron District. In 1997, his brother submitted through the Palestinian DCL more than ten requests for a visitor's permit. The Israelis rejected all of them. Sweiti went to the Israeli embassy in Amman five times to obtain permission to enter Israel, each time waiting from 11:00 P.M. to 2:00 P.M. the following day. Because of the many applicants, Sweiti never succeeded in entering the building.<sup>201</sup>

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200. This description was provided by Iyad Menasreh, who works on the B'Tselem project in Bani Na'im village. An employee of the Israeli consulate in Amman indicated that, in the summer of 1997, the embassy would be able to handle no more than 350 requests for a permit per day (*Yediot Aharonot*, Weekend Supplement, 20 June 1997).

201. The testimony was given on 2 July 1997 in Amman to Iyad Menasreh for B'Tselem.

The continuing freeze on family unification following the transfer of powers in the West Bank, and the limited quota of family-unification approvals in the Gaza Strip meant that a separated family had almost no chance to live together in the Occupied Territories. For this reason, and because there was little likelihood of obtaining a visitor's permit, many relatives who had entered the Occupied Territories to visit their relatives remained after their visitor's permit had expired. According to the Israeli authorities, the number of such persons was about 31,000 in April 1997.<sup>202</sup>

According to PA officials, Israel's figures are not correct and the status of many persons whom Israel considers "illegal visitors" has changed in the meantime.<sup>203</sup> So, for example, as Jabber Asfor, head of the Palestinian DCL in Ramallah, indicated to B'Tselem on 3 July 1997, of the list of 4,800 "illegal visitors" provided by Israel, only 1,000 fall within this classification, and all of them are the spouses of residents. PA officials also added that Israel admits the list contains errors.<sup>204</sup>

Israel contends that its limitations on family unification and extension of visitor's permits are intended to pressure the PA into ensuring that visitors leave the territory under PA control after their permits have expired, in accordance with its undertaking under the Oslo Agreements.<sup>205</sup> The pressure was applied prior to having found a solution to the problem of separated families, which is also required under the Agreements.

The PA opposes in principle acting to deport these visitors from the Occupied Territories. Hassan Abu-Hashish, a member of the coordination committee, informed B'Tselem that, "Despite the

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202. On 14 April 1997, the Government Press Office published "Unilateral Measures Taken by the Palestinian Authority in Violation of the Oslo Accords," which stated that, "The Palestinian Authority unilaterally allowed 31,000 persons to remain in the Occupied Territories beyond the allowed period, and failed to take action to expel them."

203. By becoming a resident, being registered on the identity card of the parent, obtaining a permit to study, leaving the Occupied Territories, and the like. The information was provided by, among others, Khalid Salim at a meeting with the Coalition for Family Unification on 3 June 1996.

204. Jabber Asfor provided this information to B'Tselem on 3 July 1997.

205. As indicated, for example, to Jabber Asfor by officials of the Israeli DCL (Asfor informed B'Tselem on 3 July 1997). Even before the signing of the Cairo Agreement, the legal advisor of the Ministry of Foreign Affairs, Yoel Singer, indicated that Israel would monitor the number of Palestinian visitors in the autonomous areas, and if a large number of visitors were found to remain there after expiration of the permits, the border crossings would be closed. *Ha'aretz*, 14 February 1994.

existence of an agreement that we are trying to comply with, we linked this matter to that of family unification, so that a person whose permit has expired would subsequently receive approval of family unification."<sup>206</sup>

In addition to Israel's pressure on the PA, Israeli authorities deport "illegal" visitors at every step of the way, e.g., during document checks at checkpoints. For this reason, relatives staying in the Occupied Territories without a visitor's permit live in constant fear, and many refrain from leaving their dwellings. Palestinians who were deported from the Occupied Territories under such circumstances are not allowed to visit at a later date.

The number of relatives that Israel has deported from the Occupied Territories since the transfer of powers is unknown. Lt. Col. Henry Levy, head of the Israeli contingent of the Registry Subcommittee, claims that "he does not believe" that visitors whose permits have expired are deported.<sup>207</sup>

Azmakneh Mahmud a-Traireh, 41, a resident of Bani Na'im village, stated in her testimony to B'Tselem:

I married Mahmud in Jordan in 1977. We were both born here, but in 1967, Mahmud left with his family. We have eight children... Already in 1987 I requested family unification for him. Israel rejected the application, but we only found out about the rejection in 1994. Until then, I would regularly ask about the request, but the officials always said there was no answer....

In August 1994, Mahmud entered the West Bank on a visitor's permit. B'Tselem workers told us to go to the Civil Administration, where they told us to submit a new request, but first he had to leave, they said.

The permit expired at the end of September, and the authorities did not agree to extend it. He stayed here without a permit. He tried to extend it, but they said he had to leave. My daughter Tahani, who was then fourteen, was recorded on Mahmud's permit, and the officials said that she also had to leave. B'Tselem intervened, and "Captain Lior" agreed to remove her from her

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206. Abu-Hashish made this statement to B'Tselem researcher Fuad Abu-Hamed on 29 August 1996.

207. Lt. Col. Levy made this comment in a telephone conversation with HaMoked in August 1996.

father's permit. "Captain Lior" promised Mahmud that, if he leaves, he would be granted family unification. Mahmud did not want to leave his children, and he had nothing to do in Jordan, so he stayed for about two years.

In November 1996, the army captured him and detained him for four days. We asked where he was, but they did not reply. Then they took him to the Allenby Bridge and deported him.

Mahmud returned as a tourist in November 1996, stayed for fifteen days and left again. A month later, he returned again as a tourist. He received a permit for three months. We tried to renew the permit, but the authorities refused. Since then, he remains here without a permit.

This situation is very difficult for us. It is hard for him to work as a salesman because they seize him at checkpoints, cause him problems, and tell him that he has to leave. They make him wait two, three hours, take his passport, and then return it and tell him to go back to Jordan. There is nothing for us in Jordan. Here we have a house, land, our homeland, a place for the children. All of the children are now listed on my identity card.

A year ago we submitted, through the Palestinian Authority, a request for family unification. Each time we go to the Palestinian Ministry of the Interior to check about the application, they tell us that Israel has frozen the family-unification process.

Mahmud left for Jordan two weeks ago. The reason was that he could not work here because of all the times he was held at the checkpoints. Again we have the problem of obtaining a visitor's permit for him.<sup>208</sup>

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208. The testimony was given to B'Tselem researcher Yuval Ginbar at a-Traireh's home on 13 November 1997.



*Azmakneh Mahmud a-Traireh and her children: Fatma, Shadiyeh, Tahani, Salem, and Sara'a.*

### ***Restoration of Residency Revoked by Israel***

Upon transfer to the PA in November 1995 of the power to issue documents to exit the Occupied Territories, the limitations on the length of time Palestinian residents of the Occupied Territories are allowed to remain abroad were revoked. Also nullified was the power of Israel to revoke residency on the grounds that the resident had stayed abroad.<sup>209</sup> Furthermore, the Latecomers Committee, which handled Palestinian requests to reinstate their residency, was abolished.<sup>210</sup>

Regarding Palestinians who had previously lost their residency in the Occupied Territories, the Interim Agreement provides that, "A Joint Committee will be established to solve the reissuing of identity cards to those residents who have lost their identity cards."<sup>211</sup> The handling of applications that had been submitted

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209. Khalid Salim so informed B'Tselem in February 1997.

210. The committee, operated by the Civil Administration, was abolished pursuant to art. I(5) of chap. 1 of the Interim Agreement, which stated that the Civil Administration would be abolished; however, the Civil Administration continues to operate.

211. Art. 28(3) of Annex 1, Appendix III of the Interim Agreement.

to the Latecomers Committee prior to the transfer of powers and were not handled was frozen until establishment of the joint committee.<sup>212</sup>

Because of the dispute between the parties negotiating this issue, no decision was reached on restoration of residency. At first, Israel argued that the purpose of the committee was to discuss only the printing of new identity cards to replace those that Palestinian residents of the Occupied Territories had physically lost, while the Palestinian side maintained that the purpose was to restore residency status.<sup>213</sup> Now the parties are disputing how to classify persons entitled to restoration of residency, in accordance with the year in which their residency status was revoked.<sup>214</sup>

The delay in arranging the return of 100,000 Palestinians whose residency was revoked perpetuates family separation because many of them have relatives who live in the Occupied Territories.

### **C. Bureaucracy-Related Problems**

The Oslo Accords and their manner of implementation grant Israel supremacy over the PA. In almost every area related to family unification, the PA is not empowered to make decisions without Israeli approval. Therefore, the Palestinian DCLs only provide a link between Palestinians and the Israeli authorities. The PA's activities are limited to receiving requests from Occupied Territories residents (through the PA Ministry of the Interior), forwarding them to the Israeli DCLs, receiving answers from the latter, and passing them on to the residents. The Palestinian side of the CAC is allowed to call for a reconsideration of

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212. Stated, for example, in a letter of 3 December 1995 from Lt. Oren Namani, of the office of the legal advisor of the Civil Administration in the West Bank, to attorney Leah Tsemel.

213. On 3 June 1996, Khalid Salim so informed the Coalition for Family Unification. Israel's position contradicted letters sent previously by the office of the legal advisor of the Civil Administration in the West Bank, such as: "... It was agreed that a joint Israeli-Palestinian committee would be established in order to solve problems of renewing identity cards of residents who had lost their residency" (letter of 9 January 1996 from Lt. Oren Namani, acting head of the legal department, in the name of the legal advisor of the Civil Administration in the West Bank, to attorney Leah Tsemel).

214. HaMoked and B'Tselem were so informed on 25 March 1998 by a senior official of the PA.



requests that are rejected by Israel, but here, too, the final determination is Israel's alone.

In addition to ultimate decision-making power, Israel also has sole power to set procedures for the family-unification process and visitation in the Occupied Territories. In this way, Israel continues to impose the same limitations that existed prior to the Oslo Accords, with no meaningful change having been implemented.

Israel also retained power over the technical implementation of the procedures. Contrary to the terms of the agreements, Israel did not transfer to the PA the necessary apparatus to issue documents and certificates or the central computer that enables administration of the population registry. Therefore, the PA is technically unable to perform the civil procedures it was to handle, like family unification and registration of children. Since December 1998, the PA itself can issue identity cards, as the agreements provide.<sup>215</sup>

Israel continues to issue the documents itself and requests, in exchange, the relevant fees paid by the Palestinians. For this reason, Israel is willing to handle only requests that entail payment of fees to it by the residents. Israel refuses to handle requests where the fees are paid only to the PA, which are less than the Israeli fees. Israel has rejected the PA's request that it receive the fees that Israel collects in these matters.

In August 1996, Israel and the PA agreed that residents would pay a fee both to Israel and to the PA, i.e., two fees for one request.<sup>216</sup> In early 1998, the parties agreed to change the fees. The new fee was 20 Jordanian dinars (about NIS 100), which was to be paid to the PA upon submission of the request, and NIS 50 to Israel upon approval.<sup>217</sup>

The PA often refrains from forwarding requests to Israel, such as requests to register children, when it does not consider the matter urgent. According to PA officials, the requests are not forwarded in order to prevent Israel from obtaining fees for matters concerning the population registry, in the hope that the PA will perform these services and be able to collect the fees.<sup>218</sup>

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215. Stated on 29 November 1998 by Lt. Col. Shazar to HaMoked.

216. For a family-unification request, a resident must pay a fee of NIS 359 to Israel and NIS 100 to the PA. The Israeli and Palestinian authorities collect the fee although the family-unification process is frozen. The fee for registering a child born abroad is NIS 85 to Israel and NIS 22 to the PA.

217. Where a request is rejected, the parties agreed that the PA would pay the sum to Israel. A senior PA official provided this information to HaMoked on 25 March 1998.

218. The information was provided to HaMoked in May 1997 by sources in the PA Ministry of the Interior in Gaza.

The parties agreed to cancel the "year of entitlement" obligation of a person whose request for family unification is approved. The Civil Administration argued that following the decision, such an individual would have to wait only a few days to obtain an identity card.<sup>219</sup> Requests of residents to HaMoked indicate that in many cases, obtaining an identity card for relatives still takes almost twelve months, even without the "year of entitlement," because of the duplication and complications involved in the process. In early 1998, the parties agreed that where family unification is approved, the relative located outside the Occupied Territories may enter immediately and receive an identity card within seven days.

The bureaucratic procedures Israel employs in its relations with the PA do not meet the minimal criteria of proper administration. Israel does not provide the PA with written confirmation of submission of a request and only provides verbal notice of its response when the Israeli and Palestinian DCLs meet.

The involvement of two separate authorities in the handling of requests for family unification, visits, and registration in the population registry results in bureaucratic duplication, and makes these processes more complex and lengthy than before the Oslo Agreements.<sup>220</sup> The severance of relations between the Israeli and Palestinian sides resulting from an Israeli-government decision also affects proper administration of the procedures.

Neither the Palestinian nor Israeli authorities provided information to the Palestinians about the new bureaucratic procedures and the division of powers among the various bodies after the transfer of powers. As a result, the lack of transparency under which Israel dealt with family unification over the years continues as it was prior to the Oslo Agreements.

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219. The information was provided in a letter of 4 February 1997 from Lt. Col. Alice Shazar to HaMoked.

220. Jabber Asfor informed B'Tselem on 3 July 1997 that many requests for a visitor's permit are not handled within months. Nasser Maflah, head of the Palestinian DCL in Tulkarem, indicated to B'Tselem in August 1998 that applicants often have to wait a month or more to obtain a visitor's permit.

A.A, born in 1961, submitted in February 1996 a request for family unification on behalf of his wife, P.H., who belongs to High Court of Justice Population I. He submitted the application at the population registry offices in Qalqilya and paid the relevant Palestinian and Israeli fees.

In June 1996, HaMoked contacted the Civil Administration to determine the status of the application. In September, the Civil Administration informed HaMoked that the PA did not forward the request to Israel.<sup>221</sup> A.A. returned to the population registry offices in Qalqilya, where officials told him that his request had not been forwarded to the Israelis since he had not enclosed proof that P.H. belongs to the High Court Population.

In September 1996, A.A. submitted another request for family unification and again paid the relevant fees to the Israeli and Palestinian authorities. Over the next few months, he went to the population registry offices to ask about his request. The officials told him that they had forwarded the request to the Israelis and were waiting for a response.

In June 1997, HaMoked contacted the Civil Administration about the request. The officials there answered that they had not received the request.<sup>222</sup> A.A. went back to the population registry offices, where he was told that his request had been delayed and would be forwarded within forty-eight hours. On 3 July 1997, a senior official at the Palestinian population registry informed HaMoked that the request had been forwarded to Israel in October 1996, and that he had written confirmation of this. Repeated requests by HaMoked to receive a copy of the confirmation remained unanswered.

A.A. did not want to submit a third request for family unification, because it would entail another payment of NIS 460, and it still had not been determined where the last request had disappeared to. When he ultimately decided to submit another request in December 1997, the PA refused to receive it, claiming that Israel had not processed his previous request.

Following HaMoked's intervention, A.A. submitted the third request. He has not yet received an answer.

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221. Letter of 12 September 1996 from Lt. Col. Shazar to HaMoked.

222. Letter of 19 June 1997 from Lt. Col. Shazar to HaMoked.

### **Return of 1967 Refugees to the Occupied Territories**

The Oslo Accords provide that a committee would be established to "decide by agreement on the modalities of admission of persons displaced from the West Bank and the Gaza Strip in 1967..."<sup>223</sup> It was agreed that, in addition to representatives of Israel and the PA, representatives of Jordan and Egypt would also be members of the committee.

On 7 March 1995, the quadra-partite Committee for 1967 Refugee Matters met, with representatives of Israel, the PA, Jordan, and Egypt participating. The PA, Jordan, and Egypt took a joint position, demanding that Israel allow one million refugees and their families to return.<sup>224</sup> According to the PA, this number includes Palestinians who were living outside the Occupied Territories at the time of the Six-Day War; Palestinians who left the Occupied Territories during or immediately after the war; Palestinians whose residency in the Occupied Territories had been revoked by Israel; and Palestinians whom Israel deported. Furthermore, the three parties demanded that Israel allow the spouses and children of those Palestinians to enter the Occupied Territories.<sup>225</sup> Israel only agreed to consider the return of Palestinians who had been compelled to leave the Occupied Territories as a direct result of the war, whose number it estimated at 200,000 - 400,000 persons.<sup>226</sup>

The joint summary issued by the committee stated that it had been decided to continue the negotiations and "to find a quick solution to this problem in order to vitalize the peace process."<sup>227</sup>

The committee met several more times but reached no conclusion on who would be allowed to return to the

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223. Art. XXVII of the Interim Agreement; art. XVI of the Cairo Agreement.

224. *Ha'aretz*, 5 March 1995, 7 March 1995.

225. The information was provided by Nabil Sh'ath, the PA's minister for cooperation, in an interview with "The Voice of Palestine."

226. As stated in newspaper reports according to "officials of the Ministry of Foreign Affairs." See *Ha'aretz*, 7 March 1995.

227. *Ha'aretz*, 8 March 1995.

Occupied Territories. It last met in February 1996 in Cairo.<sup>228</sup>

The return of Palestinians who left the Occupied Territories in 1967 and their family members could solve many family-unification problems in that many relatives for whom residents of the Occupied Territories want family unification are 1967 refugees or their descendents.

## Criticism

Despite the undertaking stipulated in the Interim Agreement "to promote and upgrade family unification" in order "to reflect the spirit of the peace process," the Oslo Agreements have not led to any meaningful improvement in family unification in the Occupied Territories.

Israel continues to have sole decision-making power over unification and separation of every family in the Occupied Territories. Israel unilaterally determined that family unification will continue to be based on a limited annual quota set prior to the Interim Agreement, even though the quota clearly fails to meet the needs of the population. The PA strongly opposed this position. As a result, family unification in the West Bank was frozen for more than two years. The ones who suffered were the Palestinians, who were left with no means to attain family unification.

The dispute with the PA led Israel to neglect thousands of requests that had accumulated over the years and had not been handled because the quota had been met in those years. Since Israel continued to have the sole power to approve requests for family unification, it should have handled these requests within the quotas for 1996 and 1997.

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228. According to Brig. Gen. Oren Shahor, Coordinator of Government Operations in the Occupied Territories, as reported in *Ha'aretz* on 27 November 1996, the committee's activity stopped as a result of the suicide attacks in February-March 1996. Shahor added that the parties agreed to renew the discussion in the first half of December 1996. The committee has not renewed discussions and has not reached any agreement on the return of the 1967 refugees.

In 1998, the family-unification process was renewed in the West Bank according to a quota of 1,200 approvals a year. Israel and the PA currently have more than 13,000 requests for family unification in the West Bank that have not received responses. If the present quota is maintained, these requests will be resolved only in 2006. Requests submitted today will have to wait a decade for approval. This means that if a resident now marries a non-resident, they will be able to live together in the West Bank in ten years, if at all.

Israel revoked its requirement that relatives for whom a request for family unification has been submitted wait outside the Occupied Territories, separated from their family. However, Israel did not undertake to enable such relatives to enter the Occupied Territories with visitor's permits and wait there for an answer. Since Israel almost never allows relatives to visit in the Occupied Territories, there is a strong suspicion that no change will actually take place, and families will have to remain separated for months and years before their requests for family unification are approved.

The PA chose to satisfy half of the annual quota with relatives from abroad who are living in the Occupied Territories. This determination will enable couples who are currently living together illegally to arrange their status in the Occupied Territories, but will prevent many other couples from living together in the Occupied Territories.

Since the Oslo Accords, the authorities have placed new bureaucratic obstacles to family unification and visitation. Residents of the Occupied Territories currently have no contact with the Israeli authorities even though the latter decide the fate of their requests. This administrative system keeps the procedures hidden and makes monitoring difficult.

The duplication of authorities involved in the process of family unification since the transfer of powers, and the lack of information provided to the residents by both the Israeli and Palestinian authorities relating to the new procedures increased the confusion and time required to handle requests. The procedures followed by Israel in its relations with the PA are inconsistent with the rules of proper administration required of every Israeli governmental body.

Israel has delayed the work of the committees that are supposed to deal, according to the Oslo Agreements, with the restoration of residency to Palestinians whose residency in the Occupied Territories was revoked, and with the return of the 1967 refugees. Most of the separated families in the Occupied Territories have relatives who are not residents but were residents in the past, or who are among the 1967 refugee population or their descendants. The lack of progress in establishing the committees blocks the way for the unification of these families.

# Chapter Five: Registration of Children

## 1. Registration of Children before the Oslo Accords

Prior to 1987, Israel registered in the population registry children sixteen and under, one of whose parents is a resident of the Occupied Territories.<sup>229</sup> These children were allowed to reside in the Occupied Territories with their resident parent.

In 1987, Israel changed the relevant military order and stipulated that a child whose mother is not a resident of the Occupied Territories would not be registered in the population registry, even if the father is a resident.<sup>230</sup> As a result, thousands of Palestinian children, some of whom were born in the Occupied Territories, were prevented from living there with their fathers. The ramifications of the change were particularly grave because in most of the divided families, the wife was not a resident of the Occupied Territories.<sup>231</sup> Children with a resident mother and a non-resident father were not allowed to be registered in the population registry and live in the Occupied Territories.<sup>232</sup>

The change in the military order resulted in siblings having different status, with the elder ones being listed in the population registry and holding the status of permanent resident, and the younger children not being registered or entitled to live with their families in the Occupied Territories.

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229. The registration is performed pursuant to the Order Relating to Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5729-1969, sec. 11A.

230. *Ibid.*, sec. 11(A), as amended by Order No. 13208, of 13 September 1987. An identical order was issued in the Gaza Strip.

231. According to a 1993 survey conducted by al-Haq covering 1,643 Palestinian families whose request for family unification had been rejected, seventy-four percent of the requests dealing with couples had been submitted by resident husbands on behalf of their wives. Al-Haq, Paper for World Conference on Human Rights (Vienna, June 1993); in seventy-two percent of the separated nuclear Palestinian families handled by HaMoked, the resident husband requested that his wife be allowed to live with him in the Occupied Territories.

232. Concerning these children, they must be registered in the population registry before they reach the age of five, otherwise they will be considered aliens (see the reference in footnote 230 above).

The only way fathers could register their children was by applying for family unification on their behalf. This was necessary even though the children's father is a resident, and even though some of the children had lived in the Occupied Territories much of their lives. Israel's family unification policy made it unlikely that these requests would be granted.

In cases of divided families seeking HaMoked's assistance, forty-five percent of the children were not registered in the population registry (1,426 children). In 92.1 percent of the cases, the mother was not a resident.

In January 1995, a military order was issued that revoked the amendment of 1987. This order stipulated that every child under eighteen is allowed to be registered in the population registry in the Occupied Territories if one of the child's parents is a resident, and if it is shown that the child's permanent place of residence is in the Occupied Territories.<sup>233</sup> This order was never applied, Civil Administration officials rejecting outright Palestinian requests to register their children under the new order. Therefore, the harsh policy continued, under which Israel denied the right of residents of the Occupied Territories to live with their children in their home, until November 1995, when the registration power was transferred to the PA.

Palestinian adults born in the Occupied Territories who had lived their entire lives there but had not been registered as a child because of the family's mistake also had to go through the family-unification process. Israel refuses to offer a simple procedure to register these persons, and requires their families to submit a family unification request on their behalf.

The same procedure is also required for children where the Islamic Court, which rules on personal-status matters, appointed guardians who are residents of the Occupied Territories. Israel refuses to allow such guardians to register the child on their identity cards and grant them the status of a permanent resident, even though these guardians are residents and their legal status is equivalent to that of a parent. For the child to be recognized as a resident, the guardian must submit a request for family unification, which will almost certainly be rejected.

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233. Order Relating to Identity Cards and Population Registry (Judea and Samaria) (No. 1421), 5755-1995, which replaces sec. 11A of the Order Relating to Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5729-1969.



## 2. Registration of Children after the Oslo Accords

### A. Registration of Children under Age Sixteen

The Interim Agreement empowers the PA to register in the population registry, without Israel's approval, "... all persons who were born abroad or in the Gaza Strip and the West Bank, if under the age of sixteen years and either of their parents is a resident of the Gaza Strip and West Bank."<sup>234</sup>

However, since Israel did not transfer to the PA the central computer for registering the population, Israel also continued to control this process. As with other procedures, the PA serves only as a broker between residents wanting to register their children and the Israeli authorities.

During the initial months of the transfer of powers, no children were registered because of the dispute between the parties over fees. Another dispute, which remains unresolved, involves registration of children who are not present in the Occupied Territories. According to the PA, Israel directed that children between five and sixteen who are entitled to be registered in the population registry may be registered only after they enter the Occupied Territories as visitors.<sup>235</sup>

Upon transfer of the power over registration of children, PA personnel examined previously filed requests to register children. Officials in the PA Ministry of the Interior office in Ramallah found that Israel had not processed more than twenty percent of requests to register children, even though the parents had provided the requisite documents and paid the fee. Some one thousand children in the Ramallah area were not registered in 1996, even though they were entitled to registration. They consequently had no status, which prevented them from receiving various services. To correct this, the ministry office in Ramallah again obtained the relevant documents from the parents and forwarded them to Israel.<sup>236</sup>

The Interim Agreement does not relate to registration of children with guardians. Children with non-resident parents but guardians who are residents continue to be refused registration in the population registry. In such cases, Israel requires the guardian to submit a request for family unification, with negligible chances of approval.

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234. Art. 28(12) of Annex III, Appendix I of the Interim Agreement. The definition of a minor under this article is a person under sixteen, a regression in comparison with the definition in the military order referred to in the previous footnote.

235. This information was provided to HaMoked and B'Tselem on 5 February 1998 by a senior official of the PA.

236. This information was provided to B'Tselem on 21 August 1996 by officials of the PA Ministry of the Interior in Ramallah.

## **B. Registration of Children Aged Sixteen to Eighteen**

The Interim Agreement does not relate to the registration of children between sixteen and eighteen. The military order, which provides for the registration of children under eighteen one of whose parents is registered in the population registry, continues to apply to them.<sup>237</sup> Despite this, Israeli DCLs ignore the order and refuse to deal with requests to register these children other than through a request for family unification. The PA does not pressure Israel to comply with the order.

HaMoked tried to solve the problem faced by these children by pursuing the case of 'Ilan Shaqir. 'Ilan was born in Russia in 1979. His parents, Dr. 'Ilan 'Ali Shaqir, a resident of Abu Dis, Bethlehem District, and Nesterenko Petrovna, a Russian citizen, divorced shortly after he was born, and he remained in Russia with his mother. In 1991, his mother remarried. The child, who did not get along with his stepfather, came to live, pursuant to a visitor's permit, with his father in Abu Dis. The Islamic Court subsequently appointed the father guardian of his son.

Because of the prohibition on registering in the population registry Palestinian children whose mother is not a resident of the Occupied Territories, Dr. Shaqir submitted, in July 1994, a request for family unification on behalf of his son. The request remained unprocessed for a long time, during which the youth turned sixteen.

Starting in January 1996, the Civil Administration contended that handling of the request had been frozen, just like other applications for family unification of children sixteen and above, and that the process would be handled by the PA when the procedures for family unification would be agreed upon by the two sides.<sup>238</sup> However, the request had been submitted to Israel and the fee paid well before the transfer of powers, while the child was still a minor, but the request had not been processed. The Israeli DCL rejected the request to register the youth, which the PA forwarded to Israel in April 1996.

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237. Art. XVIII (4)(a) of the Interim Agreement retains the validity of military orders issued by the military government if they are not inconsistent with provisions of the agreements; also, sec. 7 of the IDF Proclamation Relating to Implementation of the Interim Agreement (Proclamation No. 7), of 23 November 1995.

238. Letter of 5 September 1996 from Lt. Col. Alice Shazar, head of the international organizations division of the Civil Administration in the West Bank, to HaMoked.

While waiting all these years, Ilan continued to live with his father. He had no legal status in the Occupied Territories, no rights, and was subject to arrest and deportation.

In April 1997, HaMoked petitioned, in *Shaqir*, the High Court of Justice on behalf of Ilan and his father, requesting that the Court order the Israeli DCL to approve the registration, pursuant to the relevant military order, of Palestinians aged sixteen to eighteen. HaMoked subsequently added other petitioners, who were also Palestinians aged sixteen to eighteen whom Israel had refused to register.

In its response, the State argued that, following the transfer of power over the population registry to the PA, Israel was allowed to approve a request for residency in the Occupied Territories only if the request was submitted to it by the PA. The State further argued that it no longer had the authority to implement the military order of January 1995. The State indicated that Shaqir's request for residency, forwarded to Israel by the PA, was discussed and approved. As for the other petitioners, Israel stated that only after the PA forwards requests dealing with them would the circumstances of each case be reviewed and decided.

In November 1997, the High Court of Justice accepted the State's position in its entirety and denied the petition, declining to rule on the fundamental question dealing with the registration of children aged sixteen to eighteen.

### **3. Consequences of the Family-Unification and Registration-of-Children Policies**

Children in split families are compelled to live with one of their parents, and siblings often find themselves living apart from each other. Children who are not registered in the population registry are not allowed to live in the Occupied Territories with both their parents. Even if one of their parents lives in the Occupied Territories as a resident, they are permitted to see the parent only during brief visits. Children from the same family who are registered in the population registry are forced to suffer the prolonged absence of the non-resident parent and separation from their unregistered siblings.

Children in families reuniting in the Occupied Territories every few months on the basis of visitor's permits suffer a cyclical severance from one of their parents and their siblings. The unregistered children are compelled to accustom themselves to moving from country to country and to repeated separations from their immediate family. As a result,

these children have no permanent center of life to give them a sense of security and stability. Furthermore, they have no continuity in their education and social life.

According to psychological research, children, primarily very young children, suffer from changes in their external environment and from severed relations with their immediate family. Israel's policy on family unification and registration of children leads to prolonged periods of separation between children and their parents and frequent movement from place to place. Such circumstances severely affect these children and can cause irreversible damage to their development.

Ninety-two percent of unregistered children of separated families being assisted by HaMoked were twelve years old or younger when the family first contacted HaMoked. Fifty-eight percent of the registered children were in that age category. Of the unregistered children, at the time the family contacted HaMoked for assistance, sixty-two percent were five years old and under; thirty-two percent were two and under.

### ***Psychological Consequences of Separation of Children from their Parents***

Research conducted by UNESCO after World War II indicated that severance of a child from his or her parents and surroundings was much greater than the damage caused by the war itself:

When we study the nature of the psychological suffering of the child who is a victim of war, we discover that it is not the fact of war itself... which have affected him emotionally.... It is the repercussion of events on the family affective ties and the separation with his customary framework of life which affect the child, and more than anything the abrupt separation from his mother.<sup>239</sup>

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239. T. Brosse, *War-Handicapped Children* (Paris, 1950), quoted in the commentary to the Protocol, p. 909.

According to psychological studies, changes and upheavals in a child's external surroundings are liable to damage or stop his or her physical, emotional, intellectual, social, and ethical development.<sup>240</sup> A long period of separation between child and parent is liable to damage the child irreversibly. The younger the child, the shorter the time after which the parent's absence will be experienced as a permanent loss, which is accompanied by profound insecurity. Infants and small children separated from their parents for more than a few days are liable to suffer from diminished quality of contact – a shallower contact providing less security. For infants up to eighteen months, "such moves from the familiar to the unfamiliar cause discomfort, distress, and delays in the infant's orientation and adaptation within his surroundings."<sup>241</sup> Any change in routine causes the child to suffer a loss of appetite, digestive problems, difficulty in sleeping, and weeping.

Achievements resulting from an intimate relationship with a permanent parental figure are easily lost by children up to age five where the relationship with the parent is lost. For example, after separation from their mother, young children lost control over their bodily functions and their ability to verbally express themselves. Most children under five suffer from a parent's absence lasting more than two months.

For school-age children, severance of relations with a parent primarily affects achievements based on identification with social demands, prohibitions, and ideas the parent instills in the child. If a child feels abandoned by a parent, such identification often does not occur.

Numerous changes in surroundings at this age remove many children from the domain of educational influences and lead directly to disorderly, anti-social, and even criminal behavior.

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240. These statements and those presented below are taken from Anna Freud, Joseph Goldstein, Albert Solnit, *Beyond the Best Interests of the Child* (New York: The Free Press, 1973) 31-43. See, also, N. Boothby, E. Ressler, D. Steinback, *Unaccompanied Children: Care and Protection in Wars, Natural Disasters and Refugee Movement* (New York: Oxford University Press, 1998) 174.

241. Freud, Goldstein, and Solnit, *Beyond the Best Interests of the Child*, p. 32.

# Chapter Six: The Legal Aspect

## 1. International Law on the Right to a Family Life

Under international law, the power to decide whether to allow foreigners to enter a country lies within the sole discretion of that country.<sup>242</sup> For this reason, most international human rights conventions do not include unequivocal rights in the matter of immigration, and states did not undertake to allow entry for the purpose of achieving family unification.<sup>243</sup> The Convention on the Rights of the Child is the only convention that explicitly encourages the signatories to enable family unification of their citizens and residents, through allowing entry of family members, as follows:

In accordance with the obligation of States Parties under Article 9, paragraph 1 [to ensure the child's right to live with both parents], application by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.<sup>244</sup>

The Convention on the Nationality of Married Women requires signatory states to enable every foreign woman married to a citizen of the state to obtain the citizenship held by her husband, at her request, through special and preferred citizenship procedures.<sup>245</sup>

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242. *Havana Convention on the Status of Aliens*, 22 AJIL (1928), Supp. 136, 137; Lassa Oppenheim, *International Law: A Treatise*, vol. 1, H. Lauterpacht (ed.) (London: Longmans, 1950) 291.

243. Law professor Richard Plender noted that, to attain consensus on the obligations of a state to protect the family, drafters of the Covenant on Civil and Political Rights chose to neglect the effect of migration law on family unification. Richard Plender, *International Migration Law*, rev. 2nd ed. (Dordrecht, Holland: Nijhoff, 1988) 366. In other UN conferences, the states did not reach agreement on the right of migrants or refugees to family unification in their new country. See "New Article on Family Reunification," UN Doc. A/CONF.78/DC.4, 31 January 1977; Atle Grahl-Madsen – Rapporteur of the Geneva Working Group, *Territorial Asylum* (Stockholm: Almqvist and Wiksell, 1980) 65.

244. Art. 10(1). See Eliahu Abram, "The Child's Right to Family Unity in International Immigration Law," 17 *Law and Policy* 4 (1995) 397.

245. Convention on the Nationality of Married Women, art. 3(1). The Convention was opened for signing and ratification pursuant to UN General Assembly Resolution No. 1040(XI) on 29 January 1957 and took effect on 11

Furthermore, several fundamental principles of international law, incorporated in various conventions, relate to the obligation of states to protect the rights of the families of its citizens and residents:

- the right of every person, without any limitation due to race, nationality, or religion to marry and to found a family.<sup>246</sup>
- the family is defined as the natural basic unit of society, entitled to protection and assistance by the state.<sup>247</sup> This protection is required especially at the time of establishment of the family and as long as it is responsible for taking care of children.<sup>248</sup>
- prohibition on arbitrary or illegal invasion of privacy of a person, or the arbitrary or illegal intervention in his or her family or home.<sup>249</sup>

A declaration adopted by the United Nations expands the rights of the family that a state is obligated to respect to include families of foreigners living within its borders. In this context, the Universal Declaration requires the signatory states to respect the right of a foreigner to protection against the arbitrary or illegal invasion of privacy, or the arbitrary or illegal intervention in his or her family or home, and the right "to choose a spouse, to marry, to found a family."<sup>250</sup>

International humanitarian law also requires states to respect the rights of the family in occupied territory. Article 46 of the Hague Regulations of 1907, which deal with the law and customs of land wars, stipulates that, "family honor and rights... must be respected." These regulations,

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August 1958. Israel is party to the Convention. Residents of the Occupied Territories are not citizens, but the Convention applies to "all non-self-governing... territories for the international relations of which any Contracting Party is responsible" (art. 7). According to this definition, Israel is required to apply the Convention to residents of the Occupied Territories, even following establishment of the PA in 1994, though they are not citizens. See John Quigley, "Family Reunion and the Right to Return to Occupied Territories," 6 *Georgetown Immigration Law Journal* (1992) 223, 249-250.

246. Art. 16(1) of the Universal Declaration of Human Rights, of 1948.

247. Art. 16(3) of the Universal Declaration of Human Rights; art. 3(1) of the International Covenant on Civil and Political Rights; art. 10(1) of the International Covenant on Economic, Social and Cultural Rights, of 1966.

248. Art. 10(1) of the Covenant on Economic, Social and Cultural Rights.

249. Art. 17 of the International Covenant on Civil and Political Rights; see, also, art. 12 of the Universal Declaration of Human Rights.

250. Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live (General Assembly Resolution 40/144, 13 December 1985), art. 5. Residents of the Occupied Territories, even though they are not nationals, are not foreigners, so this declaration does not apply to them. It is mentioned here to show the criteria relied on by states in matters relating to rights of families of foreigners on their soil.

which apply to the military government in occupied territory, are considered part of customary international law, and are binding, therefore, on the IDF in the Occupied Territories in all its activities dealing with the civilian population there.

Article 27 of the Fourth Geneva Convention Relating to the Protection of Civilians in Time of War, of 1949, stipulates that residents of occupied territory "are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs."<sup>251</sup> This provision is one of the pivotal humanitarian clauses of the Convention, and Israel recognizes its duty to apply such humanitarian provisions in the Occupied Territories. The commentary of the International Committee of the Red Cross on the Convention states that, "Respect for family rights implies not only that family ties must be maintained, but further that they must be restored should they have been broken as a result of wartime events."<sup>252</sup>

Article 26 of the Geneva Convention provides that, "Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible." Article 74 of the First Additional Protocol to the Geneva Convention requires the State Parties to "facilitate in every possible way the reunion of families dispersed as a result of armed conflicts..." Although Israel is not a signatory to this protocol, it indicates the standards established in international law on this subject.<sup>253</sup>

Forcing families to live apart inevitably severely prejudices the right to maintain a proper family life. Since international law grants broad protection to family life, many jurists maintain that states must protect family rights, including the duty to protect family unity, by allowing immigration of family members into their territory.<sup>254</sup>

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251. This article, contrary to many articles of the Convention, which are applicable only during the first year after the termination of hostilities, continues to apply in occupied territory throughout the period of occupation (art. 6).

252. Pictet, *Commentary*, pp. 202-203.

253. The United States maintains that article 74, which deals with family unification, and articles 77 and 78, dealing with the rights of children, are positive rights that should be incorporated into law so that in time they will be considered part of customary international law, which obligates all states. See Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford: Clarendon Press, 1989) 62-66.

254. See Gerassimos Fourlanos, *Sovereignty and the Ingress of Aliens* (Stockholm: Almqvist and Wiksell, 1986) 94, 99, 110; Maryan Green, *International Law* (London: Pitman, 1973) 106; Plender, *International Migration Law*, p. 366.



International law is not static, and as it develops over the years, new rights emerge. Lillich maintains that international law is developing in a manner that changes the traditional principle of international law, according to which a person who is not a national of the state has no right to enter it.<sup>255</sup> The American Society of International Law stated that recognition of human rights supporting family unification is steadily increasing.<sup>256</sup> Fourlanos even argues that the principle of family unification is part of customary international law, and that states must, therefore, allow foreigners to enter for family unification.<sup>257</sup>

By not allowing Palestinian residents of the Occupied Territories to live together with their non-resident spouses, Israel leaves them two choices: family separation or leaving the Occupied Territories with the whole family. In doing this, Israel violates its obligation under international law to respect and protect the marriage relationship of Occupied Territories residents, safeguard the family rights of the residents, refrain from intervening in family life, and respect their right to live in their country.

Allowing emigration as the sole possibility for a person to live with his or her family violates the prohibition under article 49 of the Fourth Geneva Convention, which states, "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory... are prohibited, regardless of their motive."

## **2. Rights of the Child under International Law**

Several human rights conventions obligate the signatory states to provide, without discrimination, special protection and assistance to every child.<sup>258</sup> The major convention dealing with children's rights is the Convention on the Rights of the Child, of 1989, which emphasizes the

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255. Richard Lillich, *Human Rights of Aliens in Contemporary International Law* (Manchester: Manchester University Press, 1984) 91.

256. Thomas Burgenthal and Louis Sohn (eds.), *The Movement of Persons across Borders* (Washington D.C.: The American Society of International Law, 1992) 70.

257. Fourlanos, *Sovereignty and the Ingress of Aliens*, pp. 108, 118.

258. Art. 24(1) of the International Covenant on Civil and Political Rights; art. 10(3) of the International Covenant on Economic, Social and Cultural Rights; art. 3(2) of the Convention on the Rights of the Child.

importance of the family framework and family integrity for children and prohibits arbitrary or unlawful interference in the child's family.<sup>259</sup>

The Convention stipulates in article 18(1) that,

States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child

and in article 9(1) that,

States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

The latter provision leads to the requirement, set forth in article 10(1), that parties to the Convention handle requests for family unification of a child or the child's parents "in a positive, humane and expeditious manner."

In the event of separation between a child and one of his or her parents, the Convention, in article 9(3), requires the parties to respect the right of the child "to maintain personal relations and direct contact with both parents on a regular basis..."

Other rights of the child that are incorporated in this and other conventions are the right to be registered immediately after birth and to obtain citizenship, especially where the failure to do so leaves the child without a status,<sup>260</sup> the right to a suitable standard of living, social security, and health and education services.<sup>261</sup>

Article 38(1) of the Convention requires the signatory parties "to respect and to ensure respect for rules of international humanitarian law

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259. Art. 16(1) of the Convention. Art. 1 provides that, "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." The UN adopted the Convention on 20 November 1989 in Resolution No. 44/25. Israel ratified it in 1991. Israel and the other signatories undertake in art. 2(1) to ensure the rights secured by the Convention "to each child within their jurisdiction without discrimination of any kind..." Despite this undertaking, Israel does not consider the Convention to constitute a "legal framework that obligates it in its exercise of powers in the Occupied Territories" (stated to B'Tselem in a letter of 29 April 1997 from attorney Yael Ronen, of the legal department of the Ministry of Foreign Affairs).

260. Art. 7 of the Convention; art. 24 (2) and (3) of the International Covenant on Civil and Political Rights.

261. Articles 24 and 26-28 of the Convention.

applicable to them in armed conflicts which are relevant to the child." Among these rules is article 77(1) of the First Additional Protocol of 1977 to the Geneva Convention, which stipulates that, "Children shall be the object of special respect and shall be protected against any form of indecent assault." Article 78(1) of the Protocol prohibits removal of children to a foreign country. According to the ICRC's commentary on this provision, "everything possible should be done to avoid separating children (especially young children) from their natural protectors." In this context, the Commentary states that, "In general an interruption of family and affective ties can have dire effects on the development of children"<sup>262</sup>

Israel's family unification policy in the Occupied Territories is inconsistent with its obligations under international law to act in the best interest of the child and not to separate children from their parents. Israel does not allow children with a non-resident parent to live in the Occupied Territories, and as a result children are compelled to live without one of their parents.<sup>263</sup> Furthermore, the restriction placed on family members visiting the Occupied Territories is inconsistent with the obligation to ensure the separated child's right to maintain a regular relationship with his or her parents.

Not only does Israel's policy violate the Convention on the Rights of the Child, it also violates the provisions of the First Additional Protocol of the Geneva Convention, which applies to it pursuant to article 38(1) of the Convention on the Rights of the Child.

The Oslo Accords defines a child entitled to be registered in the population registry as a minor under the age of sixteen, whereas the Convention on the Rights of the Child defines an adult as a person who has reached the age of eighteen. Israel places many obstacles before Palestinian children between sixteen and eighteen who want to be registered in the population registry, thereby violating its undertaking to register every child within its jurisdiction and to respect the child's right to be a citizen.

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262. Y. Sandoz, C. Swinarski, B. Zimmerman (eds.), *Commentary on the Additional Protocols to the Geneva Conventions* (Geneva: ICRC, 1987) 909, 912 (hereafter: *Commentary on Protocol*).

263. For the psychological consequences of this separation, see above, p. 108.

### **3. Right to Family Unification in Regional Law on Human Rights**

Since Israel is not party to any regional human rights legal system, regional human rights instruments do not impose obligations on her. However, examination of family-unification-related provisions of those conventions is useful in indicating the relevant obligations undertaken by member states.

#### **A. The European Convention for the Protection of Human Rights and Fundamental Freedoms**

Article 8 of this convention secures the right of a person to respect for his private and family life and prohibits interference by a public authority in exercising this right. By examining the commentary on this article by European human rights bodies, it is possible to examine application of the International Covenant on Civil and Political Rights, which has a similar provision, as it relates to rights of the family.

The European Court of Human Rights ruled that, in becoming a party to the Convention, a state undertakes to limit its right to control the entry and exit of foreigners from its territory.<sup>264</sup> In several judgments, the Court ruled that the right to a family life includes the right of a foreigner to maintain a family life with his or her spouse who is resident in the state, and live there with their children and other relatives. The judgments further hold that deportation of the foreign spouse infringes the foreigner's and the native spouse's right to their private and family life. The European Court has consistently held that only a substantial public interest may be sufficient to allow the state to prejudice family life by deportation of the foreign family member. This principle of law applies even in extreme situations, where the foreign spouse clearly endangered public order and was convicted of penal offenses. Even then, the state is required to give significant consideration to the damage to family life inherent in deporting the foreign offender.<sup>265</sup>

#### **B. The Helsinki Agreement<sup>266</sup>**

The Helsinki Agreement was signed in 1975 at the end of a conference on security and cooperation in Europe. The signatories are the

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264. See, for example, Application No. 2142/64, *X. v. Austria and Yugoslavia*, VII Yearbook 314 (1964).

265. For a survey of relevant judgments on the subject, see Appendix IV.

266. Final Act of the Conference on Security and Cooperation in Europe (Helsinki, 1975).

European countries, the United States, the Soviet Union, and Canada. The Agreement is a political declaration, though according to the International Law Association, it also has certain characteristics of a binding legal agreement.<sup>267</sup>

The Agreement expresses the participating states' willingness to handle "in a positive and humanitarian spirit" and as expeditiously as possible requests for family unification, giving special attention to urgent requests, such as those submitted by old or ill persons. The states also decided to lower where necessary the fees collected for family unification requests; that until family unification is achieved, the states will enable meetings and contacts between the family members; that submission of family unification requests would not modify the rights of the applicant or of his or her family; and that denied applications for family unification may be renewed at reasonably short intervals.

As for family visits, the Agreement urges the states to respond favorably to requests for visits in their territory. Approval of requests for permission to visit is to be granted within a reasonable time, special handling is to be provided in urgent cases, and an acceptable fee is to be charged for the permits.

The Agreement also provides that, "The participating states will examine favorably and on the basis of humanitarian considerations requests for exit or entry permits from persons who have decided to marry a citizen from another participating state."

The Agreement shortened family unification procedures in the participating states.<sup>268</sup> At the time, the Agreement was considered a major step forward in the battle of Jews in the former Soviet Union to join their families in Israel and other countries, and provided support for the arguments of persons working on their behalf.<sup>269</sup> The head of the permits department of the former Soviet Union's Ministry of the Interior reported that, following the Helsinki Agreement, among other things, the Soviet government instituted significant changes to facilitate family unification and contacts between relatives.<sup>270</sup>

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267. Report of the International Committee on Human Rights, International Law Association, Belgrade Conference, 1980, pp. 59-70.

268. See Foulanos, *Sovereignty and the Ingress of Aliens*, p. 117; Plender, *International Migration Law*, p. 365.

269. See Plender, *International Migration Law*, p. 365; Nathan Sharansky, *Fear No Evil* (New York: Random House, 1988) 125, 169, 357, 421.

270. An interview with the head of the permits department, Rudolph Kuznetsov, appeared in the Soviet periodical *Novoyah Vermiyah* ("The New Time"), no. 28 (1987), and was translated into Hebrew in *Soviet Union Jewry*, vol. 11 (1988) 312.

## 4. State Laws Related to Family Unification

An examination of the laws that various states apply to their citizens in family unification matters follows. Although Palestinian residents of the Occupied Territories are not citizens, the connection between them and the Occupied Territories is that of citizens to their state: they were born in the Occupied Territories or lived there for some years after arriving as refugees; most are not citizens or residents of another country; and they are not immigrants, so they do not have another homeland to which they can return to live with their respective families.

For this reason, it is appropriate to examine family unification policy relating to Palestinian residents of the Occupied Territories in accordance with the criteria set by states for citizens seeking family unification.

### A. State Laws

Immigration laws in most states allow citizens to live with their immediate families in the local citizen's country. This right also applies in states having rigid laws concerning persons wanting to immigrate to the state for reasons unrelated to family unification.<sup>271</sup>

For example, European states and the United States grant citizenship or permanent residency to a foreign spouse and minor children automatically or after a few procedural conditions are met. These laws enable members of a citizen's nuclear family to enter and stay temporarily in the state while their request for citizenship or residency is examined. In certain circumstances, the laws also enable more distant relatives to enter.<sup>272</sup> Most states, among them the European community, also expand these protections and rights for relatives of residents, and allow family unification in their territory for aliens who are within the resident's immediate family.<sup>273</sup> Many states also enable

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271. Burgenthal and Sohn, *Movement of Persons*, pp. 69-70; Furlanos, *Sovereignty and the Ingress of Aliens*, pp. 87, 106-107.

272. *Ibid.* (Burgenthal and Sohn); "Asylum Policy and Family Reunification Policy in Ten European Countries," report by the International Helsinki Federation for Human Rights, 1985.

273. *Ibid.* (Burgenthal and Sohn), p. 68; S. Thomsen, "The Legal Position of the Spouse and Family Members," in J. Frowein and T. Stein (eds.), *The Legal Position of Aliens in National and International Law* (Max Planck Institut, Berlin, 1987) vol. II, pp. 1949, 1947, 2084; Furlanos, *Sovereignty and the Ingress of Aliens*, p. 102. See, also, Guy Goodwin-Gill, *International Law and the Movement of Persons between States* (Oxford: Clarendon Press, 1978) 197.

the spouse and minor children of a foreigner working within its borders to enter or join the spouse or parent after a fixed period of time.<sup>274</sup> The UN High Commissioner for Refugees stated that, "Family unification has continued to be a factor of major importance in obtaining the admission of refugees and displaced persons to the most traditional countries of immigration."<sup>275</sup>

Research conducted by the American Society of International Law, which collected and analyzed the accepted principles on movement of persons across borders, recognized that the concept of "family unity" has been adopted by major legal systems of the world, and that,

There is thus a general tendency... to improve the rules relating to the simultaneous, or as prompt as circumstances permit, admission of members of the family of a person crossing the border or already living in the country. The principles that are emerging are likely to become generally accepted in the near future."<sup>276</sup>

## **B. Israeli Law**

The Law of Return allows every Jew in the world to receive Israeli citizenship. The law also grants this right to non-Jews who are the spouse, child, or grandchild of a Jewish immigrant, and to the spouse of a child or grandchild of a Jewish immigrant.<sup>277</sup> Israeli Jews are entitled to be united with their families in Israel, and their Jewish foreign family members are entitled to enter the state and receive citizenship under the Law of Return.<sup>278</sup> This is also true for relatives of Israeli citizens who live in the Occupied Territories.

The law does not grant automatic citizenship to non-Jewish spouses of Israeli citizens. The law provides that the Minister of the Interior has absolute discretion whether to grant these spouses the status of permanent resident or of citizen.<sup>279</sup> The Ministry's policy in such cases is

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274. International Labor Organization, *General Survey of the Reports Concerning Migrant Workers*, Geneva, 1980, p. 120; International Committee on Migration, *Migration of Family Reunion* (M/SAI/II/19), November 1975, p. 5.

275. Report of the UNHCR, General Assembly: Thirty-fourth Session, Supplement No. 12, UN Doc. A/34/12, New York, 1979, p. 12.

276. Burgenthal and Sohn, *Movement of Persons*, pp. 65, 70.

277. The Law of Return, 5710-1950, sec. 4A (a).

278. The Ministry of the Interior recently ruled that a non-Jewish spouse of an Israeli Jew who is not a new immigrant is not entitled to receive citizenship pursuant to the Law of Return. This policy was recently upheld by the High Court of Justice.

279. Sec. 7 of the Citizenship Law, 5712-1952: sec. 2(A)(4) of the Entry into Israel Law, 5712-1952.

to grant the spouse permanent residency, and this only "after a test period of five years and three months after the decision to approve the request for family unification."<sup>280</sup> The spouses' children are entitled in any event to automatic citizenship by law because one of their parents is a citizen.<sup>281</sup>

In sum, Israel's policy on family unification in the Occupied Territories does not meet the criteria set by most states, or even by Israel itself. These criteria recognize the right of citizens to live together with their families in the state, and allow relatives to stay with the citizen while the authorities examine the request for citizenship or residency.

### ***Defining the Family under State Laws***

Most states define "family" broadly to include relatives who are not part of the nuclear family, which comprises only the couple and their minor children.

The First Additional Protocol to the Fourth Geneva Convention requires the participating states to facilitate family-unification procedures. The ICRC's commentary to the Protocol states, at page 859, that:

It would be wrong to opt for an excessively rigid or precise definition... Thus the word "family" here of course covers relatives in a direct line... spouses, brothers and sisters, uncles, aunts, nephews and nieces, but also less closely-related relatives, or even unrelated persons, belonging to it because of a shared life or emotional ties... In short, all those who consider themselves and are considered by each other to be

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280. From a letter of 11 January 1998 from attorney Miriah Bakshi, of the office of the legal advisor of the Ministry of the Interior, to The Association for Civil Rights in Israel.

281. The Citizenship Law, sec. 4(A). Since the occupation of East Jerusalem and imposition of Israeli sovereignty over its residents in 1967, the Ministry of the Interior has also been responsible for family unification of East Jerusalem residents. Its policy there is rigid and forces prolonged family separation. For an extended discussion of this matter, see HaMoked: Center for the Defence of the Individual and B'Tselem, *The Quiet Deportation Continues* (Jerusalem, September 1998).



part of a family, and who wish to live together, are deemed to belong to that family.

The European Human Rights Court interpreted the concept "family life" to include "at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life."<sup>282</sup> In defining family life, European human rights bodies also rely on factors like economic or psychological dependence.<sup>283</sup>

According to the American Society of International Law, states must include within the concept "family" every person who is totally dependent on the citizen or resident and is part of that person's household.<sup>284</sup> Many states do provide a broader definition of family than blood ties, and include within it situations of maintenance of a joint household, living together, and economic or emotional dependence.<sup>285</sup> Second-degree family relations (like aunts and uncles, nieces and nephews, and grandparents), in some cases only where the relatives are dependent on the citizen, are a basis for family unification in some states, such as the United Kingdom, France, Canada, Australia, Sweden, Denmark, and Holland.<sup>286</sup>

Even the law and practice in Israel reflect a broad perspective of the concept of family, though only for its Jewish population: section 4(A) of its Law of Return enables the child or grandchild of Jews, even those who are not minors, to immigrate to Israel.

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282. *Marckx v. Belgium*, 31 Eur Ct. HR (ser. A) (1979).

283. *Short Guide to the European Convention on Human Rights* (Strasbourg: Council of Europe Press, 1991) 65. See, also, Plender, *International Migration Law*, p. 231.

284. Burgenthal and Sohn, *Movement of Persons*, p. 65.

285. Fourlanos, *Sovereignty and the Ingress of Aliens*, p. 89.

286. Plender, *International Migration Law*, pp. 374-379; Thomsen, "The Legal Position of the Spouse and Family Members," pp. 57, 83, 202, 249, 266-268, 511, 1319. The European Community even enables relatives dependent on a foreign worker or his or her spouse to join the spouse in the country where the worker is employed. See Plender, pp. 368-369.

## 5. High Court of Justice Rulings on Family Unification in the Occupied Territories

Israel's Supreme Court, sitting as the High Court of Justice, has been called upon to exercise its judicial-review powers concerning the policy denying family unification in the Occupied Territories and the application of that policy in individual cases of Palestinian petitioners.

Prior to 1990, dozens of residents of the Occupied Territories whose application for family unification had been rejected petitioned the High Court of Justice. The number of petitions increased after Israeli policy became more restrictive in 1984. In 1985-1986 alone, some forty spouses filed petitions.<sup>287</sup> The petitioners requested the Court to overrule the discretion exercised by the military administration, and allow them to live in the Occupied Territories with their spouses and children as a normal family, which they contended was their right.<sup>288</sup>

Except for one case,<sup>289</sup> the High Court of Justice denied all the petitions, accepted all the State's claims, and ruled that the petitioners did not have a right to family unification. Not even one Justice questioned the legality of Israel's policy or the reasonableness of its application in specific cases.<sup>290</sup>

One of the principal ways in which the Supreme Court protects human rights is by requiring that a state authority, empowered to deny rights for a public purpose, must take into account the violation of the right and give it appropriate weight in making its decisions. The power to infringe a right does not turn that right into a benevolence, which the authority can ignore. Prof. Yitzhak Zamir summarized this manner of judicial protection of human rights, as follows:

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287. According to par. 15 of the Statement of the State Attorney's Office in *'Awashreh*.

288. Since 1990, the Court has not stated a position on family unification in the Occupied Territories. Following the more than eighty petitions that have been filed with the High Court of Justice since then, most through HaMoked, the State proposed an arrangement agreed upon by the petitioners, which led to the withdrawal of the petitions prior to the Court ruling on them. In one case, *'Awashreh*, the petition was not withdrawn. The Court ruled that, in light of the proposed arrangement, it was inappropriate for it to rule on the government's policy of family unification in the Occupied Territories.

289. *Samareh*, decided by the Court in 1980.

290. For a list of the High Court of Justice cases on family unification, see Appendix V.

It is insufficient that the law empowered the authority to infringe a right, nor is it sufficient that the exercise of that power should serve a public purpose. Rather, the authority must also take into account the possibility of infringement of the right and the degree of the infringement, together with the other substantive considerations, and give it appropriate weight. The appropriate weight will require the authority to attain the proper balance under the circumstances of the case between the public need and the individual's right. If the authority does not take into account this consideration, or does not give it appropriate weight, such failure provides sufficient grounds to nullify its decision.<sup>291</sup>

The Supreme Court has not taken this path, adopted in many other judgments, when considering petitions dealing with the denial of family unification of residents of the Occupied Territories.

### **A. The Right Infringed**

In its judgments on family unification in the Occupied Territories, the High Court of Justice starts with the assumption that the military government is empowered to prevent the entry of foreigners into the occupied territory. This power, the Court holds, is consistent with international law on belligerent occupation.

On the basis of the "authority" to prevent entry into the Occupied Territories, the Court ruled that residents of the Occupied Territories do not have a "right" to family unification. The Court refused to acknowledge infringement of any right of the resident in cases where the military administration exercised its power to prevent the foreign spouse from staying in the Occupied Territories: "We are not dealing with a vested right that was denied to the petitioner," the Court held, ruling that family unification is a "special act of benevolence of the authorities, grounded on humanitarian considerations."<sup>292</sup>

This approach of the Court, according to which the absence of "a vested right," incorporated in law, means there is no right whatsoever but only "an act of benevolence" granted by the authorities, contradicts the general jurisprudence of the Supreme Court on human rights. Most of the human rights recognized in the Israeli legal system were not "vested rights." Until the enactment of the Basic Laws in 1992, the Court recognized human rights that were not explicitly mentioned in statutes, and such recognition was granted precisely in those cases

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291. Y. Zamir, *The Administrative Power* (in Hebrew), vol. 1 (Jerusalem: Nevo, 1996) 104-105.

292. 'Awad, p. 285.

where the law empowered the authorities to infringe or deny those rights.

In cases involving the issue of family unification, the Supreme Court had before it numerous Israeli and international-law sources on which it could rely to establish the right infringed by denial of residents' requests for family unification with their spouse and children.<sup>293</sup> This right is not a "vested" right secured by law and immune from violation, but a basic human right that must not be ignored, whose violation requires justification and the balancing of interests.

The right to establish and maintain family life was recognized by Israeli courts in other contexts as a fundamental and natural right of every person.<sup>294</sup> Israeli judgments are replete with the recognition of the family as the basic unit of human society, which must be protected.<sup>295</sup> The best interest of the child, including children's right to grow up with their parents and the right of the parents to raise their children are expressed in dozens of judgments as fundamental principles of Israeli law.<sup>296</sup>

The Court refused to acknowledge these rights with regard to Palestinian residents of the Occupied Territories, and ruled that international law is irrelevant to family unification in the Occupied Territories, because it does not posit any explicit duty to allow the entry of a foreigner into occupied territory for the purpose of family unification.<sup>297</sup> Other judgments emphasized that nothing precludes residents from living abroad with their families, so that no right to marry or establish a family is infringed.

The Supreme Court totally ignored the devastating effect that the State's policy denying spouses family unification had on their right to establish and maintain a family life. Even if the military government is not required to allow the foreign spouse to enter the occupied territory for the purpose of family unification, by refusing to allow entry, it prevents Palestinian residents from living with their spouse and children in their own country. Inevitably, the refusal infringes their right,

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293. Concerning these sources, see pp. 110-121 above.

294. See, for example, Civ. App. 232/85, *John Doe v. The Attorney General*, *Piskei Din* 40(1) 1.5; Civ. App. 488/77, *John Doe v. The Attorney General*, *Piskei Din* 32(3) 421, 435.

295. See, for example, Civ. App. 238/53, *Cohen et al. v. The Attorney General*, *Piskei Din* 8(4) 53; HCJ 693/91, *Efrat v. Director of the Population Registry*, *Piskei Din* 47(1) 749, 783.

296. See, for example, Civ. App. 2266/93, *John Doe, a Minor, et al. v. John Roe*, *Piskei Din* 49(1) 221, 235-236.

297. *Shahin*.

protected also in occupied territory, to a family life. This infringement requires explanation of the public or security interests that justify it.

## **B. The Public/Security Need**

The Court did not meaningfully examine the public need justifying Israel's family-unification policy in the Occupied Territories. The Court simply accepted the military government's argument that there are "security" consequences to allowing foreign spouses into the region, but it never examined the relevant security considerations and their weight. The Court refrained from making this examination even though in cases presented before it, the IDF allowed the foreign spouse to visit the region on visitor's permits, and did not argue that the spouse's continued stay in the Occupied Territories as a visitor endangered security in any way.

In addition to the undefined security considerations for its family-unification policy, the State also mentioned political, diplomatic, and economic considerations related to immigration into the Occupied Territories. The Court never deliberated on the question of whether the IDF is allowed to rely on these considerations. In its decisions in other contexts, the High Court of Justice ruled that the military government was forbidden to consider the political interests of the occupying state, Israel, but may only consider the interests of the residents of the occupied territory.<sup>298</sup> Concerning family unification in the Occupied Territories, the High Court of Justice did not apply this test, but merely reiterated the State's reliance on such considerations. For example, the President of the Supreme Court, Meir Shamgar, stated: "It is the respondent's duty... to also weigh the general security, political, and economic significance of the phenomenon, and its ramifications."<sup>299</sup>

The Court did not examine the relevance of the claim that family unification had become a way to immigrate to the Occupied Territories. It neither asked nor explained what is unacceptable in such immigration or how the immigration of spouses affects the legitimate interests of the occupying power. In most states, family unification is the main reason for allowing immigration, and it is unclear where the difference lies in the immigration of spouses into occupied territory.

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298. H CJ 390/79, *Dweikat v. Government of Israel*, *Piskei Din* 34(1) 1, 17; *Teacher's Society*, p. 794; H CJ 1285/93, *Estate of Shechter v. Commander of the Judea and Samaria Region*, *Takdin Elyon* 96(4) 15.

299. *Shahin*, p. 214. See, also, *Aljera*, p. 2; *Khalil*, p. 58.

The Court made no attempt to critically analyze the State's argument on the problem of immigration into the Occupied Territories, and never asked for or received a factual basis for these contentions, such as statistics on the immigration-emigration balance in the Occupied Territories. Nor did the Court examine the policy's inequality, which allows free immigration of Jews into the Occupied Territories but totally blocks the entry of Palestinians, despite their marriage and parental ties to residents of the Occupied Territories.

The actual purpose of the military government's policy was to alter the long-term demographic balance between Palestinians and Jews in the Occupied Territories. The Court did not expose this purpose, nor did it even try to expose it.

### **C. Balancing the Public/Security Need and the Right Infringed**

As mentioned, the Supreme Court did not find any infringement of human rights in cases where Israel denied family unification of spouses, and did not scrutinize the public interest justifying Israel's policy. According to its logic, there was, therefore, no reason to balance the infringement of the right to family life against a public purpose.

The Supreme Court adopted the State's position in its entirety. None of the Court's decisions examined whether the policy of denying family unification satisfies the elementary duty of an occupying power under international law to ensure the welfare of the local population and enable them to live normal lives. In this context, the Court did not examine the policy in light of long-term belligerent occupation, when the natural course of life requires persons to marry and establish families. The Court did not ask if the sweeping denial of family unification is appropriate where there is a close connection between residents of the Occupied Territories and Palestinians living abroad, and in light of the marriage patterns in extended family groups, even when borders separate them.

Contrary to its judgments in other contexts, the Court did not examine the reasonableness of governmental directives concerning family unification by taking into account whether administrative policy "is extremely rigid, ignores the reality in the relevant area, or creates gross inequity."<sup>300</sup>

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300. I. Dotan, *Administrative Directives* (in Hebrew) (Jerusalem: Nevo, 1996) 180.

## D. Reviewing Discretion in Specific Cases

The Supreme Court's approach supports substantive judicial review in individual cases, even where no vested right is infringed. For example, where a governmental authority refuses to grant a benefit, the Court examines in depth the reasonableness of the exercise of administrative discretion and determines whether all the relevant considerations, and those considerations alone, were properly weighed.

In only one case involving a petition for family unification in the Occupied Territories did the Court make such an examination. In that case – *Samareh* – Justice Barak made it clear that he does not think that residents of the Occupied Territories have a right to family unification, but ruled that the court must nevertheless examine the discretion leading to a decision in each and every case:

The truth is, the petitioners have no right to receive a permit [for family unification], but they have the right that the refusal to grant them the permit be based on appropriate considerations.<sup>301</sup>

From 1984 onwards, the Court reviewed Israel's rigid policy not to allow family unification other than in exceptional cases. The Court approved the change in policy:

The military authorities were allowed to restrict, as they did, the granting of permits only to exceptional humanitarian cases, and to cases where they are interested in responding favorably to a particular request on its merits for political, security, or social reasons.<sup>302</sup>

When the Court accepted the policy not to approve family unification for any spouse other than in undefined exceptional cases, it effectively relinquished its judicial function of examining whether the decision to deny the request for family unification in a specific case was based on appropriate considerations. The Court's refusal to review the discretion of the military administration in specific cases occurred in *al-Swafiri*, where the military administration argued that it does not have to indicate any of the considerations that led to the rejection of the petitioners' request for family unification:

The petitioners argue that the request for family unification was denied without giving reasons. I contend that the root of the argument lies in the mistaken perception of family unification. The policy is to limit as much as possible the granting of family unification, and to grant it only in extremely exceptional

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301. *Samareh*, p. 3.

302. *Khalil*, p. 85. See, also, *Sharab*, p. 673.

circumstances (or to further a governmental interest). There is, therefore, a need to give a reason and explanation when approving family unification, while refusal is no more than the implementation of the absence of any reason to deviate from the policy. To the best of my understanding, the petitioners must indicate the appropriate reasons for family unification, and it is not for me to indicate a special reason for refusing to deviate from the policy

Following this argument, the Court ruled, without explanation, that "it is inappropriate for this court to intervene in the respondent's considerations."

The Court developed a special rubric for family unification, whereby it will not intervene even though the military administration provides no reason or substantive consideration in the specific case. In commenting on this approach, Prof. Dinstein observed that the Court showed

too great a willingness to refrain from individual examination of the specific family-unification cases... Each and every petition to the High Court of Justice should be examined on its merits, in accordance with its unique background.<sup>303</sup>

The Court was also inflexible in cases where the petitioners argued that their cases were special humanitarian situations. Discussion of claims of special humanitarian circumstances was characterized by insensitivity, condescension, and a tone of censure. For example:

The petitioner knew very well, already before the twins were born, that his wife was not granted a permanent-residency permit. The petitioner's children from his first marriage are adults, and the youngest among them is fifteen. In essence, we are confronted by the desire of the resident of the region whose wife died to bring a second wife into the region from outside the region. In this matter, the policy is not to enable family unification of this type. We are unable to say that this policy, with all the difficulties that it raises, is so unreasonable as to require our intervention. The petition is denied.<sup>304</sup>

Or the comments of the then-President of the Supreme Court, Meir Shamgar:

The petitioner mentioned in his application that his left leg is paralyzed, for which reason he has a special need for the presence of his wife... He does indeed suffer emotionally from the separation from his wife....., but, unfortunately, this cannot be perceived as a

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303. Dinstein, "Family Unification in the Occupied Territories," pp. 228-229.

304. HCJ 11/86, *Ahmad Khativ v. Minister of the Interior et al.*, *Takdin* 86(1) 84, 86.



phenomenon that makes this case special in comparison to other cases.<sup>305</sup>

The Court did not find unacceptable the exception enabling family unification when the administration had a special interest that it be granted. The Court held that, as a rule for exercising administrative discretion, such an exception – granting a privilege to a particular person where the government has an interest in improving relations with the individual but not to any other – is proper. In other contexts, the Court rejected such an approach, considering it arbitrary and discriminatory. For example, Justice Moshe Landau stated, "Discrimination in favor of persons who are 'close to the throne' over ordinary people opposes the principles of democracy and the equality of all before the law."<sup>306</sup>

### **E. Function and Performance of the High Court of Justice on Matters of Family Unification in the Occupied Territories**

The Supreme Court neither designed nor enforced the policy that compelled thousands of Palestinian families to live apart or emigrate to live as a family unit. Israeli governments, IDF commanders, and the heads and officials of the Civil Administration are the ones directly responsible for the suffering of these families.

However, the Supreme Court served as a rubberstamp to this policy, both with regard to the general validity of the policy and in individual cases. The High Court of Justice purported to judicially review the acts of the military government, but in practice failed to do so.

The Court generally denies petitions of residents of the Occupied Territories in human rights matters, and tends to accept fully the military's position. In most such petitions, the Court is faced with specific security considerations. The justices' fear that judicial intervention could create a significant security risk plays an important role in their decision-making. On this point, Prof. David Kretchmer observed that, "The judicial system does not hasten to use its power in situations where it could be accused of responsibility for harm to state or public security."<sup>307</sup>

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305. *Aljera*. See, also, *Sharav*, p. 672.

306. HCJ 209/73, *'Ali 'Odeh (Lafi) v. Minister of the Interior*, *Piskei Din* 28(1) 13, 17-18.

307. David Kretchmer, "High Court of Justice Review of Demolition and Sealing of Houses in the Occupied Territories" (in Hebrew), *Klinghoffer Handbook on Public Law*, Y. Zamir (ed.) (1993) 305, 310.

Although the Court denied many of these petitions, in most of the cases, the justices clearly perceived the right infringed, as where demolition of houses or deportation was involved. The justices placed certain substantive restraints on the authority's power, such as requiring proportionality in demolition of houses, and procedural restraints, such as the demand that a right to be heard be granted. Several justices even questioned the legality of the means and its justification, such as Justice Heshin in cases of demolition of houses, and Justices Cohen and Bach on deportation.

On the matter of family unification, the High Court of Justice refused to recognize any right that is infringed as a result of Israel's policy. This refusal has occurred precisely in cases where no defined security risk exists: another Jordanian woman, another child will not endanger the security of Israeli residents or the IDF soldiers stationed in the Occupied Territories. Despite this, none of the justices raised any opposition or suggested a substantive or procedural condition to limit the infringement of the right of residents of the Occupied Territories to live together with their families.

The High Court of Justice ratified and sanctioned an inhumane policy. The concluding comments of then-President of the Supreme Court Meir Shamgar in his principal opinion on the subject indicate that the government's policy is blemish-free, and no other choice exists but to maintain it:

The respondent does not ignore the severe humanitarian problems and does not forego its willingness to examine each case according to its circumstances. It was entitled to conclude that where a certain phenomenon becomes massive, and encompasses many thousands each year, no possibility exists to continue to apply criteria that are purely personal. Rather, it is the respondent's duty, based on his considerations made in accordance with the law of war and on the nature of his function, to consider also the general security, political, and economic significance inherent in the phenomenon and its consequences... All of us hope that peace will also solve these problems, but their immediate solution in time of war, by allowing the movement of many – and not just a few – into the region held by IDF forces, cannot serve as a pretext for this court's intervention on the background of the petitions before us.<sup>308</sup>

However, as an institution, the Supreme Court stimulated a reevaluation of the military government's policy. Following the first petition filed by human rights organizations before the High Court of

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308. *Shahin*, pp. 215-216.

Justice, the military government announced in 1990 a liberalization of its policy, and granted a group of spouses the status of long-term visitors. In its judgment in this case, *'Awashreh*, the Court left the door open to the possibility of future judicial intervention and a departure from its past rulings. Since then, the Court has served as a kind of potential threat or risk factor to the government, in case the Court should change direction and exercise substantial judicial review, recognizing the right to family life. As an institution with the power to intervene, the High Court of Justice has thus contributed to bring about some change in the State's policy.

## Conclusions

Tens of thousands of Palestinian residents of the Occupied Territories are married to non-residents. Israel's rigid policy on family unification in the Occupied Territories separates spouses and tears children from their parents. The only way for these families to live together is by emigrating from the Occupied Territories.

Israel refuses to recognize the right of Palestinians to family unification in the Occupied Territories and considers approval of a request for family unification an act of benevolence. This report shows that Israel's position is dictated by political considerations, whose objective is to change the demographics of the Occupied Territories by blocking immigration of spouses of residents of the Occupied Territories into the area and by encouraging emigration of divided Palestinian families. This political consideration also dictates Israel's policy in other areas affecting Palestinian rights, among them establishment of Israeli settlements, revocation of residency in the Occupied Territories, including East Jerusalem, and the intentional creation of a housing shortage. Under international law, an occupying power is not allowed to take into account political considerations when determining policy involving occupied territory.

Israel's policy totally ignores the social reality existing in the Occupied Territories, in which marriage between residents and relatives from outside the area is extremely widespread. In employing this policy, Israel forces residents to make a cruel choice between family separation and leaving their homeland. The Israeli authorities, supported by the High Court of Justice, inflict ongoing suffering on hundreds of thousands of persons, restrict the development of children by violating their right to live with both their parents, create family instability, and rend the family unit. Israel commits these violations of human dignity, which are totally irreconcilable with the welfare of the population, even though they serve no security needs.

The Oslo Accords did not lead to improvement in Israel's family-unification policy in the Occupied Territories, although the Interim Agreement expresses the parties' undertaking "to promote and upgrade family reunification" in order to "reflect the spirit of the peace process." Israel continues to have decisive authority in determining which families will, or will not, be allowed to live together in the Occupied Territories. Israel unilaterally established that family unification in the Occupied Territories would continue to be subject to the annual quota

set prior to the Interim Agreement, despite the woeful inadequacy of the quota to meet the needs of the population.

Israel and the Palestinian Authority currently have more than 13,000 pending requests for family unification in the West Bank. If the quota remains as is, it will take until 2006 to meet these requests. Requests filed today will be approved almost a decade from now.

Family members, whose only desire is to benefit from the warmth and security of normal family life, continue to suffer from Israel's rigid family-unification policy. This policy contravenes international law, is inconsistent with Israel's policy within its own borders, and fails to meet the relevant criteria set by most of the world's nations.

Although the residents of the Occupied Territories do not have the status of citizens of the Occupied Territories, the relationship between them and the Occupied Territories is like that between citizens and their country. They were born there or lived there for many years after arriving as refugees. Most are not citizens or residents of another country and are not immigrants who came to the Occupied Territories from another country, so they have no other homeland to which they can go to live with their family. Their right to maintain a proper family life in the Occupied Territories is their basic right, which Israel may not deny.

## Recommendations

HaMoked and B'Tselem view family unification as a purely civil matter, whose handling should be transferred totally to the Palestinian Authority. Under such an arrangement, Israel would cease to be involved in family unification matters except for exercising its right to prohibit entry of persons endangering Israel's security.

The PA should be responsible for setting family unification policy in the Occupied Territories. In establishing and implementing its policy, the PA is obligated to act "with due regard to internationally-accepted norms and principles of human rights and the rule of law."<sup>309</sup>

HaMoked and B'Tselem are of the opinion that family unification in the Occupied Territories should also cover members of both the nuclear and extended family of a resident of the Occupied Territories. Determination of whether a person belongs to one of these categories must be made according to relevant, uniform, and clear criteria reflecting the social reality of family structure in the Occupied Territories.

### The Nuclear Family

The nuclear family includes a resident's spouse and children under the age of eighteen. In instances where children have duly appointed guardians, the relationship between child and guardian is like that of parent and child. A resident's nuclear family should be allowed to enter the Occupied Territories after presenting documents proving the family relationship. Furthermore, nuclear-family members should be allowed to stay in the Occupied Territories until decision is reached on their request for family unification, as is currently the custom for persons within the High Court of Justice Population.

Quotas restricting the right of nuclear-family members to family unification should not be set. Requests should be granted expeditiously and based solely on legitimate requirements, such as documented proof

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309. Art. 19 of the Interim Agreement (previously art. XIV of the Cairo Agreement). Israel also maintains that, "As far as the powers and responsibilities transferred to the Palestinians are concerned, they are responsible for their implementation in accordance with international norms and principles." Letter of 29 April 1997 from attorney Yael Ronen, of the department of the legal advisor, Ministry of Foreign Affairs, to B'Tselem.

of family relation, that are customarily required by immigration statutes in democratic countries, and on pure security considerations relating directly to the non-resident relative.

### **The Extended Family**

This category includes family members who do not belong to the nuclear family of the resident and are elderly, alone, or dependent on the resident and his nuclear family. Examples are aged parents of a resident or a resident's elderly sister who has no nuclear family of her own.

These relatives should be allowed to enter the Occupied Territories upon presentation of documents proving their dependence on the resident. The decision regarding family unification in these instances should be based on the merits of the particular case.

### **As Regards the Two Groups**

- The right to family unification includes the more restricted right of family visits across borders. For this reason, relatives of residents of the Occupied Territories should be allowed to visit them in an organized, regular manner.
- The procedures for allowing family unification and family visits should be conducted according to the rules of proper administration, whereby the authorities publish the procedures, provide prompt responses to requests, make decisions based on clear, published criteria, provide the specific reasons for rejection of a request, and offer an appeals procedure in the event of rejection.

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## **APPENDIXES**

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# Appendix 1

## Requests for Family Unification between 1985 and 1990

Year	Requests Submitted <sup>310</sup>	Requests Approved <sup>311</sup>	Source of Information
1985	3,000*	300**	*The Palestinian Non-Violence Research Center, in Sanabel Press Services, <i>Transfer Policy in Action</i> (Jerusalem, December 1989), p. 3. ** M. Benvenisti, <i>Lexicon</i> , pp. 21-22.
1987 to 1989	3,266	695	Response of the Minister of Defense, Yitzhak Rabin, to a parliamentary query of MK Yossi Sarid, 29 January 1990.
1988	–	300	U.S. State Department, <i>Country Reports on Human Rights Practices for 1988</i> , p. 1384.
1989	1,358	442	Response of the office of the Coordinator of Government Operations in the Occupied Territories to an inquiry of BTselem, November 1990.
1990	2,610	670	Response of the Minister of Defense, Yitzhak Rabin, to a parliamentary query of MK Yossi Sarid, 29 January 1990, and the response of the Minister of Defense, Moshe Arens, to a parliamentary query of MK Avraham Poraz, 13 May 1991.

310. When Israel instituted a harsher family unification policy, making approval extremely unlikely, many Palestinians refrained from submitting requests. Therefore, the figures do not represent the Palestinian population's actual need for family unification.

311. A request for family unification with the spouse often also included the applicant's minor children. The number of persons granted family unification is higher than the number of requests approved.

## Appendix 2

### **Violation of the High Court of Justice Agreements (Based on Complaints to HaMoked)**

In the summer of 1991, HaMoked started to deal with the issue of separated families in the Occupied Territories. HaMoked advises the families of their rights and submits requests on their behalf to the various authorities and the courts. Its activities encompass all the matters relevant to separated families: obtaining a visitor's permit for non-resident relatives, obtaining extensions of the visitor's permit, obtaining family unification, registration of children, reimbursement of fees, and more.

Until the end of 1996, HaMoked assisted 1,573 separated Palestinian families, most of them from the West Bank. Seven hundred and ninety of these families belong to High Court of Justice Population I, comprising thirty percent of that group, a large and representative sample of that population.<sup>312</sup>

As of the end of 1995, HaMoked had received 375 complaints from these families regarding various violations of the High Court of Justice Agreement. Another 143 families complained that the authorities had threatened them with the objective of making their family members who are protected under the agreement leave the Occupied Territories.

Another four hundred separated families assisted by HaMoked belong to High Court of Justice Population II. These families comprise 686 persons (400 spouses and 286 children).

Since February 1994, when the decision to recognize the rights of this class was made, seventy-six families sought assistance from HaMoked relating to various violations of the State's undertakings. Another sixty-three families complained that the authorities had threatened them to make family members protected under the agreement leave the Occupied Territories.

It may be assumed that separated families assisted by HaMoked suffered violations and threats in addition to those they reported to HaMoked.

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312. These families include 1,783 persons (790 parents and 993 unregistered children), almost thirty percent of High Court of Justice Population I. According to the 22 August 1993 Statement of the State Attorney's Office in *Hadreh*, High Court of Justice Population I contains 6,000 persons.

<b>Type of Violation</b>	<b>Number of Complaints: High Court of Justice Population I</b>	<b>Number of Complaints: High Court of Justice Population II</b>
Refusal to issue a visitor's permit	19 (5 percent)	6 (8 percent)
Refusal to extend a visitor's permit	98 (26 percent)	32 (42 percent)
Brief extension of a visitor's permit	64 (17 percent)	11 (15 percent)
Refusal to accept a request for family unification	20 (5 percent)	17 (22 percent)
Delay in handling a request for family unification (Population I)	140 (37 percent)	-
Other	34 (10 percent)	10 (13 percent)
<b>Total</b>	<b>375 (100 percent)</b>	<b>76 (100 percent)</b>
Cases accompanied by threat of expulsion	143	63

Most of the violations and threats occurred during the years immediately following the making of the agreements, but they also continued in later years.

	<b>Violations</b>		<b>Threats</b>	
	<b>Population I</b>	<b>Population II</b>	<b>Population I</b>	<b>Population II</b>
1990	–	–	1	–
1991	4	–	32	–
1992*	17	–	67	–
1993	138	–	23	–
1994**	57	55	3	50
Continuing violation/date unknown	147	2	10	4
<b>Total</b>	<b>375</b>	<b>76</b>	<b>143</b>	<b>63</b>

\* In November 1992, High Court of Justice Population I was expanded. Since then, it includes women and men, from the West Bank and the Gaza Strip, who entered the Occupied Territories between 1 June 1990 and 31 August 1992 to visit their spouse.

\*\* In February 1994, High Court of Justice Population II was recognized.

HaMoked received complaints about violations from families belonging to the High Court of Justice populations from all the Civil Administration districts in the Occupied Territories.<sup>313</sup>

<b>District</b>	<b>Number of Violations*</b>	<b>Number of Threats*</b>
Nablus	53 (19.8 percent)	45 (16.8 percent)
Tulkarem	81 (22.6 percent)	64 (17.8 percent)
Ramallah	29 (21.3 percent)	25 (17.7 percent)
Bethlehem	69 (62.1 percent)	39 (35.1 percent)
Hebron	33 (22.3 percent)	17 (11.4 percent)
Jenin	26 (27.7 percent)	10 (10.6 percent)
Jericho	1 (5.6 percent)	4 (22.2 percent)
Gaza	19 (38 percent)	2 (4 percent)
<b>Total</b>	<b>311</b>	<b>206</b>

\* The number in parentheses indicates the percentage, from among the families in the particular district who were assisted by HaMoked, of families whose rights under the agreement were breached or who were threatened.

This table indicates two principal findings:

- A. The Israeli authorities' violation of the High Court of Justice Agreements in all the Civil Administration districts indicates that the entire system of informing and instructing the Civil Administration branch office personnel about the agreements was handled negligently. Under the circumstances, there are grounds to believe that this negligence was intentional, the purpose being to reduce the number of families obtaining family unification in the Occupied Territories.
- B. The significant numerical differences between the various districts relating to the percentage of violations indicates that some districts were extremely negligent in implementing the agreements, or intentionally created difficulties for the residents. The situation was

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313. This table includes the violation of delay in responding to a request for family unification of a member of the High Court of Justice Population.

particularly grave in Bethlehem, where Civil Administration district officials violated the agreements in more than sixty percent of the cases of separated families handled by HaMoked, and made threats and demands that the non-resident relatives leave the region in more than one-third of the cases.

## Appendix 3

### **B'Tselem's Project in Bani Na'im**

Since the beginning in the summer of 1994, B'Tselem has been conducting a research and assistance project involving separated families in the village of Bani Na'im, near Hebron. B'Tselem monitors the family unification process, informs the families of their rights, and corresponds with the authorities. In addition to assisting the families, the objective of the project is to determine the principal problems related to family unification in the Occupied Territories. The following summary relates to one hundred separated families from Bani Na'im that B'Tselem assisted for more than three years.

#### **Description of the Separated Families**

*Out of eighty cases in which the spouses are separated,*

- In fifty cases, the resident husband seeks family unification with his wife.
- In thirty cases, the resident wife seeks family unification with her husband.
- Forty-seven couples are members of High Court of Justice Population I.
- Three couples are members of High Court of Justice Population II.
- Twenty-five couples are not members of the High Court of Justice Populations.

Sixty-six of the couples have children, the average number of children being 4.25. *Of the total of 281 children,*

- One hundred and fifty-seven children are registered in the population registry.
- One hundred and twenty-four were not registered when the family contacted B'Tselem for assistance.

*Out of twenty cases of other family relationships,*

- In thirteen cases, the parent seeks family unification for an adult child (ten cases for a son and three for a daughter).
- In one case, the resident seeks family unification for his mother.

- In five cases, residents seek family unification for a sibling.
- In one case, a resident seeks family unification for her sister-in-law.

### **The Families' Situation before B'Tselem's Involvement**

Fifty-five of the couples did not submit requests for family unification after Israel instituted the quota policy (August 1993), even though the policy recognized for the first time the right to family unification for spouses. Twenty-five other couples were waiting for a response to requests they had submitted after August 1993.

Of the twenty other families, fifteen did not submit a request for family unification after the quota policy went into effect, and five were waiting for a response to requests they had submitted.

Of the forty-seven families belonging to High Court of Justice Population I, thirty-five had not submitted after August 1993 a request for family unification, even though Israel had undertaken then to grant them family unification. Of these thirty-five families, in thirty-two cases a previous request had been rejected or received no response, and in three cases, the families had never previously submitted a request.

Six families submitted a request to the Latecomers' Committee before B'Tselem became involved, and were waiting for a response, some for several years.

### **Following B'Tselem's Involvement**

- Twenty-nine families submitted to the Civil Administration a request for family unification prior to November 1995, when the transfer of powers to the Palestinian Authority took place (twenty-four of these families are members of High Court of Justice Population I).
- Four families submitted a request to the Latecomers Committee, at the Civil Administration, prior to November 1995.
- Seven families submitted a request for family unification through the Palestinian Authority after the transfer of powers.
- One couple requested an identity card in connection with the Palestinian elections in January 1996.

Twenty-six families decided not to request family unification. The most common reasons for this were: moving to Jordan; inability to pay the application fee; lack of hope that the request would be approved; not wanting to remain separated during the period before an answer is received; departure abroad for several years.



### *Monitoring the Requests*

Separated families submitted seventy-five requests before and after B'Tselem became involved:

- Sixty-six of the requests were for family unification.
- Eight were made to the Latecomers Committee.
- One request was for an identity card in connection with the Palestinian elections.

#### *Of the sixty-six requests for family unification*

- Forty were approved, all for the spouse.
- The average wait for a response: approximately ten months.
- The average wait for persons in High Court of Justice Population I: approximately eight months.
- The average wait for the other couples: approximately seventeen months.

Only ten families received a response within approximately three months, the period within which Israel undertook to provide the response. Of them, nine belong to High Court of Justice Population I and the other belongs to neither of the High Court of Justice populations.

Two requests were rejected: one for family unification on behalf of a male resident's mother, and one for family unification on behalf of a female resident's son. The average time to receive notice of refusal was approximately fourteen months.

- Seventeen of the requests submitted to the Civil Administration have not yet received a response. These families have waited an average of more than four years.
- The seven requests submitted to the Palestinian Authority have not yet received a response. These families have waited an average of approximately two years.

#### *Of the eight requests to the Latecomers Committee*

- Four were rejected.
- Four had not received a response as of the date that the committee was disbanded, in November 1995.

The request for an identity card in connection with the Palestinian elections did not receive a response.

## **Principal Findings**

### **1. Residents' Lack of Information about the Procedures Necessary to Exercise their Rights**

Before B'Tselem became involved, most nuclear families not included in High Court of Justice Population I had not filed a request for family unification after August 1993, even though on that date the Israeli authorities initiated a policy allowing family unification for spouses. Most of the families belonging to High Court of Justice Population I, to whom the State undertook in August 1993 to grant family unification, were unaware of the new policy and did not request family unification after that date.

The authorities failed to publish the new policy and procedures. As a result, the residents did not know about their rights, as demonstrated by the above figures.

### **2. Prolonged Waiting Period**

Even prior to the Oslo Accords, the waiting period for obtaining a response to a request for family unification was long, much longer than the three months promised by the State: only some one-fourth of the applicants received a timely response. Families not included in High Court of Justice Population I had to wait close to an average of eighteen months for a response. The long delay resulted from the limited quotas, which carried the processing over to the following year. As a consequence of the long waiting period, the families lived in uncertainty and apart, as visits were not allowed during the waiting period.

The unanswered requests have been pending before the authorities for years because of the two-year freeze on the processing requests during the dispute between Israel and the Palestinian Authority, and because of the limited quota that was reinstated upon the renewal of the processing of requests for family unification.

## Appendix 4\*

### The European Convention on Human Rights<sup>314</sup>

#### Article 8 of the Convention stipulates:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### Decisions of the European Court of Human Rights

In the following cases, the European Court ruled that the deportation of an alien convicted of a criminal offense was a disproportionate violation of the individual's right to family life, even though the prevention of crime is a legitimate aim:

*Moustaquim v. Belgium*, 18 February 1991, Series A No. 193

*Beldjoudi v. France*, 26 March 1992, Series A No. 234-A, pars. 74-79

*Nasri v. France*, 113 July 1995, Series A No. 320-B, pars. 41-46

*Mehemi v. France*, 26 September 1997, Reports of Judgments and Decisions 1997 – VI, pars. 34-37

In the following cases, the European Court held that only a pressing social need could justify the interference in family life entailed by deporting an alien from the country in which his or her immediate family lives:

*Boughanemi v. France*, 24 April 1996, Reports of Judgments and Decisions 1996 – II, par. 41

*C. v. Belgium*, 7 August 1996, Reports of Judgments and Decisions 1996 – III, par. 31

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\* This appendix was prepared by attorney Eliahu Abram, Director, Legal Department, HaMoked.

314. European Convention for Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950).

*Berrehab v. The Netherlands*, 21 June 1988, Series A No. 138, pars. 28-29

In the following case, the Court ruled that the United Kingdom's immigration regulations both infringed the right to family life and the right to equality between the sexes (the regulations discriminated against women because they did not allow their foreign husbands or fiancés to enter the country):

*Abdulaziz, Cabales and Balkandi v. United Kingdom*, 28 May 1985, Series A. No. 94

## Appendix 5

### High Court of Justice Judgments on Family Unification in the Occupied Territories

HCJ 500/72	<i>Al-Tin v. Minister of Defense et al., Piskei Din 27(1)</i> 481
HCJ 489/76	<i>Tayeh et al. v. Minister of Defense et al.</i> (unpublished)
HCJ 802/79	<i>Samareh et al. v. Commander of the Judea and Samaria Region, Piskei Din 34(4)</i> 1
HCJ 692/82	<i>Mustafa et al. v. Military Commander of Judea and Samaria Region, Piskei Din 37(1)</i> 158
HCJ 263,397/85	<i>'Awad et al. v. Commander of the Civil Administration, Ramallah District, et al., Piskei Din 40(2)</i> 281
HCJ 354/85	<i>Abu Natzira v. Head of the Civil Administration, Gaza Strip, Takdin 85(3)</i> 60
HCJ 618,724,728/85	<i>Nasreh Khalil et al. v. Commander of Judea and Samaria Region, Takdin 86(2)</i> 84
HCJ 683/85	<i>Mashtaheh v. Military Commander of the Gaza Strip, Piskei Din 50(1)</i> 309
HCJ 739/85	<i>Da'amus et al. v. Military Commander for Bethlehem District et al., Takdin 86(1)</i> 57
HCJ 11/86	<i>Ahmad Khatib v. Minister of the Interior et al., Takdin 86(1)</i> 84
HCJ 13,58/86	<i>Shahin et al. v. Commander of IDF Forces in Judea and Samaria et al., Piskei Din 41(1)</i> 197
HCJ 106/86	<i>Majid Nammer al-Swafiri et al. v. Head of the Civil Administration in Gaza, Takdin 87(1)</i> 48
HCJ 137/86	<i>Aljera et al. v. Head of the Civil Administration in the Gaza Strip, Takdin 87(2)</i> 1
HCJ 209/86	<i>Alatrash et al. v. Head of the Civil Administration</i> (unpublished)

HCJ 263/86	<i>Rashamawi et al. v. Minister of the Interior et al.</i> , Takdin 86(2) 127
HCJ 673/86	<i>Al-Saudi et al. v. Head of the Civil Administration in the Gaza Strip</i> , Piskei Din 41(3) 138
HCJ 711/86	<i>Jabareh v. Commander of IDF Forces in Judea and Samaria</i> , Takdin 87(2) 18
HCJ 31/87	<i>Sharab v. Head of Civil Administration in Gaza et al.</i> , Piskei Din 41(4) 670.
HCJ 386/87	<i>Jabareh v. Commander of IDF Forces in Judea and Samaria</i> , Takdin 87(2) 104
HCJ 42/88	<i>Saba'aneh v. Commander of IDF Forces in Judea and Samaria et al.</i> , Takdin 88(1) 105
HCJ 360/89	<i>Tabib v. Commander of Judea and Samaria Region – Beit El</i> , Takdin 89(4) 14
HCJ 1979/90	<i>'Awashreh et al. v. Commander of IDF Forces in Judea and Samaria</i> , Takdin 90(2) 358
HCJ 2151/97	<i>Shaqir et al. v. Commander of IDF Forces in the West Bank Region et al.</i> (unpublished)

## Appendix 6

### Response of the Coordinator of Government Operations in the Occupied Territories\*

STATE OF ISRAEL  
MINISTRY OF DEFENSE

Office of the Coordinator of  
Government Operations in  
Judea, Samaria, and the  
Gaza Strip  
Mil. Post 01104 IDF  
Telephone: 03-6975351/02  
Fax: 03-6976306  
January 1999

B'Tselem

HaMoked: Center for the Defence of the Individual

Dear Sir/Madam:

Re: **Report of B'Tselem and HaMoked on Family Unification in the Territories**

1. The above-referenced draft report that was sent to us for a response presents a broad historical survey of family unification in the Territories from 1967 to the present time. Already at the beginning of our comments, we note that, because of the short time allowed us to formulate a response to the report, we shall focus our comments on those parts of the report dealing with family unification in the Territories today. We responded to some of the report's contentions, and to the degree that we did not relate to certain contentions does not, of course, indicate that we agree with their substance.

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\* Translated by B'Tselem

### **General Comments**

2. Unfortunately, the report does not present the reader with objective research of the issues, but often expresses extreme positions held by marginal elements among the Palestinians, and certainly does not reflect those of the Palestinians with whom we are negotiating. The report frequently presents unsubstantiated statements and even political views, ignoring the reality, the achievements reached in this area, and the distance that we have come since signing the political agreements with the Palestinians, notwithstanding the objective difficulties.
3. The error of the authors of the report is their reliance on the statements of marginal Palestinian representatives, who did not take part in the negotiations leading up to the Interim Agreement between Israel and the Palestinian side and are not involved in the ongoing implementation of it. For example: Khalid Salim was not involved in the discussions that preceded formulation of the Interim Agreement. Three years ago he was indeed the head of the Population Registry Subcommittee (hereafter: the Registry Subcommittee), but the Palestinian Authority (hereafter: the PA) removed him from his position a short time later. Two other persons mentioned in the report as having authority are Hassan Abu-Hashish and Salim Tamari. The first was not involved in negotiations, and his tasks were limited to dealing with registration matters only in the Ramallah area. The second was not a member of the Registry Subcommittee at all and never participated in its meetings.
4. The authors of the report surprisingly criticize the Interim Agreement. The Interim Agreement was signed following extensive, difficult, and thorough negotiations between Israel and the Palestinians. The agreement is rooted in negotiations between equals and did not result from compulsion. According to our attitude, there is no place for the patronizing attitude taken by the authors of the report, according to which the Interim Agreement was forced on the Palestinian side. We believe that the entity that can represent the Palestinians, fight for their rights, and act to improve their quality of life, is the Palestinian Authority. It is improper to say that the powers of the PA are "largely



meaningless," and that the PA "is left to deal only with the formal aspects..."

### **The Population and Documentation Registry Subcommittee**

5. One of the most active and productive committees that is composed of representatives of Israel and the Palestinian side is the Registry Subcommittee (which even discussed, *inter alia*, the issue of family unification in the Territories). The committee has close working relations that take place in a good, business-like atmosphere. The Palestinian side has favorably noted this fact orally and in writing.
6. The Registry Subcommittee acts for the welfare of the Palestinians, while protecting Israeli interests, the laws, and regulations, and by ensuring compliance with the provisions of the Interim Agreement. Among the achievements of the Committee are transfer to the Palestinians of the power to issue identity cards; to issue passports; independent administration of the compilation of the population registry; and many other subjects.
7. For example, at the Subcommittee's last meeting, which took place on 10 January 1999 in Ramallah, in which senior-level officials participated, Israel announced, on its own initiative, an increase of one thousand requests to the family unification quota for 1999. Also, the Israeli side announced that it intended to handle family unification requests quicker within the next three months, in order to increase the number of requests being processed.
8. In addition, the Israeli side renewed its request to establish a committee to define the criteria for the activity of the "Latecomers Committee," a request that had been raised already a year earlier, which will examine the entitlement of Palestinians who lost their residence in the region as a result of an extended stay abroad. The Palestinian side welcomed the proposal and the committee's members have already been determined.
9. Another recent achievement is the exemption from the tax levied where persons who entered the Territories on Israeli visitor's permits (visas) continued to stay in the Territories illegally after the permits had expired. The exemption will apply from now on until June 1999 to such persons included by the PA in the family-unification framework.

10. These examples are only some of the joint achievements accomplished by the parties within the context of the Committee's deliberations. All of the decisions were adopted with the good will of the two sides.

### **Family Unification in the Territories**

11. From Israel's perspective, the family-unification process is intended to meet a humanitarian need. It was represented as such in the negotiations over the Interim Agreement, and the process has been operated on this basis ever since the agreement was signed. The PA is involved in this process, with Israel having the right to prevent entry into the Territories to anyone constituting a danger to the region, or to anyone who does not meet the family-unification criteria.
12. From the perspective of the authors of the report and of the persons on whom they rely, the objective of the family-unification arrangements is, in practice, to enable massive immigration into the Territories. It is superfluous to add that this [objective] is inconsistent with the provisions of the declaration of Principles and the Interim Agreement.
13. In the past, Israel set a quota of 2,000 family-unification requests to be handled each year, with an internal division of 1,200 for Judea and Samaria and 800 for Gaza. It is important to note that this relates to the number of requests and not the number of persons (children under age sixteen are included in their parent's request for family unification), so that the number of persons entering the region every year is very respectable. As noted, this quota was raised for 1999 by fifty percent. A request for family unification generally includes several family members.
14. The quota allocated for family unification constitutes only the tip of the iceberg of the process of receiving permanent residency in the Territories. Arrangements for family unification also exist for families of Palestinian police, employees of the PA, and investors from abroad. According to the criteria, spouses of these persons and their children may enter. It should be noted that single daughters enter without age limitation, as is the case for sons under age 22. Also, a special quota was also established for persons who

do not meet these criteria, and attempts are also made to assist persons who do not meet the age requirements.

15. In addition, the said quota does not include the hundreds of Palestinians who moved from Egypt to the Canada [refugee] camp in the south of the Gaza Strip, as part of the family-unification campaign that is now taking place. Because of the great efforts we have given to this project, this campaign is moving ahead more rapidly than had been planned. This year alone some four hundred persons have entered in this framework.
16. Furthermore, as is known, spouses who are included within the High Court of Justice Population I receive permanent residency in the region, without restriction in number and without being included in the quotas. The process did, in fact, stop during 1996, but this was a result of the PA not providing the names of the applicants. Six months later, upon Israel's initiative, the process was renewed. It is important to note that the authority to grant permanent residency was transferred, in accordance with the Interim Agreement, to the Palestinian side. Although granting residence is subject, as noted, to the prior approval of Israel, the quotas are Palestinian. The above is also true for the High Court of Justice population. Requests for granting permanent residency to these populations are transferred to Israel through the PA, and granting of the residency is not made solely according to Israel's decision. Thus, when the Palestinian side does not forward to Israel a request for permanent residency for a member of the High Court of Justice population, Israel's hands are tied, and it is not allowed to grant residency unilaterally to that person.
17. The above indicates that, contrary to the spirit that the report tries to convey, the family-unification process encompasses tens of thousands of Palestinians who settled in the region over the past three years. The various criteria led to many persons in excess of the annual quota obtaining permanent residency in the Territories.
18. In 1996-1997, family unification in Judea and Samaria ceased. The authors of the report do not note that this cessation resulted from the Palestinian side, and opposed Israel's wishes. As noted, following the Interim Agreement,

the powers related to the population registry were transferred to the Palestinian side. Hence, all the handling of family unification began in the PA. The names of the applicants reach us based on decisions made by the PA. Since the signing of the Interim Agreement and the transfer of powers, the family-unification process in Gaza has been administered without hindrance. However, for internal reasons, in Judea and Samaria, the PA decided to stop the process. We found no logical explanation for this. We subsequently learned that the cessation occurred as a result of the internal relations between the PA and the districts.

19. The PA's stopping the family-unification process meant that the PA did not forward to Israel the names of the applicants. Without the names, we are, of course, unable to perform the checking and approval procedures.
20. The problem was resolved at the beginning of 1998 when senior officials responsible for coordination of activities in the Territories and the PA intervened. The Palestinian side announced that it would renew forwarding the names of the applicants, which in practice led to renewal of the process.
21. During the course of 1996-1997, Israel explicitly informed the Palestinian side that quotas that were not met would be cancelled. However, it is important to note that, in a goodwill gesture, the Israeli side stated that the unmet quotas during this two-year period would not be cancelled, and would be available for the following two years. That is, for 1998-1999, 2,400 requests (two annual quotas of Judea and Samaria) would be added, so that we reach a total of 4,800 requests, without counting the addition provided at the beginning of the month [January] for 1999.
22. As is known, since the transfer of powers over the registry, Israel does not collect fees from the Palestinian residents, as it used to do, for services provided to them by the Civil Administration. The power over collecting the fees currently lies with the Palestinian side, and to the best of our knowledge, it makes broad use of this power.
23. Furthermore, Israel decided to reduce dramatically the fees collected from the PA for the processing of requests for

family unification, and the fees now stand at only NIS 50, even though the processing expenses are substantially greater.

24. The story of A.A. mentioned in the report, according to which he submitted three requests for family unification and paid substantial fees, must be read in the context of the above comments. Israel is unable to process a request that the PA decided not to transfer to it. The PA has its order of priorities for the requests that it wants to forward to the Israeli side for handling, and Israel has nothing to say about the matter. Similarly, money collected by the PA from the Palestinian residents is not transferred directly to Israel. As we noted, Israel only receives processing fees from the PA. These are much lower than the fees that the PA collects from the Palestinian residents.
25. The argument that the procedures and criteria of the family-unification process were not made clear is specious. Mr. Salim Tamari, upon whom the report relies, was not involved in the negotiations. Every issue that bothers the Palestinian side can be raised in the Registry Subcommittee. No subject remains unresolved.
26. As for the contention that Israel may refuse to approve requests for permanent residency in the Territories only for security reasons – the Interim Agreement states no limitation on Israel's discretion on this subject. Article 28(11) of the Civil Affairs appendix to the Interim Agreement states the power of the Palestinian to grant permanent residency in the Territories, by establishing categories (family unification being among the categories). This power is subject to the prior approval of Israel. No mention whatsoever is made of limitations on exercising discretion on this subject. The truth is that Israel is less stringent when dealing with humanitarian cases.
27. Regarding the assertion that the PA was the one that decided that half of the requests filed within the quota framework would be old requests and that priority would be given to the High Court of Justice population – this assertion is imprecise. Review of the Subcommittee's minutes indicates that it was actually the Israeli side that made this request. Another imprecision in the report is the

assertion that there was no agreement as to various details of the family-unification process. There was agreement on the time schedules for processing requests. For example, it was agreed that the quota carried over in January would be met by the end of June.

28. The report contains a series of contentions regarding the High Court of Justice populations. Unfortunately, they are inaccurate. Israel continues to regularly extend the visitor's permits of the High Court of Justice population. Unfortunately, there are delays in transferring the requests via the PA. For example, until August 1996, the PA refrained from transferring to the Israeli side requests relating to this population.
29. Israel undertook in the High Court of Justice arrangements to extend, by six months each time, the visitor's permits of members of the High Court of Justice population. It should be noted that these persons are now issued visitor's permits that are valid, in practice, for seven months. When requests for visitor's permits for this population are forwarded to Israel, Israel approves a maximum period of three months, which is the maximum period stipulated in the Interim Agreement. The PA is authorized to extend the validity of the permits for an additional four months, which it usually does. As a result, the arrangements of the Interim Agreement benefited this population more than the arrangements made in the framework of the petitions to the High Court of Justice.
30. The authors of the report complain that families wanting to be included in the High Court of Justice population are compelled to deal with the Israeli side via the PA, which creates a complex and lengthy process. In our opinion, and as the Interim Agreement provides, the PA represents the Palestinian residents. It seems that acting in another manner would reduce the authority of the PA. We suggest, at this stage, not to eliminate the PA and replace it with another organization.
31. As for granting residency in connection with the PA elections, the report's authors do not mention the fact that what prevented many Palestinians from submitting a request to obtain the status of permanent resident in the Territories was the high price that the PA demanded be paid to submit

the request. Incidentally, Israel did not collect any sum for processing the requests.

32. Until November 1995, the procedure to registering Palestinian children whose mother was not a resident of the Territories was through family unification. The contention that the likelihood of obtaining family unification was minimal is startling. Most of the requests titled "family unification of minors" were automatically approved. Now every child under sixteen can be registered in the population registry, regardless of his or her place of birth, provided that one parent is a resident [of the Territories].

### **Visitor's Permits in the Territories**

33. On the matter of issuance of visitor's permits the report also presents opinions rather than facts. Visitors are not limited to visiting only during the summer. Now, during the winter, many visitors pass via the Allenby Bridge.
34. As is known, the Interim Agreement transferred to the Palestinian side the authority to issue visitor's permits. The Palestinian side issues the permits subject to Israel's approval. The Agreement enables every family relative or acquaintance of an applicant who is a resident to submit the request through the Palestinian side. Therefore, both under the Agreement and in accordance with practice, no limitations exist regarding the entry of visitors who are not first-degree relatives.
35. Regarding the validity of the visitor's permits – the Agreement states on this matter that Israel may approve visitor's permits for a maximum period of three months (contrary to arrangements prior to the Interim Agreement, according to which the visitor's permits were valid for thirty days). The maximum period that the PA may extend the visitor's permit (without the necessity of Israel's approval, but subject to the PA so informing Israel) is a maximum of four months. Thus, a visitor can stay in the region for seven months.
36. Contrary to contentions made in the report, Israel did not place a quota on the entry of visitors. In 1996, for example, 5,453 visitors entered. These facts are not, of course, consistent with the report's contention that we only

received one hundred requests a week in 1996. The report later states that Israel "almost never allows relatives to visit in the Territories." Sixty-five thousand visitors a year proves that the assertion made in the report is unfounded.

37. Persons requesting a visitor's permit are not required to prove permanent residency of the invitees in the state in which they reside. It is required that the invitee have valid documentation for the period of the visit, as is customary elsewhere. Nevertheless, we enable visitors to enter even if the passport or *laissez passer* does not cover the entire period of the visit. In these cases, we enable a person to visit for a month. After that, the permit may be extended for an additional four months. In the event that the visitor extended the validity of the documentation, we approve two additional months, thus enabling the visitor to take advantage of the full seven-month period allowed. Incidentally, this matter was also agreed upon in the Registry Subcommittee, with the Palestinian side approving it.
38. The contention that Israel systematically rejects extending visitor's permits "in excess of the seven months that the PA is authorized to approve" is incorrect. First, the PA has the power to extend visitor's permits for a maximum period of only four months. Second, every request is examined on the merits, and a large percentage of the requests for extensions are approved. In conclusion, we observe that visitor's permits are intended, obviously, for visits, and not to enable the visitor to settle in the Territories.
39. Regarding family members residing in states in conflict with Israel, there is no restriction on their entering the Territories on the basis of a visitor's permit. We reject requests for security reasons related directly to the applicant, and not the state in which he lives. We also reject requests of persons who do not meet the criteria, and the fact that the invitee is a national of a state in conflict with Israel is not a criterion.
40. The report presents facts on requests for visitor's permits that were approved/not approved. The figures were provided by sources in the Palestinian "Ministry of the Interior." Unfortunately, B'Tselem was misled, apparently,



by these sources. As already stated above, in 1996, 24,698 visitors entered Gaza and 40,755 entered Judea and Samaria, that is, more than three times the number provided by those "sources." We did not check how many of the requests were not approved, but whether granted or not, in the event that the Palestinian contention that seventy-three percent of the requests were approved is correct, the figure is impressive, taking into account the requests that were cancelled on the grounds of security or forged documents.

41. Regarding the contention that Israel demands residents of the Territories to prove that visitors they invited left the Territories – first, Israel does not maintain direct contact with the residents of the Territories, rather the contacts are made through the PA. Second, we demand, as the Interim Agreement requires, that the PA remove visitors who do not leave upon expiration of their permits. To date, the PA has not removed even one such person. Israel infrequently removes visitors who do not leave on time, in the event that they reach area under our control or area within Israel's borders. These visitors are deported to the state from which they came, unless there is a special humanitarian reason justifying their remaining in the region.
42. No operations are conducted to deport visitors. The number of deportees reaches a few a year, a negligible number in comparison with the more than forty thousand visitors who remain in areas of the PA after their permits have expired. Israel can put significant pressure on the PA to remove visitors who remain, by instituting a sweeping refusal to allow entry until the PA complies with the agreement. We reject this idea outright because of the humanitarian implications involved in such a measure.

### **Conclusion**

43. The sides in the Registry Subcommittee give great seriousness to their deliberations relating to family unification. They have established procedures and methods of operation in which the two parties work in good will and with the objective of providing assistance in this matter of humanitarian importance.

44. Since the family-unification process encompasses great numbers of persons, it is understandable that some persons will be discontented with the handling of their cases. At times, their claims are justified. However, from an overall perspective, numerous achievements have been attained in the area of family unification in the Territories.

Sincerely,

s/

Shlomo Dror Spoke