Palestinian Residency and East Jerusalem

A technical seminar to discuss legal and practical aspects of Palestinian residency in East Jerusalem attended by lawyers and human rights activists from Israel and the Occupied Territories

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At Tantour Ecumenical Institute, Jerusalem
Under the auspices of

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Palestinian Residency and East Jerusalem Seminar

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Ever since the Israeli occupation and annexation of the city in 1967, Palestinians living in East Jerusalem have suffered from Israeli laws, policies and practices which have resulted in the separation of families and denial of many of the prerequisites for decent living conditions. Even if Palestinians overcome the first hurdle and are granted permission to remain in Jerusalem, they find that living there is also a struggle: finding housing, educating their children and keeping the family together are just some of the daily battles they must fight. Subjects addressed in the Seminar included: the legal status of Palestinian residents of Jerusalem, their rights according to international law, how residency status can be gained and lost, including the circumstances in which children can be registered as residents of Jerusalem, and entitlements to National Insurance benefits, education and employment.

In an overview of the legal status of Palestinians in East Jerusalem, advocate Salah Sa'abneh criticises the attitude of Israeli law, backed up by the Supreme Court, which treats Palestinian residents of Jerusalem as if they were foreigners wishing to enter Israel rather than an indigenous population. He emphasises some of the problems arising from their status, comparing the rights of citizens with those accorded permanent residency, including the numerous obstacles placed in the way of those wishing to obtain family reunification for their non-resident family members. The precarious nature of permanent residency status is reflected in the fact that it can be so easily lost but gained only with great difficulty.

While considering the right to family unity under international law, advocate Eliahu Abram reviews case law from Europe interpreting international conventions including the **European Convention on Human Rights**. He also examines the provisions concerning the right to family reunification contained in the **Convention on the Rights of the Child**, ratified by Israel, which in his opinion provides the strongest protection of the right of children and parents not to be separated. Advocate Abram reminded participants that the future president of the Israeli Supreme Court has stated that local law must be interpreted wherever possible in accordance with international obligations of the State, including treaty obligations.

Subsequent speakers addressed specific and technical aspects of Palestinian residency in Jerusalem, highlighting not only the fact that Israeli policies are unreasonable and the cause of considerable hardship, but also that policies are frequently either not declared at all or not fully implemented. Practitioners offered information based on cases that had been dealt with by them and conclusions they had drawn from their experience which could be useful to others working in the same field.

Other speakers made it clear that despite the peace process, the question of Jerusalem is not being discussed and Palestinian residents of the city are experiencing a worsening rather than an improvement in their situation. More Jewish construction projects are encroaching on the little land that is still available to Palestinians, and daily life is made even harder by the closing off of Jerusalem from the rest of the Occupied Territories. The discussions in the Seminar showed clearly that now more than ever the efforts of all those concerned with human rights are needed to defend the rights of the Palestinian population in Jerusalem.

The following are some of the major areas of work which were identified by participants in the Seminar, which require further discussion in order to develop effective strategies:

1. Many Palestinians in Jerusalem are unaware of their rights and entitlements, and are also unaware of the existence of organizations that may be able to help them. This makes it easier for the authorities to deny them their rights.

2. The Ministry of Interior, the Municipality and other official offices that Palestinian residents of Jerusalem are required to deal with frequently give incorrect information as to entitlements and rights, refuse to accept applications, or fail to implement declared policies. For example, the Ministry of Interior does not always publish its own regulations which makes them extremely difficult to challenge.

3. Although legal steps have been tried in the past and are an option in many cases, there are difficulties in providing documentation and proof in some cases, while addressing the High Court can be dangerous since it can result in negative precedents and close the door to other applicants.

4. Not enough has been done to mobilise support at the community and political levels on this issue. There is little tradition of effective organizing and campaigning at the community level, and the practical day to day problems of Palestinians in Jerusalem go unanswered. The Palestinian political leadership has failed to develop strategies to address the issue, while on the Israeli political front the subject is perceived as bound up with the overall political question of Jerusalem rather than as a human rights issue.

5. Although there have been some efforts at mobilising support in the international community, such as through solidarity work, this avenue has not been explored sufficiently.

6. The potential of using the United Nations Human Rights mechanisms has not been exploited sufficiently. Israel has signed or ratified most of the major international human rights instruments and is bound to report on a regular basis to the committees that review their enforcement, and representations to such bodies could be prepared and used in conjunction with local campaigning.

7. More use could be made of the media. For example, an article in an influential U.S. newspaper can have a significant impact. However, it is difficult to make the issue newsworthy without the existence of dramatic events which highlight the problem.

Introduction

Dalia Kerstein, Director of HaMoked

The idea for today's Seminar came from the desire to discuss Palestinian residency in Jerusalem in the light of the rights to family life and to freedom of movement, meaning among other things the ability to move without fear of losing permanent residency status, in addition to other related rights such as the right to education, to work, and to receive basic social benefits and services.

The main aim of the Seminar was to help the approximately 35 participants, lawyers, practitioners and activists from Israel and the Occupied Territories, to gain a greater understanding of all the different elements affecting the residency rights of the Palestinian population of East Jerusalem, and to provide a forum to discuss matters of law, policy and practice. It was intended to provide an opportunity for us to learn from each other's knowledge and experience, and also to explore new aspects such as the implications of recent political and legal developments and of the new policy declared by the Ministry of the Interior.

Representatives of HaMoked had met with the Assistant to the General Director of the Israeli Population Registry in the Ministry of the Interior, who had explained the Israeli Ministry of Interior's new policy concerning Palestinian family reunification in Jerusalem. The Ministry was invited to send a representative to the Seminar but declined, without giving a reason.

HaMoked has been dealing with Palestinian residency problems in Jerusalem since 1990 when the Israeli policy was if anything vaguer and tougher than it is today, as have other groups participating in the Seminar. While being a natural extension of the coalition of human rights organizations which has been working on Palestinian family reunification and residency issues for the past two years, the Seminar was an opportunity for discussions in a more structured manner and with more time, with the aim of identifying current problems and developing joint strategies for addressing them. We consider that the Seminar succeeded in providing the participants with such an opportunity, and through publishing the proceedings, we also have created a resource for others.

Permanent Residency Status in Israel

Salah Sa'abneh, Advocate, Quaker Legal Aid Center, Jerusalem

A. The Status of Palestinians in East Jerusalem

1. The Israeli Annexation of East Jerusalem

Following the Six Day War, Israel annexed the area that we refer to as East Jerusalem. In order to do this, it was first necessary to pass the **Law and Administration Ordinance (Amendment No.11) Law** of 1967, which added section 11B to the Ordinance: "The law, jurisdiction and administration of the State shall extend to any area of Eretz Israel designated by the Government by order". This enabled the government to take the next step, which was to issue the **Law and Administration Order (1)** of 1967, which stated that the law, jurisdication and administration of Israel would henceforth apply in the area of East Jerusalem. The borders of this area were to take in not only the former borders of the Jerusalem municipality, but also surrounding villages.

The question of whether or not this act of annexation actually extended Israeli sovereignty over East Jerusalem has remained a matter of dispute in the Israeli High Court (see Justice Agranat in the case of H.C. 223/67, ***Dov v. the Minister of Religion***, P.D. 22,440; an opposing opinion was expressed by Justice Cohen in H.C. 283/69, ***Royedi v. Hebron Military Court***, P.D. 24 vol.II, 419). The international community has certainly never accepted Israeli sovereignty over East Jerusalem and considers the Israeli annexation of this area to be in breach of international law. The question remains academic; the immediate and actual consequence of the annexation was the application of all Israeli laws to the annexed area and its inhabitants.

Immediately after the war, Israel conducted a population census in the annexed area and granted permanent residency status to those within the area on two conditions: one was that they were physically present in the annexed area when the census was conducted, the second that they were residents of the area. As a result of these criteria, East Jerusalemites who were temporarily outside the annexed area were not counted as permanent residents. Israel declared that Palestinian residents of East Jerusalem would be granted full Israeli citizenship upon request (on certain conditions, including the taking of an oath of loyalty to the state, demonstrating that citizenship of another state is not retained, and having some knowledge of the Hebrew language). For political reasons, most declined to apply. The Knesset then enacted the **Legal and Administrative Matters (Regulation) Law (Consolidated Version)** of 1970 to overcome problems relating to the transition from Jordanian to Israeli law. This law dealt with issues such as absentee property owners, continuity of legal bodies and legal actions and licensing of lawyers, companies, etc. It was to be expected that this law would address the issue of the status of residents of the annexed area, however it made no reference to this issue.

2. The Case of Mubarak Awad

After 1967, therefore, the de facto policy concerning East Jerusalem residents was to grant them permanent residency status, and issue them with Israeli identity cards. This policy was approved by the Israeli High Court in 1988 in the leading case of Mubarak Awad (H.C. 282/ 88, ***Mubarak Awad v. The Prime Minister***, P.D. 42 p.424), in which the court confirmed that the law governing residency of Palestinians in East Jerusalem is the **Entry Into Israel Law** of 1952. This was a case of a Jerusalem resident who left to study in the United States, married there and took up American citizenship, and now wished to come back and live in Jerusalem. The Ministry of Interior decided to deport him on the grounds that he had no status in Israel.

The petitioner argued that the **Entry Into Israel Law** was not the proper law to govern the status of Palestinians in East Jerusalem, and that the status of this population should be a quasi-citizenship rather than permanent residency. The court rejected this argument on several grounds. According to Justice Barak, the status of quasi-citizenship does not exist under Israeli law, and only existing legal instruments should be used in defining the status of Palestinians in Jerusalem. Secondly, the court stated that the recognition of such a special status could discriminate against other groups in Israel (such as new Jewish immigrants) who are not Palestinians.

Secondly, the petitioner argued that the title of the law – **The Entry Into Israel Law** – suggests that it would not apply to Palestinians already residing in East Jerusalem because such people had clearly not in fact "entered" Jerusalem. Justice Barak rejected this argument.

The last and major argument advanced by the petitioner was not fully addressed by the court. The petitioner claimed that the Minister of Interior, according to the powers vested in him by section 11 of the **Entry Into Israel Law**, had absolute authority to revoke the residency status of any Palestinian and deport him or her. Justice Barak denied this, saying that the Minister was not empowered to revoke the right to permanent residency in the absence of relevant considerations.

3. Criticism of the Awad Decision

In my view, the Awad judgment is unsatisfactory for several reasons. Firstly, the main intent behind the **Entry Into Israel Law** is to deal with immigration to Israel rather than with groups such as Palestinians already residing in Jerusalem. As a result of the application of this law, the Palestinians in Jerusalem face very serious problems concerning their status. The **Entry Into Israel Law** states that any person who is not an Israeli citizen or a new (Jewish) immigrant does not have the right to enter or remain in Israel and requires a permit to do so. Section 2 of the Law specifies four types of permits: 1) a transit visa, valid for five days, 2) a visitor permit, valid for three months, 3) a temporary residency permit, valid for three years and 4) a permanent residency permit for an unlimited period of time. The law grants the Minister of Interior absolute discretion to issue or revoke any of these permits and fails to set any criteria for the exercise of these powers.

The reason why this absolute discretion is a problem lies in another law, the

Administration Procedure Law Decisions and Reasoning of 1958, which specifically exempts the Minister of Interior, when exercising his discretion under the **Entry Into Israel Law**, from the normal duty imposed on any public authority to respond as quickly as possible to any application made by a citizen, and to give reasons in cases of refusal (section 9). The problem is that this exemption severely limits the scope for judicial review of such decisions; Justice Barak's assertion that decisions should be based on "relevant considerations" is in practice ineffective when the Minister of Interior fails to give reasons for his decision.

The nature of the **Entry Into Israel Law** derives from its basic aim, which is to regulate the status of foreigners who wish to enter Israel and possibly settle there. In the case of ***Lafi v. the Ministry of Interior*** (H.C. 209/73), the court stated that the Minister of Interior's discretion under the **Entry Into Israel Law** is absolute and even the argument of discrimination will not be effective in such cases because Israel, like any other state, has the basic right to control the flow of immigrants and people into its territory. The assumption is that a person who is neither an Israeli citizen nor a new Jewish immigrant has no legal right to enter or remain in the state. Judicial review is therefore unnecessary or undesirable, and residency issues are at the absolute discretion of the Minister of Interior. It is thus not at all the appropriate law to apply to existing residents.

In the ***Mubarak Awad*** case, Justice Barak considered the nature of the status of permanent residency, saying it is comprised of two aspects; on the one hand it is constitutive, creating the legal right to reside in Israel, and on the other hand declarative of an existing reality of residency. The constitutive aspect creates the reality and the continuity of the reality maintains the continuity of the right. In the ***Mubarak Awad*** case, Awad's residency was revoked on the grounds he had abandoned residence in Jerusalem. According to Justice Barak, when the reality ceased to exist, the status was dissolved and the right no longer existed. This approach, as we shall see later, forms the basis of Israeli policy concerning loss of permanent residency status, and the status of children born in Israel. In conclusion, it is my view that this legal instrument, the **Entry Into Israel Law**, is not the proper one to be applied when dealing with rights of Palestinians residing in East Jerusalem. These people are not aliens; they were born in and live in East Jerusalem (which was illegally annexed), and they should not be deprived of this right.

B. Permanent Residency Compared to Citizenship

I will now describe some of the differences between the status of permanent resident, accorded to the Palestinians of East Jerusalem, and that of Israeli citizen. As we have seen, the status of permanent resident is defined according to the concepts of the **Entry Into Israel Law** and is rather weak. Once gained, residency status has a wide range of implications:

1. The major right conferred by the status of permanent residency is the right to remain and work in Israel, without the need for further permits (see the **Foreign Employees (Illegal Employment) Law**, 1991). Article 13 of the Entry Into Israel Regulations of 1974 allows

permanent residents to work in Israel, unlike other aliens holding visitor visas or temporary residency.

2. A permanent resident should be registered in the population registration office (**Population Registration Law**, 1965) and hold an Israeli identity card, which is the physical expression of their status.

3. Permanent residents have the right to leave the country. However, the right to return to Israel is reserved only for Israeli citizens (Article 6 of the **Basic Law: Human Dignity** enacted in 1992). In fact, the Entry Into Israel Regulations of 1974 deny permanent residents the right to return if they remain abroad as we shall see later. (It should be noted that even if the right to return to the country had been granted by the Basic Law to permanent residents it would not necessarily affect the legal status of East Jerusalem residents, since the Basic Law cannot affect existing legislation.)

4. According to the **Passports Law**, 1952, a permanent resident is entitled to a laissez passer (and not a passport).

5. National Insurance entitlements and obligations depend on residency status (**National Insurance Law, Consolidated Version**, 1968).

6. The status is relevant for tax purposes; some of the taxation rules depend on residency.

7. According to Section 13 of the **Local Authorities (Elections) Law**, 1965, one of the criteria for the right to vote in municipal elections is permanent residency. The right to be elected as mayor, however, is limited to Israeli citizens.

8. With regard to education, although there is no special reference to residency in the relevant law concerning public schools, in practice schools refuse to enroll pupils who are not registered as residents.

Israeli citizenship, on the other hand, confers greater privileges:

1. An Israeli citizen is entitled to enter and to remain in Israel with no permit required, and to hold a passport.

2. An Israeli citizen has a basic right to leave the country for an unlimited period of time without losing his or her status. While remaining abroad, he or she may pass his or her citizenship to children born abroad.

3. Israeli citizenship can be revoked by the Minister of Interior only in very limited circumstances defined in section 11 of the **Nationality Law** of 1952: by reason of a) illegal entry into an enemy state, b) treason, or c) if citizenship was acquired on the basis of false information.

4. Some of the highest positions in the State are limited to Israeli citizens such as the Presidency (Section 4 of the **Basic Law: The State President**), members of Knesset, judges and mayors.

5. The other main difference is that citizens have the right basic in any democratic society to participate in the political process by voting in Knesset elections; permanent residents are denied this right.

C. Major Problems Facing East Jerusalem Palestinians

As a consequence of the nature of their status described above, Palestinian residents of East Jerusalem face three major problems: losing and gaining residency status, and registration of children.

1. Loss of residency rights

Palestinians who leave Jerusalem for different reasons and remain elsewhere for long periods are liable to lose their permanent residency status. The same problem faces Palestinians who travel abroad as those who simply move outside Jerusalem to another part of the West Bank. For those who leave the country, section 11 of the **Entry Into Israel Law** gives the Minister of Interior the power to cancel any visa or permit of residence granted under this law. This power could be exercised in individual cases, but usually is not. Its major exercise has been in promulgating the Entry Into Israel Regulations of 1974, in which sections 10 and 11 state the circumstances in which permanent residency expires. Most important for Palestinians residing in Jerusalem is section 11C which states that if a permanent resident settles outside Israel in a foreign country, his permanent residency expires. Section 11A states that a permanant resident is considered to have settled abroad if he: 1) lives for more than seven years in a foreign state, 2) is granted permanent residency status in a foreign state, or 3) is granted citizenship of a foreign state.

This raises the question of whether settling in the West Bank could be considered "settling abroad" for the purposes of Regulation 11A. Taking into consideration political and geographical factors, it seems reasonable to conclude that it could not. Since East Jerusalem is internationally recognized as part of the Occupied Territories, moving from this area to another part of the West Bank should not be viewed as settling abroad.

In practice, many Jerusalem permanent residents live outside Jerusalem in other parts of the West Bank for long periods of time and continue to hold their identity cards as Jerusalem residents. However, as regards those who leave the country, the Minister of Interior is able to regulate and to inspect stays abroad because a permanent resident must obtain a laissez passer in order to leave the country. This laissez passer is limited in time and must be renewed upon expiry. Once a person has remained abroad for more than seven years, at the border they will refuse to renew travel documents and thus prevent re-entry.

International law regarding loss of the right to residency is clear. Article 12(4) of the **International Covenant on Civil and Political Rights** provides that:

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

Article 13(1) of the **Universal Declaration on Human Rights** provides that:

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

The accepted interpretation of the term "his country" in international law includes permanent residents and not only citizens. I refer to an International Colloquium held in Upsalla, Sweden in June 1972 that attempted to give a definition:

> "A person's country is that to which he is connected by a reasonable combination of such relevant criteria as race, religion, language, ancestry, birth, and prolonged domicile. Governments come and go, and their political fluctuations and vagaries should not affect the fundamental rights of human beings, such as the right to return to one's own country and to have a homeland."

2. Gaining Residency

Gaining permanent residency status can be considered under two major headings: marriage and family reunification, and registration of children.

a) Marriage and family reunification

The law does not establish any criteria for the granting of permanent residency through family reunification. The Minister of Interior is not obliged to give any reasons for deciding to refuse such applications. The policy of the Minister of Interior has been not to issue family reunification on a regular basis but to deal with applications on a case by case basis. Where it is the husband who is the Jerusalem resident, family reunification has usually been granted. In cases where the wife is the Jerusalem resident, it was admitted by a senior official of the Ministry of Interior in a meeting with some of those present today that the Ministry's policy is not to grant family reunification. The current policy on this matter will be described by others.

b) Registration of Children

Regulation 12 of the Entry Into Israel Regulations of 1974 states clearly that if a child is born in Israel and both parents are residents, he will be given the same status as his parents. If only the father is a resident of East Jerusalem, the child will also be granted permanent residency; where the mother alone is a resident, the Minister of Interior will decide on the status of the child. In a meeting held at the Interior Ministry in February 1992 with representatives of organizations present at this Seminar, Ministry representatives declared that their policy was that a mother could have her child registered in Jerusalem on condition that she proves that she actually resides in Jerusalem. This is a very tiring and difficult process, usually requiring the help of a lawyer, which costs money and requires substantial documentation, as later speakers will describe. Clearly, this regulation discriminates against women on a gender basis, but it has been felt that an attempt to challenge this discrimination in the courts could lead to actually worsening the situation by bringing about a change whereby in EVERY case proving actual residency would be required.

The Right to Family Unity and Immigration Law

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(Relevant articles of the international human rights instruments cited in this presentation can be found in Appendix I.)

The phenomenon of spouses and children separated by international borders is certainly not an Israeli problem alone. Problems of refugees, asylum seekers and immigration have grown in the past decade to new proportions, and over one half of the world's refugees are children. Many European countries are responding with a policy of "fortress Europe" aimed at keeping people out, and asylum laws are being changed. The recent tragedies in East Africa and revolutions in Eastern Europe led to massive migration. This is a problem which affects the entire world, and I would like to address the issue of how international law views the problem of families who are separated.

It seems so natural and obvious that parents and children, husbands and wives, should be allowed to live together, and that no border should come between them. However, the power to determine who will enter a country has traditionally been considered an inherent attribute of the sovereignty of every country and the entry of the foreigner always a privilege, subject to unlimited state discretion. To quote Oppenheim's ***International Law***: "The reception of aliens is a matter of discretion, and every state is by reason of its territorial supremacy competent to exclude aliens from the whole, or any part, of its territory". When the State of Israel, in its response to 64 petitions on family reunification (***Sarhan et al v. Commander of I.D.F. in Judea and Samaria Region***, H.C.4494/91) wrote (in an unpublished brief) to the High Court of Justice: "The decision who will enter and who will settle in the regions... is a matter for governmental decision and no resident man or woman is permitted to impose his private determination in this matter on the authorities", it spoke with the voice of international authority such as Oppenheim.

In a study of international human rights instruments published in 1983 P. Seighart wrote: "Nowhere in any human rights treaty has any state accepted any express obligation to allow aliens to enter its territory." The same conclusion was reached by Richard Plender who in a massive work on international immigration law concludes that none of the international and regional human rights instruments provide a right to family reunification in general international law.

When we lawyers keep arguing before the court that this is an internationally recognized right, even a customary norm of international law, we exaggerate. We are trying to extend the law, a perfectly legitimate aim, but we certainly cannot rely on these kinds of authorities to support our position.

The Right to Family Life

So what can we rely upon? First, there is an internationally recognized human right of the family to be free from arbitrary and unlawful interference established in Article 17 of the **International Covenant on Civil and Political Rights** of 1966, which Israel has ratified. Article 8 of the **European Convention on Human Rights** similarly prohibits interference with this right, "except such as is in accordance with the law and is necessary in a democratic society", and goes on to state the grounds on which such interference might be legitimate and necessary.

The significance of the **European Convention** is that it has generated a substantial amount of jurisprudence in the European Court of Human Rights in which the scope of the right to family life has been discussed. This jurisprudence is relevant to the interpretation of the parallel provision under the **International Covenant.** I will give a few examples pertaining to international family reunification. The European Commission and the European Court on Human Rights have found violations of the right to family life in cases of expulsion of legally resident aliens whose family ties in the country where they are residing are overwhelming.

One example is the case of ***Beherab v. The Netherlands*** (11 E.H.R.R.322), decided in 1984. This was a case of a Moroccan citizen who had resided in The Netherlands for a few years, married a Dutch citizen and divorced after two years, just before a child was born. The Netherlands at this point ordered him to leave, on the basis that his right of residency was contingent on his marriage to a Dutch citizen. Eventually he was deported to Morocco. The court first examined whether or not there was a family life and concluded that there was; the father had visitation rights with his daughter and was actually visiting his daughter four times a week. The next question addressed by the court was whether there was a violation of family life. If the father was deported, the only way he could see his daughter would be on short term visitor visas, bearing the expense of travel between Morocco and the Netherlands. The court said this was not reasonable; there had been a violation of family life. The next step was to examine whether there was a legitimate purpose for the violation, and here the court concluded that there was; the purpose of excluding foreigners was to protect the local labor market. One of the legitimate reasons for limiting the right to family life under Article 8 of the **European Convention** is the economic well-being of the country. The final step was to analyze whether this was necessary in a democratic society, and the analysis of necessity is actually an analysis of proportionality: is the damage being caused to this daughter and to this father proportionable to the need of the Netherlands to protect its labor market? The court held that it was not proportional or necessary, and therefore held in favor of the father and daughter.

Another case is that of ***Moustaquim v. Belgium*** (13 E.H.R.R. 802), decided in 1991, in which a boy moved from Morocco to Belgium at the age of one and a half years with his parents. Three of his brothers and sisters were born in Belgium and one of his older brothers naturalized as a Belgian citizen; he could not even speak Arabic. However, as a result of a series of criminal convictions when he was aged fifteen and sixteen, the state decided to expel him. The court conducted the same analysis and decided as follows. First, there was clearly a family life; by this time he was twenty years old, his brothers, sisters and parents lived in Belgium and, despite the fact that he was a street gang leader, he also lived at home. Second,

there was obviously a violation of family life. Third, there was a legitimate purpose in expelling him: the protection of public order. Finally, however, the court decided that this purpose was not proportional to the damage caused, and Belgium was ordered to allow the man back.

All these cases involve people who were already in the country. Concerning the person who marries outside of the country, or an immigrant who acquires resident status while his wife and children are still in the country of origin, the European court has been very clear in a negative sense. To summarize I will quote a recent article from ***The European System for the Protection of Human Rights***, 1993, by G. Cohen-Jonathan, which states that the Convention "clearly does not guarantee any right of entry or residence for aliens in a contracting State." Denial of family reunification to non-resident alien spouses has been uniformly upheld by the European Court.

There are, however, a whole string of cases in which the European Court says that, theoretically, family unity can be violated by not letting an alien in. In the well known cases of ***Abdulaziz Cabales and Balkande v. the United Kingdom*** from 1985 (7 E.H.R.R. 471), the court held that while measures taken in the field of immigration (that is, measures preventing people from entering) may affect the right to respect for family life under Article 8 of the Convention, the obligation to admit relatives of immigrants will vary according to the particular circumstances of the persons involved. This duty, however, "cannot be considered as extending to a general obligation on the part of the contracting state to respect the choice by married couples of the country of their matrimonial residence and to accept non-national spouses for settlement in that country". In other words, family unity could take place elsewhere.

Another case from the United Kingdom of 1993 is ***N.***, a minor girl of three years old, ***v. The United Kingdom*** (16 E.H.R.R. Commission Supplement 28). Her mother had arrived in the United Kingdom at the age of thirteen with her entire family and was a naturalized British citizen. She applied for entry for her husband, whom she had married in her country of origin, Bangladesh. The United Kingdom Immigration Appeal Tribunal held that this was a marriage for the primary purpose of immigration, and therefore the Bangladeshi husband could not enter. The fact that they already had an infant daughter born in Britain did not influence the Tribunal. The European Commission agreed that confronting the mother with the choice between expatriation back to Bangladesh, and raising a fatherless child, did not entail a violation of the human right to family life protected under the **European Convention**.

To sum up, in terms of its relevance for Israel, the protection from arbitrary and unlawful interference with family life under the **International Covenant on Civil and Political Rights** can be a key to enabling people who are already in the area to remain, but is very unlikely to be helpful in gaining entry for those not already in the area.

The Convention on the Rights of the Child

The most popular convention of recent years is the **Convention on the Rights of the Child**. If all the countries that have signed this Convention will also ratify, it will have more

contracting states than any other convention except for the **Geneva Conventions** of 1949, even though it has only been on the books since 1989. In my view, the reason it is such an "international hit" is that nobody has examined its revolutionary implications.

The provisions on family reunification are contained in Articles 9 and 10. Article 10, on the face of it, seems very weak. Its origins can be found in the **Helsinki Accords** of 1975, which said that: "The participating states will deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family", and "will deal with applications in this field as expeditiously as possible". The first weakness is the problem of defining "a positive and humanitarian spirit"; this merely expresses a kind of moral commitment. The same is true of "as expeditiously as possible"; what if a country claims that it is unable to deal with an application for two or three years? The second weakness of the **Helsinki Accords** is that they are not an international treaty binding state parties, but are considered a declaration of political intent by those states who were party to the conference, and only apply to those states, which were the European countries, the United States and, I believe, Japan.

The question is, does Article 10 of the **Convention on the Rights of the Child** simply repeat this general moral obligation to look at things nicely? This is not, in my opinion, the proper interpretation of Article 10. Article 10 opens by saying that states are to deal with family reunification where a minor child is involved "in accordance with the obligations of state parties under Article 9, paragraph 1". Article 9.1 provides for family unity in unambiguous obligatory terms. States "shall ensure that a child shall not be separated from his or her parents", and only where "necessary for the best interests of the child" can states justify departure from the obligation to ensure family unity. This is a far cry from Article 8.2. of the **European Convention**, which mentions a wide range of interests which can justify violating the right to family life, including the economic well being of the country. Article 10.1., then, projects the right to family unity from Article 9, which concerns municipal law, into the international arena; it spells out how the state is to fulfill its obligations under Article 9.1. in the realm of international movement and immigration.

What does the obligation to deal with an application in a "positive, humane and expeditious" manner (Article 10.1.) mean? It seems to me that it means to act positively. The term "positive" does not appear in any other international human rights treaty. If we are talking about a mere recommendation to consider affirmative action, other language could have been chosen. For example, the contracting states shall "consider favorably the possibility of according", or shall "deal in a positive spirit" as the **Helsinki Accords** state. To deal in a positive and a humane manner with a family reunification application and to deal with it in accordance with the obligation to ensure non-separation of children from parents, would seem to me to allow only one possible answer – affirmative approval.

The implications of this term "positive" did not escape the notice of the delegations involved in the drafting process. The British objected: the term invited misinterpretation; "objective" should replace "positive." The French agreed: the French text too "seemed to contain an element of prejudgment". The Finns assured the other delegates that the word "positive" has an

established usage in the European context and to clarify, suggested that the word "favourable" could replace "positive". The Americans, who had originally sponsored the article and had urged that family unity and reunification are basic human rights, claimed that "positive", unlike "favourable", does not prejudge the issue. At this point, the British, for once preferring American understanding of their language, agreed, and the French never indicated if they were convinced by the Finnish understanding of European treaty language. The word "positive" remained. (However, when the British came to ratify this treaty, they reverted to their original understanding and entered a reservation, seeing that a requirement to give positive action on family reunification requests would affect their immigration law. The Germans entered a similar reservation.) In its context, positive consideration of an individual's request for family reunification can hardly mean anything other than as the British and French had indicated: it is a presumption in favor of approval. Rejecting an application is on its face a violation of the obligation to ensure that a child shall not be separated from his parents. Discretion remains but it is limited; there is a burden on the public authority to demonstrate that separation is necessary in the best interests of the child or that the child's best interests can in fact be ensured by reunification with his or her parents in a different country.

This problem still remains. Why should England agree to reunification in England when the family could reunify in Bangladesh? There are a number of answers to this. One is that this attitude presupposes that there is another place in the world where the family can enjoy reunification and this is not always the case, certainly not for refugees. Secondly, the state considering the application has to be absolutely sure that in fact the entire family is able to live in this other state. It is similar to the requirement that the Israeli Ministry of Interior, before accepting a request to renege on Israel citizenship, must first determine that the person is actually going to acquire citizenship in another state and will not be rendered stateless.

Finally, a state cannot as a matter of policy determine that family reunification of sundered families will take place somewhere else in the world simply by deporting family members. There is no true recognition of a right if that right can only be realized abroad. In any event, states do not normally have the power to ensure the realization of that right outside their jurisdiction. A policy to reject most requests to immigrate for purposes of family reunification where there is a minor child certainly violates the **Convention on the Rights of the Child**. Articles 9 and 10 require an opposite presumption, a presumption in favor of reunification.

The other requirement in Article 10 of this Convention is that requests be dealt with expeditiously. This provision of the **Convention on the Rights of the Child** is included for obvious reasons; especially if you are talking about a young child, a year or two is like a lifetime, and delays can be very damaging.

It should also be observed that unlike most other provisions in the **Convention on the Rights of the Child**, this provision affects the rights of adult parents as well as those of children. The reference in Article 10.1. to applications by a child or his or her parents makes it clear that the duty to ensure non-separation of a child from parents entails a reciprocal right both of the child and of the mother and father.

The right, however, remains the right of the child. If the parents are no longer married, for example, the child has a right to family unity with each of his or her parents. The European Commission case mentioned above of a Bangladeshi father and a United Kingdom mother (the case of *N*) should have been decided differently under the **Convention on the Rights of the Child**. So I would suggest that this Convention significantly extends international treaty law on the issue of family reunification where a child is concerned.

Refugees

The issue of refugees is one that concerns us very much in the Middle East and does have some relevance to Jerusalem, such as refugees from Kuwait married to Jerusalem residents. The **Fourth Geneva Convention** has the weakest possible provisions regarding family reunification of those dispersed by conflict. Basically, it merely says that children should not be left on their own; they must be cared for, and the parties to the conflict shall facilitate the reception of such children in a neutral country (**Fourth Geneva Convention**, Article 24). Article 26 adds that parties shall facilitate inquiries with the object of renewing contact if possible. This does not mean family reunification, and in my view the Israeli High Court was right to reject petitions based on the **Fourth Geneva Convention**.

The **First Protocol to the Geneva Conventions** goes considerably further in Article 74 (the problem is that Israel, like many other countries including the United States, is not a party to the First Protocol): "Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflicts and shall encourage in particular the work of the humanitarian organizations engaged in this task". It is arguable that a country which simply does not let families reunify is not facilitating their unification. Still, this provision falls short of an actual duty on states to permit aliens to enter, or refugees to return to an occupied territory.

Turning back to the **Convention on the Rights of the Child** in the hope of finding another revolution, a first glance is very disappointing. The original Danish proposal for a provision on the rights of child refugees was strong: that states recognize the right of the refugee child to be reunited with his/her parents, relatives and guardians. There is no doubt that the first thing that has to be done for a child refugee is to reunite him/her with his/her parents. This was one of the conclusions of the United Nations High Commissioner on Refugees in his report of 1988. This right was completely watered down in the **Convention on the Rights of the Child**. Article 22 says merely that the state parties shall assist such a child to trace his parents, or other family members, in order to obtain information necessary for reunification; the only duty this strong convention contains about refugee children is to provide an information service.

I would argue for a different interpretation, on the basis of Article 2, which sets out the scope of application of all the rights under the Convention. It says that state parties shall respect and ensure the rights set forth in the Convention regardless of race, color, etc., and regardless also of national origin or other status. It applies to every child within the jurisdiction of a state. If a child refugee is to be found in a certain country, all the rights under this Convention apply to him/her, including the right not to be separated from his/her parents under Article 9 and the

right to family reunification under Article 10. Therefore the information service under Article 22 of the Convention should be seen as merely supplementing the basic right of the child refugee to live together with both of his/her parents.

The Relevance for Israel

What are the practical implications of the above for Israel and for litigation in Israel? Israel is a party to and has ratified both the **International Covenant on Civil and Political Rights** and the **Convention on the Rights of the Child**. There is a basic rule concerning interpretation of laws which is stated in the strongest possible terms in Aharon Barak's recent book, ***Interpretation In Law, Volume II, Statutory Interpretation*** – and it should not be forgotten that Barak is to be the next president of the Supreme Court of Israel. According to Justice Barak, local law must be interpreted wherever possible in accordance with international obligations of the State; not only international obligations under customary law, but all international obligations including treaty obligations. Furthermore, he says that only express, clear and unequivocal language in a local law would override the international obligation where such a local law contradicts the international obligation.

In the Israeli and Jerusalem context, we are talking about the **Law of Entry Into Israel** which contains nothing that contradicts the international conventions discussed above. This law merely gives the Interior Minister complete discretion to permit people to enter Israel. In my opinion, he is obligated to exercise his discretion in accordance with these international obligations and I would hope that the Israeli courts would follow this interpretation.

The same problem exists in all countries which, like Israel, have inherited a common law tradition because in such countries, international treaties do not automatically become a part of local rights and of local law, but require a specific act of Parliament in order to become so. In a recent case in New Zealand in 1993, ***Tavita v. Minister of Immigration and Attorney General*** (C.A. 266/93, unpublished interim judgment of 30th November 1993), a father challenged his deportation order from New Zealand where his child was a New Zealand resident and citizen, claiming a right under Article 9 of the **Convention on the Rights of the Child**. The New Zealand court in a preliminary decision stated that a failure to give practical effect to international instruments to which New Zealand is a party may attract criticism. "Legitimate criticism could extend to the New Zealand courts if they were to accept the argument that because a domestic statute giving discretionary powers in general terms does not mention international human rights norms or obligations, the Executive is necessarily free to ignore them." The court did not take this view, and sent the case back for reconsideration by the Immigration Board in New Zealand.

I think it might be possible to achieve similar decisions in Israel on the basis of international obligations.

"Non-Aliens"

A final note: the fact that the Palestinian residents of East Jerusalem are not aliens or foreigners only makes the arguments made above a fortiori all the stronger. If what has been

described in this presentation is the way aliens are dealt with under international law, then those who are not aliens have to be dealt with even more favorably.

This view is supported in ***The Legal Position of Aliens in National and International Law***, published by the Max-Plank-Institute in 1987, which argues that the status of family members of citizens is not only a question of the law relating to aliens, but also touches fundamental interests of a country's own citizens concerning their right to live with their family. Plender, cited above, agrees that a national's claim to reunification with his immediate family members is based on his own right of residence, for if they are denied admission, the national is confronted with the choice between expatriation and destruction of the family unity. Most national laws do recognize the right of a citizen to bring his family and children into the country but this is not always the case, such as the example from the United Kingdom. In the context of the Occupied Territories and of Jerusalem, the term "non-aliens" would perhaps be more appropriate; they are not citizens but neither are they aliens. The non-alien resident spouse or child has the strongest possible claim to unification with the foreign family member.

Political Aspects: The New Palestinian Approach

Jan Abu Shakrah, Director of Palestine Human Rights Information Center, Jerusalem

It is unfortunate that no substantially new Palestinian approach to the question of Palestinian residence in East Jerusalem has emerged since the Oslo and Cairo Agreements. In my view, however, what has emerged are some indications as to how such an approach might or should evolve, so my remarks are going to be more normative than descriptive.

Based on statements made by Palestinian leaders as well as a plethora of conferences and seminars concerning the status of Jerusalem, my first conclusion is that no substantially new approach, thinking or strategy has so far emerged on the Palestinian side. The basic Palestinian approach is still composed of three elements:

1) A political, ideological and legal assertion of the Palestinian, Arab and Islamic significance of Jerusalem and the rights of the Palestinians there, i.e. an assertion of the rights of the Palestinian people as a whole in Jerusalem.

2) A general rejection, boycott or ignoring of the Israeli municipality and the extension of Israeli law to East Jerusalem.

3) A reactive rather than a proactive approach to Israeli initiatives.

Having stated this, I do see some possibilities for change in this basic, not very productive approach. The first is that there have been some political changes arising from the negotiating process, not because there was a conscious attempt to form a policy, but because the realities actually got the Palestinian leadership involved in doing things that have led to some new potentials.

The first was the Husseini-Shahal channel, opened when leading Palestinian Jerusalemite Faisal Husseini was appointed to deal with Israeli Police Minister Moshe Shahal on issues concerning Jerusalem. At a recent meeting primarily of Israeli peace groups, Husseini admitted that this has not been very successful, particularly considering the key question of the closure of Jerusalem and its consequences. In fact, almost nothing substantial has been achieved on residency issues through that channel, but the channel exists and it is sanctioned by both sides.

Secondly, there has been the longstanding channel which we, the Israeli and Palestinian human rights organizations dealing with family reunion, have been concerned with: the multilateral discussions on refugees. Mainly because of the failure of the multilaterals to deal with overall refugee issues, it was by way of default that that forum has in fact dealt substantially with issues of family reunification. This process was also educative for the Palestinian leadership; it was mainly due to initiatives from people concerned with the very practical issue of family reunion that the leadership began to pay attention to its potential as a political instrument.

The third development has been the formulation of the idea of establishing a Jerusalem council on the Palestinian side. I believe that some initiative is now taking place, but reflecting the fear of the political implications of appearing to be creating a shadow municipality, its development is not progressing quickly. Palestinians in Jerusalem have very practical concerns that can only be addressed if there is a unified political level that is overseeing offices which are dealing with issues such as education, National Insurance, family reunion, property, housing and zoning.

Of course, you are all aware of the "battle of Jerusalem" now taking place in the courts and on the streets concerning Palestinian institutions in East Jerusalem. Although this does have some relevance to residency, it has actually diverted attention from Palestinian residents and their problems in Jerusalem. If there have been changes in the Palestinian position they have been, very appropriately, as a result of the fact that Palestinian residents in East Jerusalem have very serious practical problems that have to be decided one way or another. These concerns have been brought to the Palestinian leadership, and when it has not come up with a solution, people find their own solutions. As a result, we are seeing some very unsavory solutions such as an increase in the number of Palestinians requesting Israeli citizenship.

In addition, many Palestinians who have residence problems and see no other solution vote with their feet; since 1967 there has been a mass migration out of East Jerusalem of a number equal to the present Palestinian population in Jerusalem. The problem is exacerbated by restrictions on housing construction and community development, and the taking up of available rental properties by the foreign community in East Jerusalem. People are forced out by what appear to be economic factors but which have a political basis. It is clearly Israeli policies that make it difficult or impossible for Palestinians to build and to live in East Jerusalem, and these policies constitute a policy of forced eviction from the city.

If Palestinians are going to develop a new approach, I believe they should start with a very serious, honest and objective assessment of the living conditions of Palestinian residents in Jerusalem. The focus has been on the political significance of Jerusalem, and the needs of Palestinians who are desperately trying to find places to live, to keep their families together there and to find work, are totally ignored in the equation. There is not even a forum where they can bring these concerns. If we are going to form a strategy to deal with the issues of family reunification, legal residency and allowing people to remain in Jerusalem, we should begin by looking at those factors that will make it possible for Palestinians to live a decent life and form communities.

Palestinians do not need to look to a foreign country or the Zionist movement to find an example; they only have to look at the Palestinian villages inside the green line. Um El Fahem, for example, is a city which for years, like every Palestinian city and town in Israel, has suffered from an extreme policy of discrimination in terms of city services and quality of life. Right now they are demonstrating before the Knesset and the Prime Minister for equality of services, but at the same time, there has been a self-help drive in this town to build it up: to put in a sewage system, to build schools, roads and communities, to make life livable for the inhabitants. This has substantially changed the quality of life and led to more people remaining in Um El Fahem, even though it is difficult to find space to build.

All over Palestine, work camps are organized which put people from here and abroad to work building streets and carrying out other projects in the community; the annual work camp in Nazareth is one of the largest. As far as I know, there has never been a work camp established in East Jerusalem.

Finally, in the **Declaration of Principles**, it is provided that Palestinian residents of Jerusalem will have the right to vote and to stand for election in the Palestinian National Authority. Of course, the PNA will have nothing to do with East Jerusalem. This has a lot of unknown implications, including in terms of residency. There are many Palestinians who are already Israeli citizens who live in Jerusalem, who are not likely to be given the right to vote in the election; but if such people are living in the city without the right to vote for those who represent them on the Palestinian side, it creates a problem of franchise. Secondly, it raises the issue of the Palestinians who are now trying to acquire Israeli citizenship.

In conclusion, my main recommendation to the Palestinian leadership is to begin to establish town meetings in Jerusalem on issues such as family reunification and the acquisition of Israeli citizenship. These issues should be debated openly in order for problems to be identified and strategies to emerge.

Aspects of Israeli Policy Regarding Palestinian Residency in East Jerusalem

Lea Tsemel, Advocate

On examining the Israeli policy concerning East Jerusalem since 1967, one realizes that there has been a plan of "Judaisation". What we are dealing with now are the victims of that phenomonen. The following are some of the aspects of this policy which influence Palestinian residency rights in Jerusalem.

1. Wherever possible, on one legal basis or another, land has been taken into Jewish hands. The actions of Israeli settlers in Jerusalem, who took advantage of poverty or other forms of Palestinian weakness to seize homes and lands, have been welcomed by Israeli institutions.

2. There is a strategy to include as much land as possible but as few Palestinians as possible within the municipal boundaries. In the Israeli plan for enlarging Jerusalem, a long finger stretches north almost to Ramallah. Palestinian populated neighborhoods beside the roads are not included in the municipal boundaries, while areas beside the road on one side or the other are placed within Jerusalem because they contain few Palestinians.

3. The building of new Jewish neighborhoods around Jerusalem is creating a belt around the city, aimed at making it almost impossible to think of ever returning it to the Palestinians. The demography of the city is being changed. Although Givat Ze'ev and Maale Adumim, for instance, are not yet part of the Jerusalem municipality, it is just a matter of time.

4. Another aspect of Israeli policy is to encourage Palestinian Jerusalemites to ask for Israeli citizenship. There is a practical aspect and a political aspect to this. The authorities wish to limit the numbers asking for rights in Jerusalem: once you are an Israeli citizen, it makes no difference whether you are from Jerusalem or the Triangle, you are an Israeli citizen.

5. Another important aspect is the limitations on Palestinian building, and the severe difficulties faced by Palestinians in finding housing solutions in Jerusalem. A Knesset member has applied to the Supreme Court for execution of outstanding demolition orders against Palestinian houses in Jerusalem. Although his petition was rejected, thousands of demolition orders on illegally constructed Palestinian homes are still outstanding and in due course, could be executed. Meanwhile, Palestinians are forced to move out of the city due to the lack of housing opportunities.

6. The policy regarding residency status is very clear. Those who changed the center of their lives and no longer live in Jerusalem will cease to be considered Jerusalemite, and that policy has been confirmed by the Supreme Court. The issue is how Palestinians, even if they leave Jerusalem, can retain some kind of center of life there, for example by sending children to

school in Jerusalem. The National Insurance investigators are checking people's addresses, the neighbours are interrogated, the closets inspected. In order that their lives continue to have some existence in Jerusalem, people should show themselves at their address, in their neighbourhood or at their parents' house as often as possible.

An old Jerusalemite woman went to live with her son in Nablus in her old age. When she went to renew her identity card, it was taken away from her on the basis she was no longer an inhabitant and had changed the center of her life. The Ministry of Interior has stated its new policy very clearly; they will not withdraw identity cards unilaterally, but whenever people seek services on the basis of the identity card, they will refer to the register and may at that point take it away.

Such cases are going to lose in the Supreme Court, and every loss will only serve to legitimise the Ministry of Interior's policy. Therefore great care should be taken in resorting to the courts on this issue, unless there is a simultaneous public campaign aimed at changing the policy.

Conclusion

What is lacking is a strategy, or an education campaign on the part of the Palestinian leadership in response to these phenomena, all of which have an impact on the right of Palestinian Jerusalemites to live in Jerusalem. Meanwhile, people are finding their own individual solutions.

Gaining and Regaining Permanent Residency Status, and Visitor Permits

Andre Rosenthal, Advocate

1. Gaining and Regaining Residency Status

Until recently, a female Palestinian resident of Jerusalem was not permitted to have her non-Jerusalemite husband live with her in Jerusalem because the Israeli Ministry of Interior operated on the basis that, traditionally, a Palestinian woman will follow her husband*. Meanwhile, male Jerusalemites rarely had a problem obtaining family reunification for their wives. Recently, the Ministry of Interior has changed its attitude and is now willing to grant non-Jerusalemite husbands family reunification as long as the wife can prove that she actually resides in Jerusalem. It is now a matter of proving that the center of life of the woman and her children, and perhaps of her family, is in fact Jerusalem. This moves into line with a body of law that has developed in the High Court whereby the residency status of a person depends upon where the center of that person's life is.

The Israeli policy takes into account regulations from 1974 containing three unconnected conditions, whereby a permanent resident is judged to have lost the right to residency if he or she: 1) remains abroad seven years, 2) becomes a permanent resident of another state, or 3) becomes a naturalized citizen of another state (section 11A of the Entry Into Israel Regulations, 1974)**. There is some flexibility in the application of this Regulation, but on the whole it is my experience that a very good reason must be shown why a person stayed abroad for more than seven years before he/she will succeed in regaining the identity card. An example might be a person who has been studying abroad and can prove a more or less continuous period of study.

The status of residents of East Jerusalem was challenged in the major Israeli High Court decision of 1988, ***Awad***, which has already been discussed. ***Awad***, in my opinion, put the nail in the coffin by allowing the court to make a ruling on this issue; it established the criteria according to which the center of life is to be decided.

Palestinian extended family members (beyond the nuclear family which is spouse and minor children) are not recognized in Israeli law or practice as having rights to come back or to gain residency status unless they fall within a 'humanitarian' category. This has not been defined but, for example, for elderly parents or a single parent with small children, the chances of gaining residency are good. One factor is how much of the extended family lives in Jerusalem, another is the socio-economic status of the extended family in Jerusalem. However, the law is applied on a case by case basis and any attempt to generalize or to define criteria has not been successful.

Unfortunately, one of my cases resulted in a rather bad judgment of the Israeli High Court. The court accepted as legitimate the stated policy of the Ministry of Interior to limit the number of "those who lack the right to enter" (the words used by the court – this means non-Jews) who may enter Jerusalem. (This decision, ***Abu Dahim***, H.C.1404/93, is so far unpublished.) The case did not completely close the door because it was decided on its facts. It was the case of a student who lived seventeen years in Jordan and became a specialist doctor. His brothers, sisters and parents all live in Jerusalem. He failed to come back at the end of seven years but there was no need for him to become naturalized in Jordan because he already had Jordanian citizenship; nor did he have to ask for permanent residency in Jordan because as a citizen, he was automatically entitled to this. Furthermore, he married a Jordanian citizen and has a medical practice in Jordan.

I attempted to use what I thought to be a loophole in the law, and requested an A5 visa, a temporary residency status. The Ministry of Interior said that this status is granted either where the state has an interest in a person becoming a resident or where the state will eventually grant residency. (For example, sometimes they grant this status in cases of children when they are not sure that they are in fact living with the mother in Jerusalem, for a maximum of two years, at the end of which they usually grant permanent residency.) This status may also be granted where a definite purpose for remaining in Israel for a limited period can be shown. Here, in my view, lies the only glimmer of hope in the ***Abu Dahim*** decision; it is sometimes possible to show that the person is essential or needed because of his or her skills, abilities or knowledge. I succeeded to obtain A5 temporary residency status in a subsequent case, although there were special circumstances.

It is important to note that the onus of proof in establishing a right to residency or a right to regain residency is on the applicant.

2. Visitor Permits

As I have mentioned, the stated policy is to limit the number of persons entering on different permits. However, an exception is made in the case of visitor permits where the visitor is a very close family member. If an application for a more distant relative is rejected, the chances of success may be increased if socio-economic factors are raised, and a financial guarantee that the person will actually leave is usually accepted.

It should be remembered that until recently we were dealing with people holding passports from states which are at war with Israel. There is a definite fear on the part of the Ministry that these people will want to extend their stay in Israel, which also extends to citizens of other states. Filipinos must pay a NIS 5,000 cash or bank guarantee in order to enter, obtain a work permit or stay as a visitor. (This may be reduced to NIS 3,000 depending on how close the relative is and the reason for the visit.) I would stress that the general policy is to limit the granting of such applications.

Finally, the physical conditions in the office where Jerusalemites submit applications are extremely poor. A few years ago there was a fire at the Ministry of Interior in which many files were lost and people were forced to resubmit applications which had been lost.

Subsequently, the office has been improved, but there is tremendous pressure on this understaffed office, whose employees work half-time, lack patience, often deliberately misinform the applicants about their rights, and do not or do not wish to know that there have been policy changes.

Perhaps the most essential point is that every application has to be accepted and processed, even if it is clear that it will be refused. Everyone has a right to submit an application; to ask for an uncle to visit, for a child to be registered, for family reunification. In many cases the first obstacle is the clerk who decides that there is no point in accepting it because it is going to be rejected. He or she has no right to do so. In my view it is essential to make a concerted effort to establish the basic point that every application has to be accepted no matter how ridiculous it might seem. From a lawyer's point of view, if the application is not submitted, it does not exist and no subsequent action can be taken.

Notes

* From about 1979, the authorities decided that in the majority of cases it is the woman who moves to join her husband, and that children will follow the mother. It seems that the reason behind the policy is to minimize the number of Palestinian children with Jerusalem identity cards.

In the case of ***Issa*** (included in the list of relevant Israeli High Court cases in Appendix II), the Ministry was asked to give reasons for refusing to register a child in the Population Registry where the mother was a resident. In its affidavit in reply, the Ministry stated that since 1948 it had followed a policy based on the assumption that a woman follows her husband because of the nature of Palestinian society. Although the court rejected this, the fact that the policy is not contained in a written regulation makes it more difficult to challenge.

** As to how Israeli officials know if someone has acquired permanent residency or citizenship in another country, the burden of proof is on the one who is asking to regain residency, who must submit documentation showing whether or not he or she became naturalized or resident elsewhere. The Ministry of Interior often asks for the last address or place of work of a person in the United States, and replies later that the Israeli Consulate has "investigated". Consulates abroad frequently give false or misleading information.

It seems likely that Israel will make an agreement with the Palestinians by which the Palestinian Authority would be obliged to register in the West Bank Population Registry anyone who is denied residency in Jerusalem.

National Insurance Entitlements of Jerusalemites

Mazen Qupty, Advocate

1. Background: development of the law on the entitlements of those who move out of East Jerusalem.

In order to understand this subject, we need to go back to the late 1960's and early 1970's, when the Israeli government decided to evacuate the Palestinians from the Jewish Quarter of the Old City and move them outside the borders of East Jerusalem. One of the issues raised at that time was the question of what would happen to the rights of these people as regards National Insurance.

Since it had been the result of a political decision that these people had been moved outside East Jerusalem, it was decided to continue to pay them their National Insurance entitlements, even though they lived outside the official borders of East Jerusalem. In 1973, a ministerial committee on Jerusalem endorsed this policy, which continued to be implemented until 1987.

The problem became the interpretation of this ministerial decision. Until 1979, the official interpretation was that any resident of East Jerusalem who moved to the West Bank or Gaza Strip would continue to make contributions and receive entitlements just as if he were still living in East Jerusalem. In other words, if, for example, somebody had a child in 1975 while living in Jerusalem, moved in 1976 to the West Bank and had another child there in 1977, he was entitled to receive allowances for both children.

In 1979, however, the National Insurance Institute attempted to introduce regulations which gave another interpretation to the policy decision, according to which anybody who moved outside Jerusalem would continue to receive only those entitlements to National Insurance to which he had become entitled before he moved. For example, if an old man aged seventy who was already receiving his old age pension moved to the West Bank, his payments would continue even after he moved. But if instead this man had moved to the West Bank when he was 62, then upon reaching 65 (the age at which he would have become entitled to a pension), because he was by that stage a resident of the West Bank, he would not be entitled to receive this allowance.

For some reason, this new policy was never published, despite a proposal to do so, but in practice the National Insurance Institute from 1979 onwards acted on the basis of this new interpretation. Anybody whose entitlement to any right arose after they had moved to the West Bank was told they could not receive allowances, and anybody who became entitled while still living in Jerusalem and subsequently moved outside Jerusalem, continued to receive all entitlements already acquired.

At the same time, the National Insurance Institute began an intensive campaign aimed at

establishing who was actually entitled to allowances, and stopped making payments to those whose entitlements had arisen after they had moved outside East Jerusalem.

2. The Test Cases

At that point, my office started bringing hundreds of claims against the National Insurance Institute. From 1983 to 1987, in my office alone, we brought some 1,000 suits. There were two kinds of claims:

1. Cases where National Insurance payments had been made to people whose entitlements had begun after they had moved to the West Bank. On the basis that the law states clearly that only residents of Israel can receive, for example, child allowance or pensions, the Institute claimed that these payments should not have been made and would be cut forthwith, although they would not ask these people to pay back what had been paid them illegally.

2. Cases of persons who actually lived outside Jerusalem but gave the National Insurance Institute an address inside Jerusalem. Because these people had actually cheated them, the Institute said they would not only stop the payments but would also ask the recipients to pay back the money paid to them since the time they moved out of Jerusalem.

On these two issues, I arrived with four or five cases to the Labor Appeal Court and obtained several decisions that distinguished between the two types of cases. The Labor Appeal Court held that in any case where the National Insurance knew that a person was a West Bank resident but paid him nonetheless, they must continue to pay him. But with regard to any person who cheated, they have the right to discontinue payment.

In one of the cases, I tried to give a different interpretation to the ministerial decision of 1973 (the National Insurance's interpretation was that which they actually began to apply in 1979). I argued that a resident who has moved outside Jerusalem should be treated in the same way as other residents who remain in East Jerusalem. The Labor Appeal Court rejected our appeal; two judges held that the National Insurance interpretation was the correct one while one agreed with my interpretation.

As a result of the many suits brought against the Institute, it decided to publish new regulations concerning former residents of East Jerusalem which attempted to combine the two interpretations. Even if you are living outside East Jerusalem, they said, you may in certain specific circumstances be able to claim rights as a resident of East Jerusalem. These regulations were published on 1st January, 1987: **"Rights and Duties according to the National Insurance Law for those who are not Israeli Residents"**.

The regulations of 1987 contained many new things. For example, someone who moved outside Jerusalem when he was over 18, who works in East Jerusalem or in Israel, is entitled to almost all National Insurance allowances, other than child allowance for children born after he moved (unemployment benefit comes under a different law). Concerning pension, someone who worked is entitled even if he lives in the West Bank. Suppose he moved to the West Bank

at the age of 50 and continued to work in Israel until the age of 63. At that point he would become entitled to a pension (Regulation 4.2). Someone who is a "resident of the area" according to the definition in the regulations* who works in Israel and suddenly becomes disabled is entitled to disability allowance (Regulations 6 and 8).

The definition of "resident of the area" given in these regulations had considerable significance for the future since entitlements under the regulations of 1987 and 1993 depend upon this definition. According to Article 1*, there are five conditions for anybody to be a resident of the area, one of which is that a person is a Jerusalem resident. This is very important because most refusals under the new regulations are based on non-fulfillment of the condition of residence in the area.

In one case, the applicant applied for adult disability allowance and gave his address as El-Ezaryeh. The National Insurance began to pay him the allowance but one year later told him he was not entitled because he was not in fact a resident. I tried to convince the judges in the Labor Court that it did not matter why and how he obtained his allowance prior to 1st January 1987, because based on the second article of the 1987 regulations, he is entitled to continue to receive this allowance. The two judges were split; one accepted my interpretation, the other accepted the National Insurance Institute's interpretation. In the Labor Appeal Court, they accepted that of the Institute, so I went to the High Court. There, the attitude of the judges was very surprising; during the first session of the court, they would not even let the Institute's lawyer speak and told him the situation could not continue; they must "clean the table" and at least pay allowances to all those who had been receiving them prior to the new regulations of 1987. Regarding the period after 1987, the new regulations could be applied.

This is in fact what happened. The National Insurance Institute issued new regulations, "**National Insurance Regulations, Payments to East Jerusalem Residents who Moved to Judea and Samaria and the Gaza Strip, 1993**". The intention behind these regulations was to establish that anybody who had received any kind of allowance prior to 1st January 1987, regardless of the reason why it was cut, was entitled to continue to receive it. As a result, many people were able to have their payments renewed.

Because these two cases had been in the courts since 1988, we argued that, at least as regards cases that were in the court, they must pay retroactively. As a result, the regulations state that anyone who had filed a suit against the National Insurance Institute will automatically receive the allowances retroactively from the date that he sued. Many of my clients whose cases were put aside pending the results of these test cases received a lot of money in retroactive payments. A total of some 100 to 200 cases (not all of them handled by my office) received retroactive payments. Others, if they make the request before a certain time, are entitled to start receiving their allowances again from that point onwards.

One of the major arguments we have raised in all these cases is that of discrimination, contrasting the treatment afforded to Palestinian residents of Jerusalem with that afforded Israeli settlers in the Occupied Territories. An Israeli citizen, or someone who is entitled to become so under the **Law of Return**, is considered an Israeli resident even if he lives in the Occupied

Territories (and this is true not only as regards National Insurance but also as regards taxation and all other rights and duties). The problem is that this was promulgated in Defence Regulations, which have the status of law and therefore cannot be challenged in the courts. We have many precedents of the High Court stating that discrimination promulgated according to law cannot be challenged. This is the answer we received whenever we raised these arguments in the Labor Court and the Labor Appeal Court. So far as I am aware the issue has never arrived to the High Court, and it may be worth considering the merits of bringing a case at this point, particularly in the light of the new **Basic Laws**.

3. The Link Between Contribution and Entitlement

It is important to note that there is little connection between the duty to pay National Insurance contributions and the entitlement to recieve benefits from the National Insurance Institute. An Israeli, whether he works or not, in most cases has a duty to pay National Insurance contributions. Part is for child allowance, part for work accident compensation, part for army reserves, and so on. But someone who does not have any children, for example, does not receive child allowance. A person who pays contributions all his life but moves abroad upon reaching the age of 65 will not be entitled to a National Insurance pension because he is no longer a resident of Israel (unless there is a reciprocal arrangement between Israel and the other country whereby benefits will be paid; for example Israel has such arrangements with France and the United States).

The current situation is that in order to receive most allowances, there is one basic condition; that you are a resident of the area*, and the cause of someone moving out of the area, whether it is due to the housing shortage or for any other reason, is not relevant. Only three types of allowance are paid without the condition of residency: work accident (the condition for which is that you work in Israel and the accident occurred in Israel or on the way to or from work between Israel and the West Bank); maternity benefits for the wife of a worker in Israel who gave birth in Israel (following an initiative by Member of Knesset Tamar Gozansky, however, the wife is now entitled even if she delivers in the West Bank); and allowance paid in the case of bankruptcy of the employer, where the employee has a right to compensation up to a maximum of, I believe, NIS 25,000. For all other allowances, the requirement of residency applies.

However, where a person, even if not a resident of East Jerusalem, paid National Insurance contributions when he did not have the duty to do so, he has the right to have such sums paid back to him. I have a case where all the money paid during the years since the person moved out of East Jerusalem was repaid, plus interest and index linking.

4. Relations with the Ministry of Interior

As to the relationship between the National Insurance Institute and the Ministry of Interior, it seems that there are secret relations between these two bodies. It would appear that the Institute has delivered most of the information in its possession to the Ministry over the past few months, and anyone who comes to the Ministry to renew his identity card or make another

application is liable to have his identity card withdrawn on the basis of evidence from the National Insurance Institute that he is not a resident of East Jerusalem. In fact, following the issuing of the 1993 Regulations, there was a rumour in East Jerusalem that anybody wishing to have his allowances renewed has to show at what point he moved to the West Bank. People are being asked to sign declarations to this effect, and it seems that this information is then delivered to the Ministry of Interior.

Notes

* The definition of "resident of the area" according to Article 1 of the 1987 Regulations is as follows: "Whoever resides in the area and fulfills all of the following:
(1) he is not an Israeli citizen;
(2) he is registered in the Population Registry according to the **Population Registry Law**, 1965;
(3) he holds an Israeli identity card given him before the date of commencement (date of commencement of these regulations: January 1, 1987).
(4) his place of residence registered in his identity card is in the area described in the addendum to the **Law and Administration Order (No. 1)**, 1967." (unofficial translation).

Registration of Children

Taghreed Jahshan, Advocate, HaMoked

Registration of children is really a practical or a technical term for the granting of permanent residency status to children, one of whose parents is an Israeli permanent resident.

Registration is governed by regulations issued pursuant to the **Law of Entry Into Israel**. The relevant regulation (Regulation 12) states that:

> "Regarding a child born in Israel, and to whom section 4 of the Law of Return, 1950, does not apply, his/her status in Israel will be that of his/her parents. If the parents do not have the same status, the child will receive the status of the father or guardian except if the other parent opposes this in writing. If the other parent has opposed this, the child will receive the status of one of the parents as determined by the Minister."

The most important condition for obtaining permanent residency status is the place of birth, which must be in Israel. If the child is born outside Israel, even if both parents are residents, he or she will not be registered as a resident and the case will become one of family reunification (which is a formality, since it is invariably granted).

Since according to Regulation 12 the child is automatically granted the identity of its father, if the father is a West Banker, the child will get a West Bank identity unless the mother protests in writing.

Thus a problem only arises where it is the mother who is the Jerusalem resident. The Ministry of Interior allows registration of children on the mother's identity card in such cases only in very restricted circumstances, and appeals against negative decisions by the Ministry of Interior are frequently made against this discrimination on the basis of gender. In such cases, and in order to obtain permanent residency status for her children, the mother has to prove that the center of her life and of her children's life is in Jerusalem. This involves producing as evidence the documents listed below. Many items on the list are not very easy to obtain. Some, such as an up-to-date rental contract and bills for municipal taxes or telephone and electricity, relate to the present, while others, such as full study records of the children from the time they began to go to school, are required in order to prove that throughout these years they were living in Jerusalem.

As has been mentioned by others, there seems to be a secret relationship between the National Insurance Institute and the Ministry of Interior which relates to the process of proving residence in Jerusalem. When the Assistant to the General Director of the Israeli Population Registry in the Ministry of Interior was asked about this, it was the only question which he refused to answer.

Recently there have been certain changes in the policy of the Ministry of Interior, which is now more open to granting family reunification to non-Jerusalemite fathers and husbands. One result of this change is that registration of children will become part of the same procedure. If family reunification is granted, then registration of the children will occur automatically. If on the other hand the family reunification application is not accepted, then the children will not be registered and will not become permanent residents. (In fact, the evidence mentioned below required in applications for registration of children is also now required for family reunification applications.)

Documents Required for Registering Children on their Mothers' Identity Cards*

1. Copies of the identity cards of both parents.
2. A marriage contract from a Muslim religious court in Israel.
3. A rental contract and/or confirmation of residence in the neighbourhood from the neighbourhood Mukhtar and/or UNRWA.
4. Confirmation by the National Insurance Institute of the payment of child allowances.
5. Bills for municipal taxes, water, electricity and telephone.
6. An entry permit to Jerusalem for the husband.
7. Copies of documents relating to school studies showing continuous school attendance in Jerusalem.
8. A copy of immunization records.
9. A copy of a Kupat Holim (Health Fund) membership card.
10. Confirmation by the parents' place of employment in Jerusalem or in Israel.
11. Birth Certificate.

All documents and permits must be up-to-date.

* This is an internal list used at HaMoked arising out of HaMoked's experience in handling such cases. It has no legal status, and in fact the requirements are not listed anywhere in the law. The list consists of the sum total of what is usually demanded by the Ministry, plus some common sense. Some pieces of evidence are more important than others. Regarding item 6, in cases where the husband is refused an entry permit because of security reasons, we intend to try to argue that this has nothing to do with whether or not the center of life of the mother and child are in Jerusalem.

Education

Dalia Kerstein, HaMoked

Through handling cases of registration of children, HaMoked has discovered families that are not registered anywhere. These are families where the mother is a resident of Jerusalem and the father of Jordan, the West Bank or elsewhere, and the children are registered either on the father's identity card – even though they are in fact living with their mother in Jerusalem – or are simply not registered anywhere. In either case, these children are not being accepted in the Jerusalem municipal school system. For such children, compulsory education does not exist; the international **Convention on the Rights of the Child**, ratified by Israel in 1991, which talks about a right to education, has no meaning for them.

Responsibility for education in Jerusalem lies with the Municipal Department of Education. A letter dating from 1992 addressed to ACRI from the Assistant to the Municipality's Legal Adviser states that the municipality recognizes its legal duty, together with the state, concerning compulsory education of children residing within the city boundaries in official educational institutions, and states that the municipality fulfills its obligations as regards that duty. In a second letter, dated 1994, the Officer in Charge of the Arab sector in the Jerusalem Municipality Department of Education informed HaMoked that as far as pupils resident in Jerusalem are concerned, whether they have an identity card from Jerusalem or the West Bank, the municipality does not dispute its obligation to accept them in the municipal schools. As regards fees to be paid by such pupils, this would be handled by the Legal Adviser to the Municipality.

Despite these letters, during 1994 it has come to HaMoked's attention that many children are not in practice being accepted in municipal schools and we are having to fight over each case. Currently there are many cases in the hands of the Legal Adviser to the municipality awaiting a decision concerning fees. She is now demanding to know the status of these children. In our view, the same criteria that are relevant for National Insurance purposes should be applied as regards education, and acceptance in municipal schools should not depend upon registration in the Ministry of Interior (a process which is lengthy and in the meantime can lead to lost education time).

The Ministry of Interior requests documentation regarding where the children go to school as one of the pieces of evidence required of applicants for permanent residency in Jerusalem in order to prove actual residence, whether for children or for adults. At the same time, however, the school system tells the parents that if their children are not registered in Israel or with the Ministry of Interior, they cannot be accepted in the school system. As a result of such refusals and of the prohibitive cost of the private schools, some are forced to send their children to schools in the West Bank on the outskirts of Jerusalem, which then in turn leads the Ministry of Interior to point to this as proof that their center of life is not in Jerusalem.

A recent article published in the Israeli newspaper Kol Hair discussed the severe shortage of classrooms for children in East Jerusalem. The Municipal Educational Department says that it is trying to deal with this question but gives it as a reason for not being able to accept more students.

Some people manage to get their children into private or Waqf schools, despite the problem of how to pay. However there is a political aspect to this; suppose all the problems were solved, there were sufficient schools and classrooms in the public system and the municipality was willing to accept all of these children; the Waqf and the other private schools would be severely hit.

Children in a similar situation in the West Bank (where one parent is a resident, the other present on the basis of long-term visitor permits), have their right to compulsory education respected. In East Jerusalem, where it is the Israeli government which is directly responsible for ensuring the fulfillment of this right, it is not respected.

The Right of Non-Resident Spouses of Jerusalem Residents to Work in Jerusalem and Israel

Mustapha Mar'i, Advocate, Al Haq
(A Palestinian human rights organisation based in Ramallah, West Bank)

There are three distinct policies pursued by Israel regarding the right of non-resident spouses of Palestinian Jerusalem residents to work in Jerusalem and Israel. The policy applied in a certain case depends almost entirely on the spouse's nationality and/or original place of residence. Such a policy ignores the fact that all such non-resident spouses have in common their marriage to a Jerusalem resident. These three policies are detailed hereunder:

1. Cases of West Bank and Gaza Strip Spouses of Jerusalem Residents

According to current Israeli policy (but it is important to note that this policy is frequently not adhered to), West Bank and Gaza residents married to Jerusalem residents are given permits to leave the area of their permanent residence and stay overnight in Jerusalem, if they prove that their spouses are actually living in Jerusalem. A security check is made by the office of the Civil Administration that issues the permit. The permit states clearly that it does not entitle its bearer to work in Israel (or Jerusalem).

If and when such a non-resident spouse wishes to work in Israel or Jerusalem, his potential employer should apply to the Israeli Labour Bureau for a permit to employ a West Bank or Gaza resident. The applicant is limited by many restrictions related to the kind of work he is seeking and age restrictions. (Currently, Palestinians residing in the West Bank and Gaza aged under 30 are not allowed to enter Israel and Jerusalem, but the age limit varies from time to time.) If such an application is approved, the employee hands it to the relevant West Bank Labour Department. The latter applies for a work permit, or asks the employee to apply, to the Civil Administration in that area. After a strict security check, a permit to work might be issued to the spouse of the Jerusalem resident. No reasons are usually given in cases of refusal.

2. Cases of Spouses of Jerusalem Residents who Entered Jerusalem on Visitor's Permits Issued by the Ministry of Interior

A visitor's permit does not constitute a permit to work in Israel or Jerusalem. On the contrary, each visitor's permit issued by the Ministry of Interior states clearly that its bearer has no right to work in Israel or Jerusalem.

There are indications of a new Israeli policy, according to which such spouses are given renewable extensions of visitors' permits, each extension being valid for six months. Despite information to this effect, I have noticed several cases during the past few weeks where such spouses were asked to leave the area upon the Ministry of Interior's refusal to extend their

permits. This shows, unless the contrary is proved, that the established procedure of the Ministry of Interior in this regard is still being practiced, which is that such people are not entitled to renewable extensions of their permits. It is, therefore, unrealistic to discuss the right of such spouses to work, while they are not even permitted to remain in the area legally.

3. Cases of Spouses who Entered Jerusalem on Visas from Israeli Embassies Abroad or from Israeli Border Crossing Points

Such spouses are usually given a B2 visa, which does not entitle its bearer to work in the area. This visa may be replaced with a B1 visa, which does confer the right to work if a certificate of employment from an Israeli employer is presented.

Comparisons

For the sake of comparison, I will briefly outline the situations of non-resident spouses in the West Bank and Gaza Strip and in the United States.

a) The Situation of Non-Resident Spouses in the West Bank and Gaza Strip

In the territories occupied in 1967, except Jerusalem, a new policy has been established since 1992, according to which non-resident spouses of Palestinian residents of these areas are, subject to some limitations, allowed to renew their visitors' permits for extendable periods, each of six months. Any spouse who is eligible to extend his permit is given a de facto residency status which enables him to work in the 1967 occupied territories without obtaining a work permit. (Other visitors to the Occupied Territories must apply for a special permit if and when they wish to work in these territories.)

b) The Situation of Non-Resident (Foreign) Spouses in the United States

A non-American spouse of an American citizen is allowed to apply for residency in the States immediately after marriage. This residency status is usually granted to the non-resident spouse within four to six months. Upon the approval of the application for residency in the States, the non-resident spouse is issued with an American Green Card. This document entitles its bearer to all rights other than the right to vote which American citizens are entitled to, including the right to work. No special work permit is required from the bearer of such a document. A work permit might even be granted during the short interim period during which the Green Card application is processed.

Al Haq's Arguments:

1. As regards West Bank and Gaza Strip spouses of Jerusalem residents.

a) The security check is repeated needlessly, since a previous security check will have been

conducted when the spouse was granted the permit to leave his area and stay overnight in Jerusalem.

b) Such a spouse is required to apply for the permit to work at the Civil Administration in the West Bank and Gaza Strip, despite the fact that he has already succeeded to convince the Israeli authorities of the fact that he is living with his spouse in Jerusalem and that the center of his life is in Jerusalem. The referral to the Civil Administration, and the security check, is required for each extension of the permit. Thus it is clear that the Israeli authorities give no weight to the fact that such spouses are residing in Jerusalem with their families, and are supposedly doing so permanently. Once convinced that the applicant's center of life is indeed in Jerusalem, why ask him to go again and again to the Civil Administration in the West Bank, where he does not live, to request a renewal of his work permit? This is the same treatment accorded to West Bank residents coming to work in Israel.

c) Such a spouse of a Jerusalem resident will not be able to work in Israel or Jerusalem unless:

i) The work he is applying for falls within the list of areas of employment in Israel that are open to West Bank and Gaza Strip residents, which is prepared by the Israeli authorities and changes from time to time. (Currently, work is permitted in construction and agriculture.)
ii) He is within the age limits set by the Israeli authorities, which varies from time to time.
iii) The quota for that period is not filled at the time he applies. (The quota of workers from the West Bank and Gaza Strip allowed to work in Israel at any one time is decided, inter alia, on the basis of the security situation and the unemployment rate in Israel.)

While such a spouse is being allowed to live in Jerusalem, the above restrictions should not be applied to him.

2. The spouses who fall within the three criteria I have outlined in this presentation are all spouses of Jerusalem residents. The only difference between them is their nationality or place of original residency. Thus it is clear that the Israeli authorities deal with cases not on the basis of the right to family unity, but on the basis of other criteria.

3. The strict procedures for non-resident spouses of Jerusalem residents, even when compared with the policy regarding such spouses in the rest of the Occupied Territories (which also violates the right to family unity), show that the "battle of Jerusalem" has continued since the occupation of the city in 1967. By such policies and procedures, Israel intends to create a reality that undermines the rights of the Palestinian people as regards Jerusalem.

4. As a result of such policies, separated Palestinian families may decide to live outside the borders of the city. This in turn leads to the Israeli authorities applying Article 11 of the **Law of Entry Into Israel** as regards the Jerusalem members of these families, which deprives them of their residency status in Jerusalem. There are several hundreds, or maybe thousands, of such families.

Proposals

A. The procedures applied to spouses who entered Jerusalem on visas should be applied to all other spouses of Jerusalem residents, irrespective of their nationality or formal place of residence.

B. The procedures applied to non-resident spouses of West Bank and Gaza residents should be applied to spouses of Jerusalem residents who entered using visitors' permits issued by the Israeli Ministry of Interior, particularly the granting of the right to work after the extension of the visitor's permit for six month periods.

Notes

1. Whenever the term "West Bank" is used, it means the West Bank excluding East Jerusalem.
2. Whenever the male is addressed, the female is implied, unless otherwise clearly stated.

Appendix I

International Human Rights Instruments Referred to by Eliahu Abram

International Covenant on Civil and Political Rights, 1966

Article 17:
1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

European Convention on Human Rights, 1950

Article 8:
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.

Convention on the Rights of the Child, 1989

(Articles 9, 10, 16 and 22)

Article 9:
1. 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. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10:

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 16:

1. No child shall be subjected to unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 22:

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-

governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Final Act of the Helsinki Conference, 1975
Section on Cooperation in Humanitarian and Other Fields

(Article 1(b) and (c))

1(b) Reunification of Families:
The participating States will deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family, with special attention being given to requests of an urgent character – such as requests submitted by persons who are ill or old. They will deal with applications in this field as expeditiously as possible.
They will lower where necessary the fees charged in connexion with these applications to ensure that they are at a moderate level.
Applications for the purpose of family reunification which are not granted may be renewed at the appropriate level and will be reconsidered at reasonably short intervals by the authorities of the country of residence of destination, whichever is concerned; under such circumstances fees will be charged only when applications are granted.
Persons whose applications for family reunification are granted may bring with them or ship their household and personal effects; to this end the participating States will use all possibilities provided by existing regulations.
Until members of the same family are reunited meetings and contacts between them may take place in accordance with the modalities for contacts on the basis of family ties.
The participating States will support the effects of Red Cross and Red Crescent Societies concerned with the problems of family reunification.
They confirm that the presentation of an application concerning family reunification will not modify the rights and obligations of the applicant or of members of his family.
The receiving participating State will take appropriate care with regard to employment for persons from other participating States who take up permanent residence in that State in connexion with family reunification with its citizens and see that they are afforded opportunities equal to those enjoyed by its own citizens for education, medical assistance and social security.

1(c) Marriage Between Citizens of Different States:
The participating States will examine favourably 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 processing and issuing of the documents required for the above purposes and for the

marriage will be in accordance with the provisions accepted for family reunification.
In dealing with requests from couples from different participating States once married, to enable them and the minor children of their marriage to transfer their permanent residence to a State in which either one is normally a resident, the participating States will also apply the provisions accepted for family reunification.

IV Geneva Convention, 1949

Article 24 – Measures relating to child welfare:
The Parties to the conflict shall take the necessary measures to ensure that children under fifteen, who are orphaned or are separated from their families as a result of the war, are not left to their own resources, and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.
The Parties to the conflict shall facilitate the reception of such children in a neutral country for the duration of the conflict with the consent of the Protecting Power, if any, and under due safeguards for the observance of the principles stated in the first paragraph. They shall, furthermore, endeavour to arrange for all children under twelve to be identified by the wearing of identity discs, or by some other means.

Article 26 – Dispersed Families:
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. It shall encourage, in particular, the work of organizations engaged on this task provided they are acceptable to it and conform to its security regulations.

Protocol 1 to the Geneva Conventions 1949

Article 74:
The High Contracting Parties and the Parties to the conflict shall facilitate in every possible way the reunion of families dispersed as a result of armed conflicts and shall encourage in particular the work of the humanitarian organizations engaged in this task in accordance with the provisions of the Conventions and of this Protocol and in conformity with their respective security regulations.

Appendix II

Israeli High Court Decisions Relevant to Residency in Jerusalem

1. H.C. 282/88 *Mubarak Awad v. Prime Minister and Minister of the Interior*

A petition against the deportation of Mubarak Awad from Israel. According to Justice Barak, the status of East Jerusalem residents is based on the **Law of Entry into Israel**, and someone included in the census of 1967 will be considered to have received leave for permanent residency in Israel. Awad's leave was no longer valid and Barak gave two bases for this: a) regulations 11C and 11A of the Regulations Concerning Entry Into Israel, which invalidate permission when a resident moves overseas and settles there, and defines what settling overseas means, and b) Barak's interpretation of leave for permanent residency: on the one hand it is constitutive, creating the legal right to permanent residency, and on the other hand declarative, indicating the actual state of affairs of permanent residency. If this reality disappears, the leave is automatically no longer valid. Barak also finds that on the facts of the case, Awad had settled outside of Israel.

Barak stressed that permanent residency is not merely at the whim of the Minister, but has a basis in law, and can only be revoked on the basis of relevant considerations.

2. H.C. 48/89 *Issa v. the Director of the Registrar of Population in the Regional office of East Jerusalem of the Ministry of the Interior*

The petition concerns the registration of a daughter of a Jerusalem resident mother and a resident of the Occupied Territories in the Israeli Population Registry. It was decided that registration on the identity card of a mother who carries an Israeli identity card depends on the fact that the daughter has the status of permanent resident under the **Entry into Israel Law**. The petition was dealt with on the assumption that Regulation 12 under this law is valid, but it was emphasised that no arguments were raised to doubt its validity. The petition was accepted due to the fact that there was no explanation given as to why the Minister did not use his discretion to give the daughter the same status as the mother.

3. H.C. 702/88 *Mohammed Asur v. the Prison Service Board of the Central Prison Service of Judea and Samaria*

The petitionert was in fact a resident of Jerusalem but carried an identity card of the Occupied Territories and appealed against being held in jail in the Occupied Territories. It was decided that the meaning of resident of the Occupied Territories for the purposes of this law should be given a formal interpretation and not a factual one.

4. H.C. 482/71 *Clark v. Minister of the Interior*
H.C. 100/85 *Ben Israel v. State of Israel*

H.C. 269/86 ***Goldshuv v. Minister of the Interior***
H.C. 332/87 ***Ben Shlomo v. Minister of the Interior***

These petitions, and others which were not published and which do not add much, all concern the status of the "Black Hebrews". In the case of Clark, it was decided that the Minister of the Interior has wide discretion concerning the granting of leave to reside in Israel. In the Goldshuv case it was argued that the Black Hebrews had over the years acquired a status of being tolerated in Israel and the Minister of the Interior was prevented from deporting them. This argument was rejected as lacking factual basis, without the legal aspects being considered. In the Ben Shlomo case, the discussion was over the right of those who remain in the area illegally for a long period, and their right to work here; it was decided that such persons do have some elementary rights such as to a fair trial, medical treatment and education, but not the right to work.

5. H.C. 758/88 ***Kandel v. Minister of the Interior***

This was a request by Jews who believe in Jesus for permanent residency in Israel. The petition was rejected. The discussion concerned the breadth of the discretion of the Minister of the Interior and there were differing attitudes between Justices Netanyahu and Heshin. Heshin emphasised that although the Minister was exempted from giving reasons for refusal, making it more difficult for the High Court to examine the decision, this did not derogate from the legal power of the High Court to look into the exercise of the discretion. There is no absolute discretion of the Minister of Interior under Israeli law.

6. H.C. 205/82 ***Abu Salah v. Minister of the Interior***

This case concerned the obligation of residents of the Golan Heights to carry an identity card. Such a duty falls on a resident as defined in the **Law of Registration of Population**, where resident includes also whoever is "legally in Israel". The petition was decided on the basis of the definition of the phrase "Israel" as a term that includes the Golan Heights on the basis that Israeli law is applied there, regardless of whether it is actually a part of the state.

7. H.C. 296/80 ***Bukovsa v. State of Israel***

The question of when someone is considered to have settled abroad was discussed, in the context of a Jewish citizen of the state wishing to give up his Israeli citizenship. (The court said that he should keep his citizenship even though he was not a resident.)

8. H.C. 629/82 ***Mustapha v. Military Commander of Judea and Samaria***

A petition against a deportation order. The petitioner was born in the Occupied Territories and settled in Venezuela but came back to the Occupied Territories with his wife and daughters and remained there openly without a permit. It was argued that the authorities had in fact consented to his remaining; this was rejected factually and without consideration of the legal arguments. The petition also dealt with international legal arguments, which were rejected.