

# **Temporary Order?**

Life in East Jerusalem under the Shadow of  
the Citizenship and Entry into Israel Law

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the Citizenship and Entry into Israel Law

Research and Writing: Noga Kadman and Andrea Szlecsan

Content Editing and Research: Shelly Cohen

Information Coordination: Adv. Benjamin Agsteribbe, Noa Atlas,  
Adv. Sigi Ben-Ari, Adv. Noa Diamond, Adv. Anat Gonen,  
Denise Haddad, Yonatan Kanonich, Adv. Adi Lustigman,  
Yoel Verete

Translation: Maya Johnston

Copy Editing: Shelly Cohen

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Design: Tartakover Design

Typesetting and Layout: Judith Sternberg

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רח' אבו עוביידה 4

ירושלים 97200

4 Abu Obeidah St.

Jerusalem 97200

شارع ابو عبيدة ٤

القدس ٩٧٢٠٠

[mail@hamoked.org.il](mailto:mail@hamoked.org.il)

[www.hamoked.org.il](http://www.hamoked.org.il)

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כניסת מבקרים  
مدخل الزوار



# Introduction

For more than a decade, Israel's law books have been marred by a particularly racist law – the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003. This law prohibits, inter alia, the grant of Israeli status to Palestinians from the Occupied Palestinian Territories (OPT) who marry Israeli residents and citizens, simply because of their national identity and the fact that they are OPT residents. Until 2002, family unification applications that were filed on behalf of Palestinian residents of the OPT who married Israelis were reviewed on their merits, like those of other foreign nationals, and decisions were made based on objective criteria related to personal circumstances, at least officially. If the applicants met all the terms and conditions required by the Ministry of Interior, they could begin the graduated family unification procedure that culminated with the OPT spouse receiving permanent residency status in Israel. However, on May 12, 2002, following the second Intifada, the Government of Israel decided to freeze all processing of family unification applications filed for Palestinian residents of the OPT. The Citizenship and Entry into Israel Law, enacted a year later, enshrined this moratorium in Israeli law, and effectively prohibited family unification between Israelis and Palestinians from the OPT inside Israel, including areas annexed in 1967. The Law was passed as a temporary order, ostensibly necessitated by the security situation in Israel at that time, but it has since been extended 15 times, with no end in sight.

The Citizenship and Entry into Israel Law severely harms spouses as well as children in families in which one of the spouses is a resident of East Jerusalem and the other is a resident of the OPT. East Jerusalem residents did not choose to become Israeli subjects; this status

was imposed on them following Israel's 1967 annexation of the Jordanian part of the city along with neighboring villages and refugee camps, in breach of international law. With the annexation, East Jerusalem became separated from the rest of the West Bank, but the mutual connections between its residents and residents in the rest of the OPT have survived; marital and family ties between the two communities have remained common. Yet despite this, with very few exceptions, the Citizenship and Entry into Israel Law denies OPT residents the possibility of entering and living in Israel with their spouses from East Jerusalem, or receiving status in the country. The Law also denies many children born into such families the possibility of receiving permanent-residency status in Israel. In so doing, the Law forces families apart, separating East Jerusalem residents from their OPT spouses, and parents from children.

The first part of the report briefly outlines the special status of East Jerusalem residents and Israel's policy toward them from the annexation in 1967 to the government resolution in 2002, and surveys the policy on status practiced during this period. The report's second part provides a detailed review of the legislative processes for the enactment of the Law and the legal battle for the Law's repeal, waged by HaMoked and other human rights organizations. The third part elaborates on the hardships faced by couples that come under the Law and the Law's harmful effect on children born to such couples, and describes in detail the Ministry of Interior's efforts to maximize the Law's reach; the implementation of the rules and procedures that apply to couples and children that come under the Law is examined in light of cases handled by HaMoked since the early 1990s. The report's final part focuses on the plight of stateless Palestinians living in the city and the particular hardships faced by Palestinian women living in East Jerusalem under the Citizenship and Entry into Israel Law ■

# Background

## The Annexation and the Status of East Jerusalem Residents

In 1967, in contravention of international law, Israel annexed and applied its laws to more than 7,000 hectares of West Bank land in Jerusalem and to the north, east and south of the city. The annexation brought 30 Palestinian villages and refugee camps into Jerusalem's municipal jurisdiction.<sup>1</sup> In June 1967, Israel held a census in the annexed area and residents who were present at the time received permanent-residency status in Israel.

1. Hereinafter, the term "East Jerusalem" applies also to the annexed villages and refugee camps surrounding the city.

2. See Entry into Israel Law 5712-1952, Sect. 11, and Entry into Israel Regulations 5734-1974, Reg. 11.

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### Permanent Residency

Permanent residency status is unlike citizenship: despite its literal meaning, this status is not permanent and it expires if, for example, the resident holding it is absent from the country for seven years or receives permanent residency status in another country.<sup>2</sup>

Permanent residents may not participate as voters or candidates in the Israeli parliamentary elections, and may not hold official office. They have laissez-passer documents rather than Israeli passports, and their children do not automatically receive the same status that they have.

In fact, Israel applies to Palestinian residents of East Jerusalem the same arrangements it applies to non-Jewish foreign immigrants, though the Palestinians did not immigrate to the city from elsewhere and have been living in the city for generations; it is rather their status in Israel that was imposed on them as part of the occupation and annexation.

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Israel's policy in Jerusalem since 1967 has been guided by political considerations striving to maintain what Israel calls a "demographic balance" in the city; in other words, maintain a solid Jewish majority in Jerusalem. This goal has been pursued through various measures designed to reduce the number of Palestinians residents in the city; these measures include land expropriation, restrictions on building and planning, house demolitions, overall neglect and systematic discrimination in the provision of services, the development of infrastructure, budget allocations for education, culture, health and welfare, and more. These join to drive Palestinians away from the city, and many move to neighborhoods and villages that lie very close to the city, but outside the annexed part of the West Bank. Living outside the municipal boundaries of Jerusalem often leads to loss of residency status in the city.

3. This policy was known as the "Open Bridge Policy"; see Major General (res.) Shlomo Gazit, **The Carrot and the Stick: Israel's Policy in Judaea and Samaria, 1967-68**, B'nai B'rith Books, Washington D.C., 1995.
4. See Entry into Israel Regulations, Reg. 11a(1), incorporated in 1985.
5. For more, see joint reports by HaMoked and B'Tselem, **The Quiet Deportation – Revocation of Residency of East Jerusalem Palestinians**, 1997, and **The Quiet Deportation Continues – Revocation of Residency and Denial of Social Rights of East Jerusalem Palestinians**, 1998.

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### **Revocation of Status of East Jerusalem Residents**

After the annexation of East Jerusalem in 1967 and until 1995, East Jerusalem residents could travel abroad and remain there for years without risking their residency status, provided they returned to Jerusalem periodically to renew the exit permits they received before departure.<sup>3</sup> Residency status was revoked only after seven years of absence without renewal of exit permits.<sup>4</sup> Palestinian residents of East Jerusalem who moved to other parts of the OPT did not require permits to enter and exit the city, and many continued to receive the national-insurance pensions they received before moving outside the city limits.

In 1995, Israel changed this policy and the Ministry of Interior began revoking the status of people who had lived for several years in other parts of the OPT or abroad, claiming they had moved their "center-of-life" out of the city and consequently their permanent-residency permit had "expired". The new policy, which came to be known as the "quiet deportation",<sup>5</sup> was based on a 1988 judgment ('**Awad**), in which

the Supreme Court found that the legal status of East Jerusalem residents was governed by the Entry into Israel Law 5712-1952 – an immigration law designed to govern the entry of tourists and the status of immigrants – hence, the status may expire automatically if the resident transfers his/her center-of-life to another country.<sup>6</sup>

Following legal advocacy by HaMoked and other human rights organizations, the “quiet deportation” was halted in 2000: in an affidavit submitted that year to the High Court of Justice (HCJ), then Minister of Interior Nathan Sharansky announced that the ministry would no longer revoke permanent residency due to prolonged absence from Israel, provided the resident maintained a connection to Israel. The affidavit also introduced an arrangement that allows Palestinians whose residency was revoked to have it reinstated if they spend two years in Israel, including East Jerusalem.<sup>7</sup>

For several years, the number of East Jerusalem residents deprived of their status declined somewhat; but the 2000 block on the “quiet deportation” did not put an end to status revocations – in 2006, their number rose again and later even surpassed the levels seen in the 1990s. According to interior ministry figures HaMoked has obtained over the years, between 1967 and 2013, Israel revoked the status of more than 14,000 Palestinian residents of East Jerusalem. In 2008 alone, 4,577 Palestinians lost their residency.<sup>8</sup> In April 2011, HaMoked and the Association for Civil Rights in Israel (ACRI) petitioned the HCJ against the interior ministry’s status revocation policy.<sup>9</sup> HaMoked and ACRI asked the court to rule that since the territory of East Jerusalem was occupied and annexed by Israel and its residents were forced to become permanent residents of Israel, their status could not expire even if they lived abroad for an extended period of time or obtained status in another country; that they had a right to return to their homeland whenever they chose and that this right should be read as an inherent

**6.** HCJ 282/88 **‘Awad v. Prime Minister et al.** (1988).

**7.** HCJ 2227/98 **HaMoked: Center for Defence of the Individual et al. v. Minister of Interior et al.**, Additional Respondent’s Affidavit, March 15, 2000, available at: [http://www.hamoked.org/items/3055\\_eng.pdf](http://www.hamoked.org/items/3055_eng.pdf).

**8.** For more information and complete figures on residency revocation in East Jerusalem, see HaMoked’s update from April 2014, available at: <http://www.hamoked.org/Document.aspx?dID=Updates1285>.

**9.** HCJ 2797/11 **Qarae’en et al. v. Minister of the Interior** (2012).

condition of their permanent residency visas. The organizations said that even if the civil status of East Jerusalem residents was governed by the Entry into Israel Law, as ruled in ‘**Awad**, it was unlike the status of any other resident, least of all immigrants to Israel. In March 2012, the organizations had to withdraw the petition after the HCJ proclaimed it would not review it on its merits because “there is no reason for the court to grant theoretic relief just to enable a person to consider his actions in advance”.<sup>10</sup>

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10. Ibid., Hearing Transcripts, March 21, 2012.

Israel not only pushes Palestinians to leave East Jerusalem and then revokes their residency status, but also goes to great lengths to block an increase in the Palestinian population of the city. As part of these efforts, ever since 1967, Israel has practiced a policy aimed at reducing the number of applications it accepts and approves for grant of status to Palestinians from the OPT and neighboring countries who marry East Jerusalem residents and also to children born to such couples. This policy intensified after the outbreak of the second Intifada, with the enactment of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 ■

## **Family Unification in East Jerusalem, 1967-2002**

Until 1991, access between the territories occupied in 1967 and Israel including East Jerusalem, was unrestricted. OPT residents who married East Jerusalem residents could live with their spouses and children in the city without any special permits; and so, applying for family unification – the official process through which foreign spouses of Israelis obtain status in Israel – was of little consequence. However, in February 1991, following the first Intifada and during the First Gulf War, Israel began requiring Palestinians

from the OPT to obtain Israeli entry permits. These permits were initially issued for long durations and with hardly any restriction. But in March 1993, Israel imposed a general closure on the OPT and installed checkpoints and roadblocks not just between the OPT and Israel proper, but also between them and East Jerusalem. Since then, entry permits have been difficult to obtain and they are given under strict criteria.

**11.** For more on the term "center-of-life", see *infra* p. 32.

This policy change created a new reality for families in which one of the spouses is a resident of East Jerusalem and the other a resident of the OPT, and made living together in Jerusalem difficult. It was only then, years after they married, that many such couples filed for family unification. The Civil Administration initially employed a special procedure that allowed OPT residents married to Israelis to receive temporary Israeli stay permits pending a decision in their family unification application. However, these permits were cancelled every time the closure on the OPT was tightened, and often the Civil Administration refused to issue them at all. When the closure was tightened in 1996, this special procedure was cancelled. Since then, OPT residents who are waiting for approval of their initial family unification application, do not receive permits of any kind – neither stay permits nor short-term visit permits. And so, OPT residents who choose to live with their families in Jerusalem without permits are in constant danger of deportation and many must live in hiding.

As a rule, until 2002, the Ministry of Interior could reject a family unification application only if the couple failed to meet one of three conditions: proving the authenticity of the marriage, proving center-of-life in Israel,<sup>11</sup> and receiving criminal and security clearance for the foreign spouse's presence in Israel. However, until 1994, the ministry usually accepted for processing only applications filed by men from East Jerusalem, and rejected out of hand applications made by women from

the city. Its justification for this policy was that in Arab society “the wife follows her husband”, so there was no reason to grant the male spouse status in Israel.<sup>12</sup> Many women from East Jerusalem were forced to leave their homes in order to live with their spouses and maintain a normal family life. In June 1994, following a petition to the HCJ, the ministry abandoned this discriminatory policy and stated it would begin processing family unification applications made by East Jerusalem women.<sup>13</sup> Thousands of applications were then filed by East Jerusalem women, some who had been married for many years and already had children.<sup>14</sup>

Until 1996, spouses received permanent status in Israel as soon as their family unification applications were approved. In September 1996, the Ministry of Interior introduced a new, graduated procedure, under which permanent status should be granted five years and three months from the application approval date. The graduated procedure consisted of two main stages: in the first stage, once the initial application was approved and for a period of 27 months, the foreign spouse would receive temporary stay permits, allowing holders to enter and live in Israel lawfully, but without conferring status or social security rights. In the second and final stage, lasting three years, the foreign spouses would receive temporary residency status (also known as an A/5 visa) – which confers the same rights as permanent residency, but must be renewed, usually once a year. After three years in temporary residency, the foreign spouse would finally receive permanent residency. But in practice, the graduated procedure took much longer. The Ministry of Interior not only routinely dragged its approval of the initial application for about five years, but also extended the graduated procedure far beyond the official timeframe, through continued foot-dragging in processing each stage.

As stated, in order to enter the family unification process, the application first had to be approved.

**12.** See, e.g., HCJ 48/89 **Issa v. Director of Regional Population Administration Bureau et al.** (1989).

**13.** Letter from Adv. Yochi Gnessin, Senior Deputy State Attorney, to Adv. Eliyahu Avram, ACRI, June 23, 1994, following HCJ 2797/93 **Gharbit v. Minister of Interior** (1994).

**14.** While during 1993, only 650 applications for spouses were filed by women residents of East Jerusalem, in 1994, 2,550 such applications were filed, followed by 1,800 in 1995; this, according to a letter from Adv. Moria Bakshi, Ministry of Interior Legal Department, to Adv. Malchiel Blass, State Attorney's Office, March 31, 1996, following HCJ 7316/95 **Menuhin et al. Minister of Interior et al.** (1997).

To have their application approved, couples had to prove their marriage was genuine and that they had not entered into it solely for the purpose of obtaining status. The East Jerusalem residents also had to prove de-facto residency in the city by submitting numerous documents attesting that they lived and worked in Jerusalem and that their children received their education there. In addition to these “marriage authenticity” and “center-of-life” tests, as the Ministry of Interior refers to them, Israeli security agencies conducted comprehensive background checks on the foreign spouses to determine if they posed a criminal or security threat. Applications were approved only after the couples successfully passed these tests. The background checks and center-of-life tests were then repeated every year as a condition for extending the temporary stay permit or temporary status given to the foreign spouse ■

## **Child Registration in East Jerusalem, 1967-2002**

According to Regulation 12 of the Entry into Israel Regulations 5734-1974, children born in Israel to parents who are both permanent residents in the country are entitled to receive the same status as their parents. The newborn child receives an identity number at the hospital and gets registered in the Israeli population registry. The parents then have the Ministry of Interior add the child to their own identity cards. If only one of the parents is an Israeli resident and the other has no status in the country, the child is still entitled to receive the same status as the resident parent, but in this case, the child does not get an identity number at the hospital and the resident parent must apply to the Ministry of Interior to have the child registered in the Israeli population registry. If, for some reason, the child was not registered in the population registry immediately after birth, the resident parent must prove the child regularly lives with him/her in Israel to have the registration approved.

Israeli law does not stipulate how a child born outside Israel to Israeli resident parents may acquire status in Israel. Therefore, the registration of such children is carried out according to internal Ministry of Interior procedures. Until 2001, the ministry followed a single registration process for children who were born in Israel to just one Israeli resident parent and children who were born outside Israel to Israeli residents: their status was determined through a procedure of “application for child registration” and according to the center-of-life criterion – compliant with the principle that a child who lives in Israel with an Israeli resident parent should have the same status as the parent.<sup>15</sup>

However, the Ministry of Interior often changed its policy and procedures regarding registration of children of East Jerusalem residents – without advance notice or publication. The ministry used any loophole it could find in order to prevent Palestinian children from being registered in the Israeli population registry; HaMoked learned about these policy changes only from the ministry’s replies to its letters regarding individual cases.

Furthermore, until 1994, the Ministry of Interior only registered children with one Israeli resident parent and one OPT resident parent when the father was the Israeli resident; Israeli resident mothers were directed to register their children in the OPT. Once East Jerusalem women were allowed to apply for family unification with their OPT spouses,<sup>16</sup> the Ministry of Interior abandoned this practice too, and instituted a criterion whereby a child who had one Israeli resident parent and a center-of-life in Israel would receive residency status in Israel, regardless of the gender of the Israeli resident parent.

Despite this, between 1994 and 1996, the Ministry of Interior refused to register children of East

**15.** HCJ 979/99 **Carlo et al. v. Ministry of Interior et al.** (1999).

**16.** On the revised policy for processing family unification applications filed by women who are Israeli residents, see *supra* pp. 10-13.

Jerusalem mothers and non-Israeli fathers and demanded that the children be registered through the family unification application the mother filed for the father. In 1996, the ministry admitted this was “incorrect processing” and announced that in future, “the application for family unification with the spouse will be considered separately, according to the accepted criteria”; and that parents seeking to register their child would need to fill “an application form for child registration as customary”.<sup>17</sup> In 1998, however, the Ministry of Interior began granting children with Israeli resident mothers – but not fathers – just temporary residency for one year, and only then permanent residency. A year later, following intervention by HaMoked, the ministry abandoned this policy, announcing that it would resume granting children of Israeli resident women permanent status without an interim period of temporary residency. The ministry added that it would grant permanent residency to all children who were registered as temporary residents at the time, subject to proof that their center-of-life was in Israel.<sup>18</sup>

Otherwise, as stated, for many years, the Ministry of Interior followed a single policy for registering children of permanent residents, regardless of where they were born (with the exception of Israeli-born children whose parents were both permanent residents). However, in 2001, the policy changed: first, the ministry started charging a fee for registering children of East Jerusalem residents who were born outside Israel. Later, it announced that rather than receiving permanent residency directly, these children would receive temporary residency for two years, and only then permanent residency. Before the implications of this new policy could be understood, the government passed the resolution to freeze family unification; and with it, the Ministry of Interior began instituting a new, outrageous interpretation of the child registration procedure ■

17. Letter from Adv. Moria Bakshi, Ministry of Interior Legal Department, to Adv. Andre Rosenthal, March 18, 1996.

18. Letter from Esther Sharon, Registration and Passport Department, Population Administration, to HaMoked, May 13, 1999.

# The Citizenship and Entry into Israel Law (Temporary Order) 5763-2003

## The Freeze and the Government Resolution, 2002

As stated, since September 1996, the family life of East Jerusalem Palestinians and their non-resident spouses had been subjected to the “graduated procedure”, which required the non-resident spouses to gradually work their way up to permanent residency status, while repeatedly proving center-of-life and undergoing security background checks. The procedure was long and laborious: couples were sent back and forth to produce various documents, and sometimes legal action was needed to get the Ministry of Interior to approve the applications. Yet despite the difficulties, the process still provided some sort of solution for East Jerusalem Palestinians who married non-Israelis, including OPT residents.

In late March 2002, then Minister of Interior Eli Yishai issued an order to freeze processing of family unification applications for spouses from the OPT.<sup>19</sup> The decision was ostensibly made as a punitive measure in response to a suicide attack in Haifa that was perpetrated by the son of an Israeli citizen who had married a resident of the OPT and had not lived in Israel for many years. But in fact, the Ministry of Interior had been working to change Israel’s policy on this issue since late 2001, in a bid to block “immigration of Palestinians into Israel”,<sup>20</sup> as the ministry put it. In February 2002, after the Ministry of Interior published figures showing that some 140,000 Palestinians

19. Mazal Mualem, *Yishai freezes family unification of Israeli Arabs married to residents of PA*, **Haaretz**, April 1, 2002, available in Hebrew at: <http://www.haaretz.co.il/misc/1.783766>.

20. On the measures the Ministry of Interior employed to prevent non-Jews from naturalizing in Israel, even when mandated by the right to family life, see, e.g., Nurit Palter, *Ministry of Interior initiative will make it harder to become an Israeli*, **Yedioth Ahronoth**, October 21, 2001 (in Hebrew). On Yishai’s instructions to the Ministry of Interior Legal Department to “look into ways of changing legislation in order to reduce the number of Arabs who receive Israeli citizenship”, reportedly because “the number of non-Jews, including Arabs, who are receiving Israeli citizenship has grown dramatically” and “as a result, the Jewish character of the state is being endangered”, see Mazal Mualem, *Yishai: Let’s restrict citizenship for Arab spouses*, **Haaretz**, January 9, 2002, available at: <http://www.haaretz.com/print-edition/news/yishai-let-s-restrict-citizenship-for-arab-spouses-1.79460>.

had entered Israel since 1993 as part of the family unification process, Yishai said, “This figure shows that through Israel’s back door, the Palestinians are realizing their right of return”, and that it was “surprising and worrisome”.<sup>21</sup> Shortly thereafter, a special team was set up to explore ways to curtail this phenomenon through legislation.<sup>22</sup>

The special team proposed a plan, suggesting, among other things, to prevent the filing of new family unification applications for OPT residents, terminate processing of pending applications filed prior to the freeze, and halt all status upgrades of OPT residents whose applications had been approved. Individuals who already entered the graduated procedure would remain with whatever status they had prior to the freeze; meaning that those who were residing in Israel with stay permits would not be able to receive temporary residency and those who had received temporary residency could not receive permanent residency; they would all be required to undergo yearly center-of-life and security checks, perpetually, with no end in sight.

Yishai presented his plan to the government on May 12, 2002; the government accepted it in its entirety.<sup>23</sup> Before voting, the ministers watched a presentation put together by the Population Administration which plainly demonstrated the considerations behind the policy change – securing a Jewish majority in the State of Israel and saving resources.<sup>24</sup> In its presentation, the Population Administration alerted the ministers about the existential threat it thought Israel faced as a result of family unification with OPT residents and described the high costs incurred when Palestinians who received status in Israel through family unification exercised their social security rights. In the concluding recommendations, the Population Administration asserted that “since this is a clear and present danger, action must be taken on two levels”: in the immediate

**21.** Mazal Mualem, *Yishai seeks to stop Palestinians’ ‘backdoor right of return’*, **Haaretz**, February 6, 2002, available at: <http://www.haaretz.com/print-edition/news/yishai-seeks-to-stop-palestinians-backdoor-right-of-return-1.53741>.

**22.** Mazal Mualem, *Yishai appoints professional team to reduce naturalization by non-Jews*, **Haaretz**, March 6, 2002, available in Hebrew at: <http://www.haaretz.co.il/misc/1.777686>.

**23.** Government Resolution No. 1813, May 12, 2002.

**24.** Population Administration, Ministry of Interior, **Immigration and Settlement of Foreigners in Israel**, May 2002, available in Hebrew at: <http://www.hamoked.org.il/items/5760.pdf>.

term, applications for family unification with OPT residents should no longer be approved; in the medium term – legislative changes should be introduced, which express “a policy [...] that would help block this trend and preserve Israel’s character as a Jewish and democratic state in the long run”.

The government resolution stipulated that “Given the security situation and due to the effects of the processes of immigration to and settlement in Israel by foreign nationals of Palestinian origin, also through family unification, the Ministry of Interior, in cooperation with the relevant ministries, would formulate a new policy for processing family unification applications”;<sup>25</sup> pending formulation of the policy, the processing freeze on family unification applications with OPT residents would remain in place ■

## **The Enactment of the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003**

In June 2003, more than a year after the government resolution, a bill regarding the freeze on family unification was brought to the Israeli parliament, the Knesset, for first reading. The bill did not introduce a new policy, and was almost identical to the freeze plan Minister Yishai presented to the government in May 2002. The bill passed second and third readings on June 31, 2003: 53 members of Knesset voted in favor of the bill, 25 voted against it and one abstained. The bill was passed into law as a “temporary order” valid for one year, which the government could extend with the Knesset’s approval “for no more than a year at a time”.<sup>26</sup> The official justification for the Law rested on security,<sup>27</sup> i.e., concern that Palestinian terrorist organizations would use Palestinians who receive Israeli identity cards – which allow freedom of movement inside Israel – for terrorist activities.<sup>28</sup>

25. See supra note 23, Sect. B.

26. Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Consolidated Version, Sect. 5, available at: <http://www.hamoked.org/Document.aspx?dID=5727>.

27. See “explanatory notes” of the Citizenship and Entry into Israel Bill (Temporary Order) 5763-2003, June 4, 2003, available at: [http://www.hamoked.org/files/2014/1080\\_eng.pdf](http://www.hamoked.org/files/2014/1080_eng.pdf).

28. See also, HCJ 7052/03 **Adalah et al. v. Minister of Interior et al.** (2006), Summation on behalf of the Respondents, December 16, 2003, available at: [http://www.hamoked.org/items/4481\\_eng.pdf](http://www.hamoked.org/items/4481_eng.pdf).

The Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 incorporated the government freeze on family unification with OPT residents and stipulated provisions regarding family unification applications that were submitted or approved before the Law was passed: couples with approved applications who had entered the graduated procedure would continue receiving whatever permit they had when the Law was passed, but would not be able to proceed to the next stage of the arrangement or receive permanent status in Israel; outstanding applications would be processed only if they were submitted before the freeze of May 2002.<sup>29</sup> The Law explicitly stipulated that application approvals would result in temporary stay permits only, without any status upgrades.

In the discussions that preceded both the government resolution and the new legislation, there was no mention of the fact that the termination of family unification also eliminated the possibility of registering in the Israeli population registry children who were born in the OPT and had at least one parent who was an East Jerusalem resident.<sup>30</sup> As previously stated, Israeli law is silent on the issue of what status such children should have. In 2002, when family unification was frozen, the Ministry of Interior exploited this loophole and decided that registration applications for children born in the OPT to Israeli residents were in fact family unification applications, and it therefore suspended all processing of such applications. The 2003 Law adopted this policy, but included a caveat that children born in the OPT who were under the age of 12 could receive either Israeli stay permits or some sort of status in the country (permanent or temporary), in order to prevent their separation from their parents who were lawfully present in Israel.<sup>31</sup> When it came down to interpreting the Law, the Ministry of Interior chose the former, weaker option, and when child-registration processing resumed, it did not grant such children status, but only confirmation letters for obtaining stay permits – which, as stated,

**29.** Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Consolidated Version, Sect. 4.

**30.** The issue of the Law's applicability to children of residents was first raised in the Knesset Internal Affairs and Environment Committee on July 29, 2003, two days before the Law was passed. During the committee session, state representatives confirmed that the Law would apply to children born in the OPT to one parent who is a permanent resident and one who is an OPT resident, but did not provide further details. Questions raised by MKs and other parties invited to participate in the session in an attempt to understand what impact the new policy would have on the lives of children and families went unanswered.

**31.** Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Sect. 3(1), available at:

[http://www.knesset.gov.il/laws/special/eng/citizenship\\_law.htm](http://www.knesset.gov.il/laws/special/eng/citizenship_law.htm).

Note that under Israeli law children are entitled to citizenship if one of their parents is a citizen, regardless of place of birth and the other parent's status. Therefore, the freeze and the Law that followed did not apply to children born to an OPT resident and an Israeli citizen, and affected almost exclusively the registration of children of East Jerusalem residents.

confer no social security rights. HaMoked fought this decision for close to a year and filed numerous petitions to the Court of Administrative Affairs on this issue,<sup>32</sup> until finally, the Ministry of Interior pledged to grant under-12-year-old children temporary status for two years followed by permanent residency, subject to proof of center-of-life and security clearance.<sup>33</sup>

But under the new Law, children older than twelve could receive neither stay permits nor status.<sup>34</sup> In that, Israel forced their families to make an impossible choice – in effect, to be deported to the OPT or have their children live as illegal aliens in their own homes, in their own city ■

## The First Round of HCJ Petitions

In December 2003, HaMoked petitioned the HCJ against the application of the Citizenship and Entry into Israel Law to children.<sup>35</sup> The HCJ heard the petition jointly with other general petitions aimed at repealing the Law, including petitions by human rights organisations Adalah and the Association for Civil Rights in Israel (ACRI).<sup>36</sup> The petitions argued that the Law was racist and discriminatory; that it violated on the basis of ethnicity and nationality the constitutional rights of Israeli residents and citizens to equality and family life; that the harm it caused was disproportionate to its proclaimed security purpose; and that it was in fact motivated by illegitimate demographic considerations.

HaMoked sought to repeal the Law inasmuch as it applied to minor children of permanent Israeli residents, or, at the very least, a finding that any child to at least one permanent Israeli resident parent who lived in the country with this parent – that is, had a center-of-life in Israel – was entitled to permanent residency status in the country. HaMoked's petition

**32.** See, e.g., AP 1238/04 **Joubran et al. v. Ministry of Interior et al.** (2009); AP 402/03 **Judah et al. v. Minister of Interior et al.** (2004).

**33.** *Ibid.*, AP 402/03, Motion by Consent to Enter as Judgment, June 6, 2004. The Ministry of Interior's pledge was given the force of a judgment on October 26, 2004.

**34.** For more on the "effective age" for granting status to children, see *infra* pp. 58-61.

**35.** HCJ 10650/03 **Abu Gwella et al. v. Minister of Interior et al.**, available at: [http://www.hamoked.org/items/1154\\_eng.pdf](http://www.hamoked.org/items/1154_eng.pdf).

**36.** See *supra* note 28, Adalah's petition available at: [http://www.hamoked.org/files/2011/4480\\_eng.pdf](http://www.hamoked.org/files/2011/4480_eng.pdf); HCJ 8099/03 **The Association for Civil Rights in Israel et al. v. Minister of Interior et al.**, available in Hebrew at: <http://www.acri.org.il/pdf/petitions/hit8099.pdf>.

depicted the severe impact the Law had on the fate of children of East Jerusalem residents who were left without status in Israel and faced being torn away from their parents and siblings. HaMoked argued that the distinction the Law made between children younger and older than 12 was arbitrary and legally unsound, and that the prohibition on granting status to children older than 12 defied the principle of the child's best interest – a guiding principle in formulating policies relating to minors – and also violated parents' right to raise their children, nurture and protect them and give them a home. HaMoked also argued that the legislative process leading up to the Law's enactment had been inexhaustive and flawed throughout and that it violated the Law regarding Provision of Information about the Potential Effect of Legislation on the Rights of the Child 5762-2002.

Having considered the Law, the presiding justices found that it was not an ordinary law and warranted "special consideration".<sup>37</sup> The government, anxious that the Law's blanket restrictions would not stand up to the HCJ's scrutiny, set out to amend it ■

## **The 2005 Amendments to the Citizenship and Entry into Israel Law**

In August 2005, the Knesset passed the first amendment to the Citizenship and Entry into Israel Law. One of the major changes introduced in the Amendment was a clause that allows granting OPT residents Israeli stay permits based on their marriage to Israelis provided they meet a minimum age requirement – 25 for women, 35 for men.<sup>38</sup> State officials and media reports hailed the amendment as allowing family unification for spouses in these age groups;<sup>39</sup> but this was misleading, as, in fact, the Amendment allows those who meet the age criterion to seek only renewable stay permits in order to regularize

**37.** See supra note 28, Decision, December 14, 2004, §5.

**38.** Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Consolidated Version, Sect. 3.

**39.** See, e.g., Shahar Ilan and Yuval Yoaz, *Panel okays easing Israeli-Palestinian family unification criteria*, **Haaretz**, May 8, 2005, available at: <http://www.haaretz.com/news/panel-okays-easing-israeli-palestinian-family-unification-criteria-1.158038>.

their presence in Israel, without any prospect of receiving residency status so long as the Law remains in effect. The Amendment condemns such spouses to a life without stability, social security rights or medical insurance and with legal status that is different from the rest of the family. Moreover, in order to renew the Ministry of Interior confirmation that allows them to receive stay permits they have to meet the center-of-life requirements and obtain security clearance, year after year.

Another major change was the addition of a clause on security preclusions. According to the new clause, OPT residents may be precluded from receiving Israeli entry permits for whatever purpose, including living with their spouses, if the authorities have determined that they or a member of their family could pose a security threat to the State of Israel.<sup>40</sup> Security requirements for entry into Israel are nothing new: though not through legislation, since the early 1990s, OPT residents seeking to enter Israel for whatever purpose, have had to undergo security checks. But the innovation in the 2005 Amendment is that even if the applicants themselves are not considered security threats, their entry into Israel can be prevented if a member of their family is considered to be such a threat. The Law defines “family members” as spouses, parents, children, siblings and siblings’ spouses, of both sexes, and remains silent on the issue of the nature of the alleged threat and whether the applicant has any sort of relationship with the impugned relative, other than the biographical fact that they are related.<sup>41</sup>

Two additional changes related directly to children. First, the new definition of the term “resident of the OPT” (dubbed “resident of the Area” in the Law): it no longer covers strictly individuals who actually live in the OPT, but also those who are merely registered in the OPT, even if they never lived there and even if they were born in Israel.<sup>42</sup> In the past, East Jerusalem

**40.** Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Consolidated Version, Sect. 3d.

**41.** The security preclusion clause has far reaching effects as it applies to all residents of the OPT who wish to enter Israel or remain in it for whatever purpose except medical treatment.

**42.** Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Consolidated Version, Sect. 1. For more on the term “resident of the Area”, see *infra* pp. 55-58.

families with one OPT resident parent often had their children registered in the OPT population registry. There were various reasons for this, including the past near impossibility of gaining access to the Ministry of Interior, the ministry's non-recognition of the Jerusalem parent's residency status, or the parents' choice to have the child registered somewhere rather than not at all. And so, children who had lived in Jerusalem their entire lives, many of whom born in the city, were turned by the Amendment into residents of the OPT, and as such, were made subject to the Law's restrictions.

The second change related to the registration of children over age 12. The original 2003 Law did not provide for children older than 12 who were not registered in the Israeli population registry; once it passed, these children were to leave Jerusalem and move to the OPT. In 2005, ahead of the vote on the Law's extension, the government proposed to amend it, so that children over the age of 12 would receive Israeli stay permits until they turned 18.<sup>43</sup> HaMoked urged the government to avoid this arbitrary discrimination between children over and under the age of 12 and give all children status in Israel.<sup>44</sup> This demand went unheeded, but in the enacted Amendment, the cut-off age for receiving status was raised to 14.<sup>45</sup> HaMoked had also demanded that the revised Law expressly stipulate that children under the age of 14 should be given status in Israel, in order to prevent the Ministry of Interior from returning to the policy of granting them temporary stay permits only.<sup>46</sup> The demand was accepted and adopted in the Law.<sup>47</sup>

Following the Amendment, the government declared that "the Law underwent substantive changes" and that the expanded exemption clause "reflects a new balance between the need to protect the security of the Israeli public and the desire to help groups with lower security-risk potential". The state asserted that the Amendment provided "a solution for all minors

**43.** Amendment Bill to the Citizenship and Entry into Israel Law (Temporary Order), 5765-2005, Sect. 2(2)e, **Bills**, Bill No. 173, May 16, 2005, available in Hebrew at: <http://www.hamoked.org.il/files/2010/1146.pdf>.

**44.** HaMoked's position paper opposing the bill, presented on July 6, 2005 to the committee that considered the proposed amendment, available at: [http://www.hamoked.org/items/1145\\_eng.pdf](http://www.hamoked.org/items/1145_eng.pdf).

**45.** Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Consolidated Version, Sect. 3a1.

**46.** See supra note 44.

**47.** Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Consolidated Version, Sect. 3a1.

living Israel with a custodial parent lawfully residing in Israel”, and added that “taking this risk is a radical measure”.<sup>48</sup> The petitioners argued that nothing in the Amendment nullified the substantive arguments against the Law: first, the Amendment still precluded any possibility of obtaining status in Israel and provided only for temporary stay permits, and this too, in very few cases; second, the Amendment contained constitutional flaws that constituted discrimination on the basis of age and gender, and established a presumption of collective security risk based on kinship; third, it expanded the definition of the term “resident of the Area” to include children born in Israel, who did not come under the original Law ■

48. See supra note 28, Response of the Respondents, November 6, 2005, §§ 42, 128; Response of the Respondents, February 7, 2006, §39.

49. Ibid., Judgment, May 14, 2006.

50. Ibid., opinion of Justice Levy, §9.

## **Dismissal of the First Round of HCJ Petitions**

Despite the petitioners' criticism of the amended Law (presented to the court when the hearings resumed) and the fact that it introduced only marginal changes, in May of 2006, an extended HCJ panel of 11 justices rejected the petitions by a majority vote of six to five. In the leading majority opinion, Justice Mishael Cheshin wrote that the Law did not violate constitutional rights and even if it did, the violation was proportionate. In the dissenting opinion, then Supreme Court President Aharon Barak found that the Law disproportionately impinged on the constitutional rights to family life and equality.<sup>49</sup> However, Justice Edmund Levy, who voted with the majority, effectively sided with the minority, finding that the Law caused disproportionate harm to constitutional rights, but considered that the Law should remain in effect and the state should be given nine months to formulate an arrangement for individual consideration of applications by Israeli residents for family unification with their OPT spouses.<sup>50</sup>

The judgment applied also to HaMoked's petition, which, as noted, dealt with the Law's unique impact on children of East Jerusalem residents married to OPT residents.<sup>51</sup> The judgment almost entirely ignored the Law's threat to children. Justice Cheshin found that the arrangements stipulated in the Law on this issue were "satisfactory".<sup>52</sup> Interestingly, it was one of the majority justices, Justice Miriam Naor, who held that the state should consider "a significant increase of the age of minors to whom the prohibition in the Law will not apply".<sup>53</sup>

51. See supra note 35.

52. See supra note 28, opinion of Justice Cheshin, §65.

53. Ibid., opinion of Justice Naor, §24.

54. Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Consolidated Version, Sects. 2, 3e and Schedule.

Following the judgment, the Knesset amended the Law again, ostensibly to reflect the justices' comments and reduce the Law's harmful effect. In reality, however, the comments were not implemented, and the new Amendment actually expanded, enhanced and solidified the arrangement that a majority of the justices had held should be invalidated ■

## **The 2007 Amendments to the Citizenship and Entry into Israel Law**

In March 2007, the Knesset passed the second amendment to the Citizenship and Entry into Israel Law, applying the Law also to spouses and family members from Iran, Lebanon, Syria and Iraq, or other "risk regions" the government may decree by order.<sup>54</sup> Like OPT residents, these relatives can no longer receive status or stay permits in Israel through the family unification process. However, while the Law provides OPT residents with at least a slim possibility of living in Israel lawfully – provided they meet the stipulated age requirement for family unification – no such exemptions exist for citizens or residents of risk countries and the ban applies to them fully.

The Amendment introduced another change expanding the possibility of denying family unification

for security reasons. According to the new provision, the Minister of Interior may decide that an OPT resident poses a security threat based only on the finding that in the area where the applicant resides, activity that may jeopardize the security of Israel and its citizens is taking place.<sup>55</sup> Thus, for example, under the new provision, a 15-year-old who lives in Jerusalem with his Israeli resident mother, but is considered an OPT resident because his father from Bethlehem registered him in the Palestinian population registry, might be denied stay permits if hostile activity is taking place in the city of Bethlehem, if not anywhere in the entire District of Bethlehem. The language of this clause implies that even hostile activity elsewhere in the West Bank could lead to the denial or termination of a family unification or child registration application.

Another change introduced in 2007 allows the Minister of Interior to grant stay permits or temporary status to OPT residents or subjects of designated “enemy states” on special humanitarian grounds according to the recommendation of a specially-appointed professional committee.<sup>56</sup> Ostensibly, this clause was intended to correct the many flaws in the Law pointed out by the HCJ; but this “humanitarian exception” is so limited that it lacks any real meaning. Thus, for example, the humanitarian clause precludes granting permanent residency, and is only applicable when the OPT resident has a first degree relative – spouse, parent or child – who lawfully resides in Israel; this, while it expressly stipulates that “The fact that the family member of the person applying for a residency or stay permit who is lawfully present in Israel is [the applicant’s] spouse, or that the couple has children together, shall not, of itself, constitute a special humanitarian reason”.<sup>57</sup> Moreover, the Minister of Interior may cap the number of humanitarian exceptions.<sup>58</sup> The arbitrariness in placing caps clearly flouts the concept of a “humanitarian exception” ■

**55.** Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Consolidated Version, Sect. 3d.

**56.** Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Consolidated Version, Sect. 3a1.

**57.** *Ibid.*, Sect. 3a1(e)(1).

**58.** *Ibid.*, Sect. 3a1(f).

## The Second Round of HCJ Petitions and its Dismissal

In 2007, after the state repeatedly extended the validity of the “temporary” law, more HCJ petitions for its repeal were filed,<sup>59</sup> including another by HaMoked, which again focused on the Law’s harm to children of East Jerusalem residents.<sup>60</sup> HaMoked argued that the provision that allowed granting children over 14 stay permits but not status could not be justified on security grounds, given that stay permits allowed the supposedly dangerous children the freedom to move inside Israel. What the children were actually being denied was registration, medical services and social security rights. Thus, the provision could only be construed as the state’s attempt to save money and promote demographic goals.

In January 2012, the HCJ rejected the second round of petitions, again by a single vote. The majority opinion acknowledged that a constitutional right to family life did derive from the right to dignity, but ruled that it need not necessarily be exercised in Israel. The court further found that even if the Law violated constitutional rights, including the right to equality, its harm was proportionate and it was therefore constitutional and should not be repealed.

In her opinion, Justice Naor once again addressed HaMoked’s petition on the harm to children of East Jerusalem residents. She accepted as satisfactory the state’s pledge, though not anchored in law, to allow children who turn 18 to continue living with their parents in Israel pursuant to stay permits, so long as their center-of-life remained in Israel. Other justices concurred, ignoring the fact that children over age 14 who live in their own homes with only stay permits have no status, no social security rights and no health insurance. Justice Elyakim Rubinstein even pronounced that the policy was “at least appropriate”,

59. Four HCJ petitions were filed in this round and were heard jointly by the court. See HCJ 466/07 **MK Zahava Gal-On et al. v. Minister of Interior et al.** (2012).

60. HCJ 5030/07 **HaMoked: Center for the Defence of the Individual et al. v. Minister of Interior et al.**

and that the opportunity given to parents and children to live together sufficed.

In contrast, the five dissenting justices noted that though the previous petitions had been dismissed on condition that the Law be amended to become more proportionate, the amendments had actually expanded the restrictions and intensified the infringement on human rights, and therefore the Law should be repealed; furthermore, though the Law had been legislated as a temporary order in 2003, it had since been extended 13 times, remaining in effect for many years, with no end in sight. Justice Edmund Levy ruled that “The injury caused by the Law is severe. Its damage resounding”.<sup>61</sup> Justice Levy also wrote:

The continued existence of the Citizenship and Entry into Israel Law (Temporary Order) 5773-2003, casts a dark shadow over the chances of democracy in Israel to withstand the challenges it has braved so far. Mistaken are those who believe that the majority, by whose decisions this law came into being, would be able to withstand its dire effect in the long run. [...] At the end of the day, this harm, as distant and as creeping as it may be, as authoritative as it may seem, is no less dire than the harm of the terrorist acts from which we seek to defend ourselves.<sup>62</sup>

Most of the justices expressed dissatisfaction with the mechanism that was meant to answer exceptional humanitarian needs and noted that it operated inefficiently, according to inadequate criteria, and had, until then, benefited very few people. Ultimately, the court dismissed the petitions by six votes to five. Thus, with the Supreme Court’s seal of approval, children and spouses of Israeli residents continue to live in the country pursuant to military-issued stay permits, precluded indefinitely from receiving social security rights or permanent legal status in Israel. The third part

**61.** See supra note 59, opinion of Justice Levy, §45.

**62.** Ibid., opinion of Justice Levy, §29. As stated, in the judgment in the first round of petitions against the Citizenship and Entry into Israel Law, Justice Levy found that the Law violated constitutional rights but held that the petitions should be dismissed as the state should be granted nine months to formulate an alternative.

of the report depicts the Law's grave impact on the lives of East Jerusalem residents, their spouses and children ■

## **Revocation of Family Unification with Gaza Residents**

If the disastrous effects of the twice-amended Citizenship and Entry into Israel Law were not enough, in June 2008, the government decreed that family unification with individuals residing or registered in Gaza would no longer be allowed under any circumstances.<sup>63</sup> The resolution rested on the Law's expanded clauses that allow the Ministry of Interior to reject family unification applications due to a possible security threat attributed to the OPT spouses themselves or their relatives, or the simple fact that they live in an area where dangerous activity is taking place.<sup>64</sup> However, while the amended Law stipulates in what circumstances the Minister of Interior may determine that a single individual is dangerous, the government resolution stipulates a blanket prohibition on family unification with Gaza residents, instructing the minister to flatly reject all applications for Gazans, simply because they live in "an area in which activity is being carried out which is liable to endanger the security of the State of Israel and its citizens". Moreover, the government resolution takes the notion that a person's place of residence is enough to pronounce that person a security threat and applies it to individuals who are registered as Gaza residents regardless of where they actually live.

In July 2012, following the HCJ's dismissal of the general petitions in January of that year, HaMoked contacted the Prime Minister, the Minister of Interior and the Attorney General, demanding the revocation of the government resolution banning family unification with Gaza residents. In its letter, HaMoked argued that

**63.** Government Resolution No. 3598, June 15, 2008, available at: <http://www.pmo.gov.il/English/MediaCenter/SecretaryAnnouncements/Pages/govmes150608.aspx>.  
**64.** Citizenship and Entry into Israel Law 5763-2003, Consolidated Version, Sect. 3d.

the government resolution failed to meet fundamental constitutional principles and was an extreme departure from the provisions of the Law: while, according to the HCJ's judgment, the Minister of Interior has discretion to reject family unification applications for security reasons, the government resolution establishes a blanket refusal on family unification with Gaza residents, unfounded on specific security allegations against any individual applicant. In so doing, the government resolution attributes a "security risk" to all individuals who are registered as Gaza residents in the population registry – even if they do not live there and irrespective of their actions – in disproportionate violation of basic rights, primarily the right to family life.

**65. HCJ 4047/13 Khadri et al. v. Prime Minister et al.**

In June 2013, as no pertinent response arrived, HaMoked petitioned the HCJ.<sup>65</sup> Despite the urgency of the matter, the hearing was scheduled for May 2014 ■

# Family Unification and Child Registration under the Shadow of the Citizenship and Entry into Israel Law

Ever since the annexation of East Jerusalem, families in which one spouse is an Israeli resident and the other an OPT resident, have been facing almost insurmountable bureaucratic obstacles in obtaining status for the children or the OPT spouse. But in 2003, the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 and the attendant interior ministry protocols complicated matters further and now only few manage to find their way through the tangle of sections, subsections, protocols and guidelines.<sup>66</sup> In addition, the foot-dragging, negligence and arbitrariness that has always characterized the ministry's processing of applications by East Jerusalem residents continues unabated. Most notably, more than ever before, the ministry exhibits a tendency toward further restricting the already limited status procedures still available to East Jerusalem Palestinian residents. Thus, bureaucracy serves as a weapon in Israel's demographic war against the Palestinian population of East Jerusalem. This bureaucracy continues to disrupt the lives of those who made it through the process and live in the city with stay permits, as again and again, each and every year, they must overcome the interior ministry's bureaucratic hurdles, primarily the center-of-life examination.

**66.** Note that for many years the Ministry of Interior concealed the Population Administration procedures and protocols from the public. A long legal battle, waged by HaMoked, ACRI and other human rights organizations, was required before the ministry abided by its duties under the basic norms of good governance and published its procedures – in Hebrew only – on the website of the Population and Immigration Authority (PIA), including those relating to family unification and child registration. See, AP 530/07 **Association for Civil Rights in Israel v. Minister of Interior** (2007).

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### **Center-of-life**

One of the major conditions for approval of family unification or child registration is that the “sponsor”, namely the spouse or parent who is an Israeli resident, has maintained a center-of-life in Israel, namely has actually resided in Israel, for the two years preceding submission of the application. Center-of-life must be demonstrated on submission of the initial application, and again at the time of renewal every year thereafter. To prove center-of-life in Israel, applicants must produce a long list of documents showing the family members live, work, study and receive services in the city: a house lease or homeownership papers, household bills such as water, telephone, electricity and property tax, payslips, records of pensions paid by the National Insurance Institution (NII), health fund membership, children’s immunization records, school report cards and more. A sponsor who cannot produce these documents must sign an affidavit commissioned by a lawyer. The Ministry of Interior sometimes even explores how much water or electricity has been used in the family’s home, or relies on the findings of NII investigations conducted to determine benefit eligibility. As stated, even after the family unification or child registration is approved, the family must still submit these documents year after year to prove their center-of-life has remained in Jerusalem in order to have the stay permits given to the sponsored child or spouse extended. Any doubt on the part of a Ministry of Interior clerk regarding the family’s center-of-life could lead to the rejection of the application or the cessation of the procedure.

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Families in which one spouse is an OPT resident often have to battle for a decade or more in order to obtain legal approval for the spouse or child to live in Israel. Over the years, HaMoked has acted on behalf of hundreds of East Jerusalem families who

needed assistance with family unification and child registration. HaMoked's experience has shown that in many cases, a long string of bureaucratic and legal proceedings are required before the Ministry of Interior agrees to grant the spouse or the children the visa or permit they are entitled to. Status procedures are structured sequentially, and must be followed in order. Before they may take legal action, applicants whose application was rejected, must go through a number of internal Ministry of Interior processes, beginning with an appeal to the ministry. If the ministry refuses them again, or fails to respond to their appeal, applicants may file an application for further review to the Appellate Committee for Foreigners – which is another Ministry of Interior body. Only if this committee rejects the application as well, or fails to respond, applicants may file an administrative petition, and if rejected, appeal to the Supreme Court.

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### **The Appellate Committee for Foreigners**

An internal instance at the Ministry of Interior meant to provide quasi-judicial review of decisions made by other departments of the ministry. Despite its title, it is in fact a one person body.<sup>67</sup> As stated, an application may only be made to the committee after both the application and the appeal submitted to the Ministry of Interior were denied, or when the appeal received no response. An application to the appellate committee is a prerequisite for taking legal action. The proceedings of the appellate committee rely exclusively on the written submissions of the resident (or counsel) and of the Ministry of Interior (through specially-appointed counsel).

The appellate committee was established in late 2008 on a temporary basis, to alleviate the backlog in the courts pending the establishment of a special tribunal for matters concerning entry into Israel.<sup>68</sup> In practice, not only is the committee an added stage in the exhaustion of administrative remedies required before

**67.** The chair of the Appellate Committee for Foreigners is subordinate to the Ministry of Interior. At least in Jerusalem, the chair has an office in the same location as the ministry's lawyers, and uses their secretarial and office services – all contrary to the Ministry of Interior protocol that requires "separation between the chair of the appellate committee and the Population Administration, including the location of his office and other administrative aspects of his work", in order "to ensure his impartiality and independence". See PIA Protocol No. 1.5.0001, **Appellate Committee for Foreigners at the Ministry of Interior – Jerusalem and Tel Aviv Districts**, Sect. 9b.

**68.** The Amendment to the Law relating to the Tribunal's establishment was passed on August 3, 2011. However, at the time of writing, April 2014, it has yet to be established. See Entry into Israel Law 5712-1952 (Amendment No. 22), 5771-2011. The Tribunal was initially titled the Tribunal for Foreigners. Following protests from human rights organizations that the word "foreigners" had negative connotations inappropriate for a tribunal, the name was changed to "The Tribunal for Regularization of Status and Residence (the Appeals Tribunal)". The Tribunal is set to operate under the Ministry of Justice as a first instance for judicial review over issues relating to immigration and status of non-Jews; the Court for Administrative Affairs will serve as an appellate instance.

taking legal action, but its own conduct is marred by unreasonable foot-dragging. According to the committee's working protocol, the Ministry of Interior must submit its response within 30 days from the review-application submission date, and the committee must give its decision within 60 days of receiving the interior ministry's response. But in most cases, the Ministry of Interior fails to meet the deadline and receives – sometimes without asking – one extension after another from the committee chair, an appointed interior ministry official ■

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69. PIA Procedure No. 5.1.0001, **General Procedure for the Intake of all Application Types and the Submission of Appeals against Decisions.**

## **Family Unification**

Since the enactment of the Citizenship and Entry into Israel Law, the process of family unification for East Jerusalem residents and their spouses from the OPT does not end with permanent status in Israel, and in fact, does not end at all. Under the Law, OPT residents who wish to live in Israel with their spouses from East Jerusalem, may do so lawfully only through temporary stay permits, and this too, only if they meet the minimum age requirement – 25 for women and 35 for men.

As stated, obtaining the visa or permit required for the OPT spouse to lawfully remain in Israel often requires years of battle. Despite that, the Ministry of Interior refuses to issue “sponsored individuals” from the OPT Israeli stay permits pending approval of the application, practically forcing them to live in Jerusalem without permits as they await its decision. Until recently, “sponsored individuals” could wait for the decision in their case without fear of deportation, because the Ministry of Interior followed a general procedure instituted a decade ago that prohibited the deportation of people with pending applications to the ministry.<sup>69</sup> However, in October of 2013, the Ministry of Interior

revised its procedures, and excluded OPT applicants from the protection afforded to other foreign nationals seeking status in Israel, allowing their removal to the OPT even if they have pending applications.<sup>70</sup> The new procedure appears to be nothing more than an attempt to deter individuals who are entitled to lawfully remain in Israel from contacting the authorities, as doing so now, exposes them to the risk of arrest and deportation. In early December 2013, HaMoked, ACRI and six other human rights organizations contacted the director of the Population and Immigration Authority (PIA), demanding the policy be reversed.<sup>71</sup> The letter has not yet been answered.

When a family unification application is approved, usually after a lengthy wait, the Ministry of Interior gives the spouse from the OPT a referral to the local military District Coordination Office (DCO) to receive a DCO permit, namely an Israeli stay permit, valid for a year. Less than a year later, when the permit's expiry date approaches, the couple must again apply to the Ministry of Interior to have the DCO referral renewed – year in, year out; and each time, they must produce documents and affidavits proving center-of-life in Jerusalem and undergo security and criminal background checks. Renewal applications may be filed during the three months preceding the permit's expiry date, but in HaMoked's experience, applying well in advance does not guarantee that the ministry will provide the referral on time. Without the referral, the chain of stay permits is broken, and the OPT spouse is forced to either live in East Jerusalem unlawfully – under threat of detention, arrest or deportation as an “illegal alien” – or return to the OPT and thus transfer her or his center-of-life outside of Jerusalem.

In September 2004, following HaMoked's petition on a similar issue, the Ministry of Interior introduced a procedure ostensibly meant to address cases of referrals issued past the last permit's expiry date due

**70.** PIA Procedure No. 1.6.0001, **Procedure for the Intake of Applications and of Appeals against Decisions by PIA Branch Offices**; PIA Procedure No. 5.2.0011, **Procedure for Processing the Grant of Status to a Foreign Spouse Married to a Permanent Resident.**

For more on the change in the procedures, see HaMoked's update from October 2013, available at: <http://www.hamoked.org/Document.aspx?dID=Updates1259>.

**71.** Letter dated December 3, 2013, available in Hebrew at: [http://www.hamoked.org/files/2013/1158043\(1\).pdf](http://www.hamoked.org/files/2013/1158043(1).pdf). See also HaMoked's update from December 2013, available at: <http://www.hamoked.org/Document.aspx?dID=Updates1271>.

to the ministry's conduct, and so spare OPT spouses from having to remain in Jerusalem without a permit, as "illegal aliens".<sup>72</sup> According to the procedure, the Ministry of Interior must summon people who apply for visa or permit extensions within three months of the application filing date; if the permit cannot be extended upon the applicant's arrival, the applicant will be given a temporary permit for six months, during which the ministry must issue a decision. However, HaMoked's experience shows that this procedure is followed only when the applicants arrive at the ministry office accompanied by counsel who insists on the procedure. In July 2012, HaMoked wrote to the Ministry of Interior requesting that ministry officials be instructed to comply with the procedure.<sup>73</sup> No response has been received to date.

### **Living in Israel with DCO permits**

As stated, DCO permits do not afford holders social security rights under the National Insurance Law, including disability and unemployment pensions. Worse still, even after years of living in Israel, DCO permit holders remain ineligible for national health insurance, and should they fall seriously ill, they would have to be hospitalized in the OPT, or else privately pay unaffordable sums – especially for East Jerusalem families – for hospitalization and treatment in Israel. In April 2009, ACRI and other human rights organizations petitioned the HCJ to rule that health rights and all social security rights must be afforded to Israeli residents' foreign spouses and other relatives who lawfully reside in Israel but cannot obtain status due to the Citizenship and Entry into Israel Law.<sup>74</sup> Following the petition, the state appointed a special committee to look into the matter. In May 2011, the committee presented its recommendations whereby only the National Health Insurance Law – but not the National Insurance Law – should be applied to all those who live in Israel pursuant to stay permits and are not entitled to status upgrades due to the Citizenship

**72.** AP 612/04 **Dahud et al. v. Minister of the Interior et al.** (2004).

**73.** Letter dated July 18, 2012, available in Hebrew at: <http://www.hamoked.org/files/2012/1156740.pdf>.

**74.** HCJ 2649/09 **Association for Civil Rights in Israel et al. v. Minister of Health et al.**

and Entry into Israel Law, subject to certain terms and conditions. Three years later, in February 2014, the committee's recommendations were anchored in the National Health Insurance Regulations that are to take effect in May 2014.<sup>75</sup> But, in fact, this arrangement is costly, discriminatory and falls short of the arrangement available to non-OPT relatives. Thus, for example, while the latter are entitled to full health insurance under the same conditions as Israeli citizens and residents, Palestinians living in Jerusalem with stay permits must pay a fixed monthly fee that is not adjusted to their income; they do not receive child exemptions (as do residents and sponsored individuals who do not come under the Law); and during the initial registration with a health fund, they are charged a large first payment for each family member holding a stay permit: for spouses or children of East Jerusalem residents, this payment stands at ILS 7,695 (as opposed to ILS 1,710, collected from relatives of Israeli citizens). An amended petition filed against this arrangement is still pending before the HCJ.<sup>76</sup>

In the past, DCO permit holders had great difficulty finding work, because the DCO permit bore the inscription: "This permit does not constitute a permit to work in Israel". To get an Israeli work permit, they had to follow a cumbersome process to obtain an entry permit to Israel – though they were lawfully living in Israel – and their prospective employers had to apply for a permit to employ them.<sup>77</sup> Employer applications, in general, involve lengthy proceedings due to the requirements of both the Ministry of Interior and the military; approvals are given in just a few sectors subject to quotas placed on each employer; and they also bind the worker to the specific employer. This bureaucratic obstacle forced DCO permit holders to work in Jerusalem without work permits, or, for lack of choice, find their livelihood in the West Bank, far from their families, thus jeopardizing the family unification procedure – which, as stated, hinges on proof of

**75.** National Health Insurance Regulations (Health Fund Registration, Rights and Duties of Recipients of Stay Permits under the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003) 5774-2014.

**76.** HCJ 2649/09 **Association for Civil Rights in Israel et al. v. Minister of Health et al.**, Amended Petition for Order Nisi, February 26, 2014.

**77.** This procedure was designed for Palestinians working in Israel who must return to their homes in the OPT at the end of the workday, but was later imposed also on spouses of Israeli residents who lawfully lived in the country.

center-of-life, including residence and work in the city. In September 2011, HaMoked petitioned the HCJ to allow Palestinians living in Israel with approved family unification applications and DCO permits to work and earn a living in Israel without restrictions or additional processes.<sup>78</sup> Following the petition, the state announced that Palestinians holding DCO permits as part of the family unification procedure could be hired to work in all sectors, without need for another permit, and that their DCO permit would clearly state: "This permit allows working in Israel".<sup>79</sup>

Living in Israel with DCO permits also impedes the pursuit of professional development. In January 2011, HaMoked contacted the Ministry of Industry, Trade and Labor about a Palestinian woman who had been living in East Jerusalem since 1993 with DCO permits given to her as part of a family unification procedure with her Israeli resident spouse.<sup>80</sup> The woman had finished with honors a family daycare management program in a Jerusalem college. But when she went to take the ministry's accreditation exam, she was told she could not do so without an Israeli identity card.

HaMoked asserted it was unreasonable that an individual who was living in Jerusalem lawfully for many years and could not have her status upgraded due to the Citizenship and Entry into Israel Law, could not get professional training – and thus build a professional future and support herself and her family with dignity – by, inter alia, studying and taking the ministry's accreditation exams. In August 2011, the Ministry of Industry, Trade and Labor announced in response: "Individuals living in Israel due to a family unification process [...] will be able to take professional training courses and professional exams".<sup>81</sup>

While processing cases of family unification between East Jerusalem residents and OPT spouses, HaMoked has often come across refusals by Israeli banks,

**78.** HCJ 6615/11 **Salhab et al. v. Ministry of Interior et al.** (2013).

**79.** Ibid., Preliminary Response on behalf of the Respondents, November 6, 2012.

**80.** Letter dated January 20, 2011, available in Hebrew at: <http://www.hamoked.org/files/2011/114780.pdf>.

**81.** Response of Ministry of Industry, Trade and Labor, August 28, 2011, available in Hebrew at: <http://www.hamoked.org.il/files/2011/114781.pdf>. See also HaMoked's update from September 2011, available at: <http://www.hamoked.org/Document.aspx?dID=Updates1127>.

including the postal bank, to open bank accounts for OPT residents living in Israel with DCO permits. HaMoked's inquiries revealed that this was a blanket policy applied without individual review based solely on the national identity of the potential customers – Palestinian residents of the OPT; this, while, routinely, foreign nationals not from the OPT are able to open bank accounts without issue, even when undergoing family unification. In December 2013, HaMoked initiated action to end this unacceptable and unlawful practice.

DCO permits ostensibly provide complete freedom of movement throughout Israel and the 1967 annexed areas, but not so when it comes to crossing from the eastern side of the separation wall to the western side. Thus, for instance, Palestinian DCO permit holders who live with their families in one of Jerusalem's neighborhoods near the Shu'fat refugee camp – all located inside the city's municipal boundaries but east of the separation wall – are not permitted to use the Shu'fat checkpoint because they do not have Israeli identity cards. To reach the city parts located west of the wall, they must pass through more distant crossing points such as Qalandiya, designated for passage of Palestinian identity card holders. And so, for years, they and their families have been forced to waste precious time every day. Following HaMoked's insistent letters to the military,<sup>82</sup> the Civil Administration finally announced it would allow DCO permit holders to cross the Shu'fat checkpoint, subject to a process of "mapping" all of the families living east of the wall in which one of the spouses is a Palestinian DCO permit holder; the "mapping" process would be held in collaboration with the Shu'fat refugee camp committee, to which DCO permit holders would have to provide documents showing they reside in the relevant neighborhoods.<sup>83</sup> HaMoked responded that this collaborative "mapping" was a complicated and unnecessary process, given that the Ministry of Interior

**82.** See, e.g., Letter from HaMoked, December 3, 2012, available in Hebrew at:

<http://www.hamoked.org/files/2013/1158242.pdf>.

**83.** Letter from Lieut. Bar Akoka, Public Liaison Officer, Civil Administration, to HaMoked, October 6, 2013.

already had detailed information about the permit holders' place of residence – as continued issuance of stay permits requires solid proof of center-of-life in Israel, including known permanent address. In March 2014, having received no response to its arguments, HaMoked petitioned the HCJ to allow Palestinians who hold Israeli stay permits to cross Shu'fat Checkpoint without any restrictions or special conditions.<sup>84</sup>

84. HCJ 2129/14 **Zahdeh et al. v. West Bank Military Commander.**  
85. HCJ 3544/13 **Qweidar et al. v. Coordinator of Government Activities in the Territories et al.**

In addition, unlike visas, issued directly by the ministry to foreign spouses who are not OPT residents, DCO permits, which are issued by the military, do not allow holders to obtain an Israeli driver's license; this often curtails the right to freedom of movement of the entire family. In one case, for instance, a Palestinian man who has been living in East Jerusalem with his Israeli resident wife since 2005, cannot drive his children to school, or even take his wife who suffers from a debilitating medical condition to her treatments, because as a DCO permit holder, he cannot obtain an Israeli driver's license. In May 2013, HaMoked petitioned the HCJ on his behalf, demanding he – and others in his position – be permitted to drive in Israel.<sup>85</sup> The hearing has been scheduled for June 2014.

### **Temporary Residency**

Palestinians from the OPT who received temporary residency in Israel (A/5 visas) prior to the revocation of the family unification procedure, have remained in this status, but cannot receive permanent residency. Temporary residents are afforded NII pensions and social security benefits such as national health insurance, but they must renew their status annually, subject to proof of center-of-life and security and criminal background checks. As with stay permits, considerable gaps occur between one visa and the next, during which the spouses are left without legal status in Israel or social security rights. Moreover, the Ministry of Interior often exploits the situation to strip spouses of their status at this late stage in the

procedure, leaving them without any status or social security rights, and even forcing them thereby to leave their families and homes in Jerusalem.

86. AAA 8849/03 **Dufish v. East Jerusalem Population Administration Director** (2008).

### **Upgrades to Temporary Residency due to Ministry of Interior Default**

As stated, the 2002 government resolution stipulated that OPT residents who already entered the family unification procedure would remain with whatever visa they had prior to the resolution, without status upgrade. Following HaMoked's administrative petition to the Jerusalem District Court and pressure from the Supreme Court justices who presided over the subsequent appeal, the state agreed to depart from this rule when the process was delayed due to errors or foot-dragging by the Ministry of Interior. It was agreed that in such cases, the status of the OPT spouses could be upgraded despite the family unification freeze. The arrangement was given the force of a judgment in June 2008 and became known as the "Dufish rule".<sup>86</sup> Following the arrangement, HaMoked renewed its efforts to help spouses who meet the criteria receive temporary residency and the attendant social security rights and health insurance. These bureaucratic-legal struggles have frequently yielded results.

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HaMoked has been assisting the R. family since 1993. T.R. is an East Jerusalem resident. M.R., her husband, is an OPT resident. The couple married in 1990 and settled down in the Shu'fat refugee camp in Jerusalem. As reported, until 1994, the Ministry of Interior automatically rejected applications made by women from East Jerusalem for their non-Israeli spouses, holding that women were supposed to "follow their husbands". In 1995, a year after the policy was changed, the couple filed for family unification. In November 1997, the Ministry of Interior rejected the application, claiming the couple did not maintain a center-of-life in Jerusalem – this, though just a few

months earlier, in April 1997, the ministry approved the couple's application to register their children, after they had proven that the family's center-of-life was in Jerusalem. The family appealed, providing ample proof of their center-of-life in Jerusalem – the same proof based on which the children's registration had been approved. But rather than grant the application, the ministry decided to examine the family's center-of-life further; later, it withheld the approval because it was waiting for other agencies' opinions.<sup>87</sup> Finally, in 1999, the application was approved, but the foot-dragging continued: the first one-year permit M.R. should have received never arrived, and the second-year permit application remained unanswered for over a year. In a telephone conversation, a Ministry of Interior clerk explained that the file "got buried" in the office. In the summer of 2002, all relevant officials finally approved the couple's continued eligibility for family unification. But, by then, the government had already banned family unification with OPT residents, and the ban was soon enshrined in the Citizenship and Entry into Israel Law. All M.R. got was the military-issued DCO stay permit. HaMoked petitioned the Jerusalem District Court on the family's behalf, arguing, *inter alia*, that had it not been for the authorities' foot-dragging, M.R. would have had temporary residency before the government resolution, and that the family should not pay the price for the authorities' negligence.<sup>88</sup> The court dismissed the petition, and HaMoked appealed to the Supreme Court.<sup>89</sup> Following the Dufish arrangement in mid-2008, the case was remanded to the District Court and the state agreed to apply the Dufish rule to the R. family. The couple was summoned to the Ministry of Interior and received another referral for a DCO permit. Following additional correspondence, in the summer of 2009 – some 14 years after the family first applied for family unification – M.R. received temporary residency in Israel. (Case 5075)

87. For more on the "Security Agency Comments Procedure", see *infra* pp. 43-50.

88. AP 723/03 **Rajub v. Minister of Interior** (2007).

89. AAA 5534/07 **Rajub v. Minister of Interior** (2008).

In late 2013, following the Supreme Court judgment in **Dajani**,<sup>90</sup> the Ministry of Interior announced that applications for status upgrade under the Dufish rule that had been submitted after January 1, 2010 – some 18 months after the arrangement began – would be rejected automatically. HaMoked is working for the cancellation of this blanket decision by submitting applications for further review to the Appellate Committee for Foreigners. The matter has not yet been resolved.

### **Denial of Family Unification Applications for Security or Criminal Reasons**

Under the Entry into Israel Law 5712-1952, the Minister of Interior has discretion to reject a family unification application due to security or criminal risks attributed to the foreign spouse. Accordingly, in 2003, the Ministry of Interior introduced the “Security Agency Comments Procedure”, which requires the ministry to obtain the opinions and recommendations of police and security officials before approving a family unification application.<sup>91</sup> Originally, the procedure stipulated that a brief summary of the security or criminal report against the sponsored spouse should be provided to the couple only after the decision in their case, as part of the refusal notification. The procedure allowed no opportunity to challenge the allegations made against the couple before a final decision was made.

In 2008, the Ministry of Interior appealed a judgment of the Jerusalem Court for Administrative Affairs that had faulted this practice. The court had ruled that when the state considered rejecting applications by East Jerusalem residents for family unification with their foreign spouses for security reasons, the ministry should allow the couple to plead their case before reaching a decision. In August 2009, the Supreme Court rejected the appeal and endorsed in its judgment the ministry’s obligation to hold a hearing.<sup>92</sup> The court said that the hearing should preferably be held both

**90.** AAA 6407/11 **Dajani et al. v. Ministry of Interior – Population Administration** (2013).

**91.** PIA Procedure No. 5.2.0015, **Procedure on Security Agency Comments regarding Family Unification Applications**. Procedure presented in the context of ACRI’s petition, HCJ 7016/01 **Almadani et al. v. The Minister of Interior** (2004).

**92.** AAA 1038/08 **State of Israel v. Ja’abis et al.** (2009).

in writing and orally, and that when considering a security related refusal, the interior ministry should inform the applicants ahead of the decision and in as much detail as possible, to allow them to adequately prepare to plead their case in the hearing. The court further ruled that only in highly exceptional cases, when the interior ministry convincingly justifies why the applicants pose real and immediate danger, can it reverse the process and hold the hearing retroactively, after the decision has been made, and may even demand that the foreign spouse leave the country.

In April 2010, the Ministry of Interior published a revised Security Agency Comments Procedure, but despite the court's comments, it did not stipulate the duty to hold an oral hearing, only a written one.<sup>93</sup> Only in October 2013, following HaMoked's persistent letters, the ministry announced that it would hold oral hearings for individuals undergoing the graduated procedure who face termination due to security agency input. Individuals rejected in the initial application stage would receive only a hearing in writing.<sup>94</sup>

As stated, in 2005, a new clause was incorporated into the Citizenship and Entry into Israel Law, allowing rejection of family unification based not only on security allegations against the sponsored individuals themselves, but also on "negative security information" attributed to one of their relatives – parent, child, sibling or sibling's spouse. Since then, the Ministry of Interior has been employing this clause extensively to terminate family unification in approved applications – applications that already received security clearance – and even when the sponsored individuals have been living in Jerusalem, with permits and approvals, for quite some time. In such cases, rejections are issued when the spouses repeat the entire obligatory

**93.** See supra note 91, PIA Procedure No. 5.2.0015, Update of April 15, 2010.

**94.** Letter dated October 21, 2013, available at: [http://www.hamoked.org/files/2013/114061\\_eng.pdf](http://www.hamoked.org/files/2013/114061_eng.pdf).

approval process to renew the permits and visas they already received.

In 1999, Israel allowed J.F. to enter the graduated procedure leading up to permanent residency in Israel. His wife, F.F., is a resident of East Jerusalem, as are their six children. According to the graduated procedure, J.F. should have received permanent residency in 2004; but due to Israel's policy changes – expressed through the initial 2002 freeze, the government resolution and ultimately, the Citizenship and Entry into Israel Law – he had remained with temporary residency, namely the periodic extension of his A/5 visa, since 2001. In November 2006, the couple's visa-extension application was suddenly rejected and J.F.'s Israeli identity card was immediately seized. The response to HaMoked's inquiry stated, "I hereby announce that your application for family unification has been examined and the following decision has been made: Rejection due to security reasons. Since the siblings of the sponsored family member [...] are activists in a terrorist organization and involved in violent activity".<sup>95</sup> Thus, with one stroke of a pen, J.F., a husband, father and breadwinner for a family of eight, was turned into an illegal alien – without social security and civil rights, destined for deportation without any possibility of challenging the allegations against him – for nothing he himself had done. HaMoked submitted an administrative petition on the family's behalf, demanding the reasons for the rejection.<sup>96</sup> In response, the state held that the evidence behind the rejection was classified and presented a certificate of privilege signed by the Minister of Defense; it only revealed that one of J.F.'s siblings was in administrative detention and another was in prison for security-related offenses.<sup>97</sup> HaMoked petitioned to have the privilege removed,<sup>98</sup> but withdrew the petition after the state provided the names of J.F.'s

95. Letter from Hagit Weiss, Head of Family Unification, East Jerusalem Population Administration Branch Office, to HaMoked, November 6, 2006.

96. AP 187/07 **Fasfus et al. v. Minister of Interior et al.** (2008).

97. *Ibid.*, Response on behalf of the Respondents, February 20, 2007.

98. HCJMAApp 7792/07 **Fasfus et al. v. Minister of Interior et al.** (2007).

three brothers purported to be the reason for his security-based rejection, with scant information about their alleged actions. The three were J.F.'s half-siblings, with whom, according to his testimony, he maintained no contact; the families had quarrelled long ago and had no contact for years. When the frailty of the state's allegations came to light, a new allegation suddenly materialized that the petitioner himself was a security threat. The state refused to divulge any information regarding the new allegation and produced a new certificate of privilege. HaMoked filed another petition, challenging the reasons for the refusal and the state's cynical use of the security clause.<sup>99</sup> After the District Court dismissed the petition, HaMoked appealed to the Supreme Court, arguing the state had rejected the application without due discretion.<sup>100</sup> HaMoked's application to issue J.F. a stay permit pending the legal proceedings was also rejected. After 16 years of living in Jerusalem, J.F. had to leave the city and move with his wife and children to Hebron. Ahead of the hearing of the appeal, the parties agreed that F.F. could reapply for family unification with her husband, without need to prove center-of-life, given that they were compelled to move to the West Bank. In January 2011, the agreement was given the force of a judgment, and the petition was withdrawn.<sup>101</sup> The couple, however, embittered by its past experience, decided to stay in Hebron. (Case 7356)

99. AP 8121/08 **Fasfus et al. v.**

**Minister of Interior et al.** (2008).

100. AAA 8289/08 **Fasfus et al. v.**

**Minister of Interior et al.** (2011).

101. *Ibid.*, Judgment, January 24, 2011.

102. HCJ 7444/03 **Dakah et al. v.**

**Minister of the Interior** (2010).

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In February 2010, in a judgment known as the "Dakah rule", the Supreme Court deliberated the level of impingement on the right to family life inflicted by the interior ministry's use of security-based refusals. The court gave special consideration to cases in which the ministry rejected applications to extend the permits or visas issued to sponsored individuals already living in Israel pursuant to an approved family unification application.<sup>102</sup> The court ultimately ruled that the

cessation of an approved family unification procedure means “dissolving a family unit that has already been established, ripping the family from the kinship, social and economic roots it has meanwhile put down, and causing tremendous upheaval in the fabric of family life that has evolved over the years”; the Ministry of Interior must therefore balance the security preclusion with, inter alia, “the number of years the permit holder has resided in Israel, his level of integration to life in the country, the size of his family, the Israeli spouse’s chances, in the event of separation, of caring for the family should his spouse be compelled to leave the country, and the overall significance of the separation between the spouses for the fate of the family and the children”. The court added that when the refusal is based on an indirect security preclusion emanating from the sponsored individual’s relative, the state should convince the court that the risk to public safety is near certain, justifying the impingement on family life.<sup>103</sup>

However, despite the guidelines laid out in the judgment, the Ministry of Interior continues its practice and does not hesitate to revoke family unification approvals on security grounds, even when security officials have no information whatsoever about the sponsored individual’s involvement in any hostile activity against Israel. Occasionally, the “indirect security risk” underlying the Ministry of Interior decision turns out to be completely vacuous, even according to Israel’s security establishment itself.

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M.N. and A.N. were married in 1996. M.N. is a Palestinian resident and A.N. an Israeli resident. In 2003, after HaMoked proved in the Jerusalem District Court that the Ministry of Interior had delayed processing their family unification application, it was approved despite the Citizenship and Entry into Israel Law, and M.N. received a stay permit.<sup>104</sup> About five years later, in August 2008, M.N. applied, as annually

**103.** Ibid., Judgment, February 22, 2010.

**104.** AP 1007/02 **Natsheh et al. v. Director of the East Jerusalem Population Administration Office** (2003).

required, to have her permit renewed, but the Ministry of Interior informed her that her application was refused due to a security risk emanating from her ties to her two brothers, against whom the state alleged there was “negative security information”.

In February 2009, HaMoked’s appeal on M.N.’s behalf was rejected. In April 2009, an application for further review was submitted to the Appellate Committee for Foreigners, and in September 2009, the committee partially accepted it and returned the file to the Ministry of Interior for reconsideration and a hearing. In July 2011, after the Ministry of Interior ignored its obligation to hold a hearing, HaMoked reapplied to the appellate committee. In November of that year, the committee accepted the application, returned the file to the Ministry of Interior and stipulated a schedule for completion of processing. When processing resumed, the Ministry of Interior notified HaMoked of a new condition: M.N. could receive stay permits for a “probationary period” of one year, but only after she and her husband signed an undertaking to sever all ties with M.N.’s two brothers and one of her brothers-in-law – an unnamed individual, whose existence as a “security threat” was never mentioned before or ever again. During the Ministry of Interior hearing – held only following HaMoked’s second application to the appellate committee – M.N. agreed to undertake not to participate in any activity that could endanger Israel’s national security. In a hearing over HaMoked’s third application for further review – filed in June 2012, after the Ministry of Interior failed to deliver a decision on the previous hearing, in disregard of the schedule dictated by the appellate committee – the Ministry of Interior said that M.N.’s disavowal of her relatives’ actions was “meaningless without action in the shape of an undertaking to sever ties with her brothers”. HaMoked countered that requiring M.N. to sign such an undertaking was injurious and unjustified, highlighting the degradation caused by this demand, particularly to M.N.’s husband, a permanent resident of Israel, who was under no suspicion or any sort of

probation. In January 2013, the appellate committee rejected the application and announced that it accepted the interior ministry's position, even describing it as reasonable and proportionate.

In March 2013, HaMoked petitioned the Court for Administrative Affairs on the couple's behalf.<sup>105</sup>

HaMoked claimed that in refusing to continue processing the couple's family unification, Israel was violating their right to family life as well as the rights of their children. HaMoked added that the state had acted unreasonably and disproportionately and that its demand to renounce all ties with M.N.'s brothers was humiliating to the couple who had done nothing wrong.

In May 2013, the state notified HaMoked that it retracted the demand for a renouncement pledge and that there was no security impediment to renewing M.N.'s stay permit. (Case 14700)

**105.** AP 29198-03-13 **Natsheh et al. v. Minister of Interior** (2013).  
**106.** See supra note 91, PIA Procedure No. 5.2.0015, Sects. 3.1-3.4.

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While most family unification denials HaMoked encounters rely on some type of security reasoning, occasionally, the Ministry of Interior also uses its power to deny applications on criminal grounds. Under the Security Agency Comments Procedure, family unification applications may be rejected due to criminal behaviour on part of the sponsored individual (whether criminally convicted or under criminal investigation), but not for criminal reasons relating to the sponsoring spouse (who will remain an Israeli resident regardless of any criminal activity or the outcome of the application) – unless the sponsoring spouse is serving a lengthy prison sentence or is facing charges that may result in lengthy imprisonment.<sup>106</sup> In such circumstances, the procedure allows for rejecting the application because in any event the couple could not to live together in Israel. But despite these express provisions, the Ministry of Interior habitually rejects family unification applications – “pending the end of proceedings”, as the ministry puts it – if the sponsoring spouse is facing a criminal investigation for whatever offence, no matter how minor.

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In 2007, the Ministry of Interior informed Y.A., an East Jerusalem resident, that in compliance with the position of the police, his application for family unification with K.A., an OPT resident, was “rejected pending the end of proceedings”; “for processing to resume”, the notice stated, “you must close the files pending against you”. The notice was sent despite the fact that there were no open criminal files against K.A., the sponsored spouse, and it was highly unlikely that the ongoing file against Y.A. – who hadn’t even been detained for questioning – would end in a prison sentence. HaMoked appealed the decision, arguing that the ministry contravened its own procedure by rejecting the application solely based on criminal suspicions against the sponsoring spouse. As no response arrived, HaMoked applied to the Appellate Committee for Foreigners. Nine months later, the ministry’s response arrived: K.A. would receive stay permits outside the graduated procedure for a period of one year, during which, the couple’s criminal involvement would be monitored. The Ministry of Interior contended that the application to the appellate committee should be withdrawn, given that it concerned a failure to respond and now a response was provided. HaMoked objected, and asked the appellate committee to review the case on its merits. The committee accepted HaMoked’s position that the rejection failed to meet the criteria and that processing should be resumed.

(Case 34031)

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### **Family Unification with Gaza Residents**

As stated, the government resolution of June 2008 directs the Minister of Interior not to grant family unification in Israel to spouses from the Gaza Strip. The resolution is worded such that it applies not only to people who actually reside in the Gaza Strip, but also to anyone registered in the Palestinian population registry as a Gaza resident – including Palestinians living in the West Bank for many years, whose registered address remains in the

Gaza Strip due to Israel's policy of prohibiting address changes from Gaza to the West Bank.<sup>107</sup> Accordingly, since then, the Ministry of Interior has been refusing to consider any applications for family unification with Palestinians living or registered in the Gaza Strip, even if there are no security allegations against them. In one of HaMoked's cases, the ministry consented to grant Israeli stay permits to a woman registered in a Gaza address, but did so strictly on humanitarian grounds, outside the family unification procedure and only after legal action was taken.

**107.** For more on this policy, see joint report by HaMoked and B'Tselem, **So Near and Yet So Far: Implications of Israeli-Imposed Seclusion of Gaza Strip on Palestinians' Right to Family Life**, 2014, pp. 11-17.

**108.** See infra pp. 70-71 for more on the Humanitarian Committee under the Citizenship and Entry into Israel Law.

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H.A., born in Khan Yunis in the Gaza Strip, got married at age 16 to M.A., an Israeli resident, and moved to live with him in Jerusalem. Soon after the marriage, in April 2000, M.A. applied for family unification with his wife. In response, the authorities informed him that H.A. must first have the marital status listed in her Palestinian identity card changed from “single” to “married”; but before she could do so, the government froze all family unification procedures, completely preventing H.A. from seeking lawful status in Israel. Following the 2005 Amendment allowing for new applications on behalf of women over age 25, it seemed that once H.A. turned 25, it would be possible to arrange for her presence in Israel through permits. But in 2008, a few months before her 25th birthday, the government banned family unification with Palestinians from Gaza. And so, H.A.'s new application, filed when she turned 25, was turned down on the grounds that she was a registered resident of Gaza – this, even though she had been living with her husband in Jerusalem for many years. The ministry also rejected the appeal HaMoked filed on her behalf, and HaMoked's application to the Humanitarian Committee under the Citizenship and Entry into Israel Law received no response.<sup>108</sup>

In May 2011, HaMoked petitioned the HCJ, arguing that H.A. had been living away from the Gaza Strip

for many years and maintaining a center-of-life in Jerusalem for over a decade; therefore, the ban on family unification with Gaza residents in no way applied to her case.<sup>109</sup>

Following the petition, in September 2011 – more than a decade after she had married and settled in Jerusalem – the Ministry of Interior informed HaMoked that it decided to accept the application and grant H.A. a permit to stay in Israel “for special humanitarian reasons”. (Case 60694)

109. HCJ 3830/11 **‘Abd al-Bari et al. v. Minister of Interior et al.** (2011).  
110. AP 10144-11-11 **Ahmad et al. v. Minister of Interior et al.** (2012).  
111. AAA 7212/12 **Ahmad et al. v. Minister of Interior.**

The government resolution stipulated that the ban on family unification with Gaza residents would take effect “henceforth and shall not apply in any case to individuals whose initial application has been approved”. Thus, the ban applies retroactively to families who applied well before the resolution, but did not receive the interior ministry’s decision due to its usual foot-dragging, until ultimately the government altered its policy and issued the blanket ban. In November 2011, HaMoked petitioned the Jerusalem District Court, demanding the Ministry of Interior continue processing pending applications filed prior to the government resolution.<sup>110</sup> In July 2012, the court dismissed the petition, finding no cause to intervene in the state’s decision. HaMoked appealed to the Supreme Court in October 2012.<sup>111</sup> The appeal is still pending.

### **Family Unification with Non-OPT Residents**

The Citizenship and Entry into Israel Law does not apply to foreign spouses who are neither OPT residents nor originate from one of the four countries to which Israel applied the Law; for them, the graduated family unification procedure remains intact. And yet, since the Law came into effect, HaMoked has handled several cases in which the Ministry of Interior denied family unification of East Jerusalem residents with foreign spouses – all of them ethnically Palestinian, but none registered in the Palestinian population registry; the

Ministry of Interior had nonetheless decided to apply the Law to them as if they were OPT residents, and accordingly denied their applications outright when they failed to meet any of the criteria listed in the Law – such as the minimum age criteria.

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H.F. was born to Palestinian parents in 1980 in Brazil. He grew up in Brazil and has a Brazilian passport. During his childhood, he visited the West Bank only once, in 1989, for about six weeks. In 1997, his mother, together with his sister, left Brazil and returned to her home village in the West Bank. H.F. and his three other siblings remained in Brazil with their father. In 2002, following his father's death, H.F. went to visit his mother in the West Bank; three months later, he left for Jordan for a week and then returned to the West Bank. He spent the next few years in central Israel and Jerusalem, working mainly on construction sites, without permits or pay slips, sleeping where he worked; and all the while, he did not live in the West Bank.

In 2006, H.F. married N.F., an East Jerusalem resident. After living at his mother's home in the West Bank for a few months, the couple moved to live near N.F.'s parents, in Shu'fat Refugee Camp, inside the Jerusalem city boundary. In February 2007, N.F. applied for family unification with her husband. H.F. was asked to produce evidence that he had maintained a center-of-life in Israel from the time he entered the country in late 2002 until his marriage in 2006, and a hearing was held in his case. In September 2008, the Ministry of Interior agreed to register the couple's son, born in late 2007, in the Israeli population registry, but denied family unification for H.F. because he was considered an OPT resident under age 35; the ministry claimed that H.F. had lived with his mother in the West Bank from March 2003 to September 2004, and that he had difficulty naming past employers or co-workers from the time he had worked in Israel, and thus failed to prove he was not a resident of the OPT. This, despite the fact that H.F. was a Brazilian citizen,

had lived most of his life in Brazil, still had a Brazilian passport and was not registered in the OPT population registry. Without producing any evidence that H.F. had lived in the OPT, the ministry rejected the application. HaMoked appealed the interior ministry's decision and attached an affidavit from a workshop owner who declared he had employed H.F. from October 2004 to September 2006; but the Ministry of Interior claimed the affidavit's credibility was questionable and rejected the appeal. HaMoked filed an application for further review to the Appellate Committee for Foreigners, arguing that even if H.F. had lived for a while with his mother in the West Bank, as the ministry claimed, this period represented just a tenth of his life, a brief time that could not justify defining him a resident of the OPT.

Following this application, the ministry reexamined the family unification application and decided to approve it, with a caution that "should it emerge in future that the Appellants provided the Respondent with false information and the Appellant had resided in the Area [i.e., the OPT], the Respondent shall be entitled to apply the Citizenship [and Entry into Israel] Law to the Appellant". In March 2009, H.F. entered the graduated family unification procedure and received an Israeli work permit that allowed him to provide for his family. Two years later, his status was upgraded to temporary residency. (Case 54571) ■

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## **Child Registration**

According to the Citizenship and Entry into Israel Law, despite having at least one parent who is an East Jerusalem resident, children who are defined as "residents of the Area" are differentiated by age: children under age 14, to whom the minister of interior may grant status in Israel, and children over age 14, to whom the minister may not grant status in Israel.

Children over 14 may receive stay permits only – which do not grant them social security rights, including health insurance – subject to the strict security background checks stipulated in the Law. But the future of these children is uncertain: the Law does not provide for their continued stay in Israel upon reaching 18, leaving them at the mercy of the Ministry of Interior. For the time being, the ministry allows granting them stay permits after they come of age.

**112.** The interior ministry's broad interpretation of the term "resident of the Area" affects the entire population that comes under the Citizenship and Entry into Israel Law; but, as explained below, the harshest effect is on children with one parent who is an Israeli resident and one who is a resident of the OPT.

All in all, the Ministry of Interior has been acting over the years to intensify and expand the discrimination against children of East Jerusalem residents. As stated, even before the 2002 government freeze on family unification, the ministry employed a policy aimed at impeding the registration of such children in the Israeli population registry. Following the Citizenship and Entry into Israel Law, the ministry redoubled its efforts by introducing internal procedures meant to further expand the Law's reach. The ministry's efforts to maximally reduce the number of children still eligible for status in East Jerusalem – beyond the dictates of the Law – now focused on broadening the definition of "resident of the Area" and counteracting the raising of the "effective age" for grant of status to children.

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### **The Interpretational Battle over the Legal Definition of "Resident of the Area"**

The Citizenship and Entry into Israel Law applies to anyone Israel defines as a "resident of the Area", Area being the West Bank and the Gaza Strip. The original Law of 2003 defined "resident of the Area" as anyone who was living in the OPT in practice whether or not they were registered as OPT residents, other than Israeli settlers. But the Ministry of Interior hastened to adopt a broader interpretation of this definition, encompassing anyone registered in the OPT – even if they did not actually live there.<sup>112</sup> Thus, the ministry could apply the Law, inter alia, to children who had

lived most or all of their lives in Jerusalem but had been registered in the OPT for various reasons. One reason that pushed parents to register their children in the OPT even though the family's center-of-life had been exclusively in Jerusalem, was Israel's years' long practice of introducing frequent and unpublished changes to its child registration policy. Another reason was the near inaccessibility of the East Jerusalem Ministry of Interior branch office in the past: residents had to wait in line for days on end, and when they finally managed to gain entry, they were obliged to fill out forms in Hebrew, submit affidavits obtainable for a legal fee, and produce bills and other documents proving their center-of-life years back.<sup>113</sup>

While waiting for the process to end, many registered their children in the Palestinian population registry so that the children would not remain stateless for long, and in order to enroll them in educational institutions, or obtain other essential services for them. Similarly, permanent residents who had lived for a certain period abroad for work or studies, sometimes registered children who were born abroad in the OPT population registry, because they could not register them in Israel without proof of center-of-life for at least two years. In addition, many women from East Jerusalem who had married residents of the OPT had moved to live with them there, and so registered their children in the OPT; those who ultimately returned with their children to live in Jerusalem with their families after they divorced or lost their husbands, had to seek the same status for their children as their own.

Between 2003 and 2005, the ministry's broad interpretation of the term "resident of the Area" was reviewed by the Jerusalem District Court in a number of administrative petitions. The court repeatedly ruled that the Citizenship and Entry into Israel Law should not apply to the children of East Jerusalem residents who were born in Israel and maintained a center-of-life in the country, even if they had been registered in the Palestinian population registry. The court

**113.** In 2006, following HCJ petitions filed beginning in 1999, the Ministry of Interior opened a new office in East Jerusalem. See HCJ 4892/99 **Jaber et al. v. Minister of Interior et al.** (2001); HCJ 6683/99 **The Association for Civil Rights in Israel et al. v. Minister of Interior** (2001); HCJ 2783/03 **Jabra v. Minister of Interior et al.** (2003). Physical conditions initially seemed to improve, but in February 2007, the Employment Services office moved into the same building and the lineups and crowding returned. Waiting in line once again became a long, humiliating and sometimes dangerous experience. In early 2013, following HaMoked's petition, waiting conditions were somewhat improved, see, HCJ 176/12 **al-Batash et al. v. Senior Division Manager, Population Authority, Ministry of Interior et al.** (2013); for more, see HaMoked, **Activity Report 2011-2012**, pp. 104-105.

therefore instructed the Ministry of Interior to grant these children permanent residency under Regulation 12 of the Entry into Israel Regulations.<sup>114</sup> Initially, the ministry ignored these rulings and continued to pursue its policy, but in 2005, it began appealing the judgments to the Supreme Court.<sup>115</sup> At the same time, in order to ensure that as many children as possible would be defined as “residents of the Area”, hence ineligible for status in Israel, the Knesset entered the ministry’s interpretation into the amended Law, redefining “resident of the Area” as “someone who has been registered in the population registry of the Area, as well as someone who resides in the Area”.<sup>116</sup> In August 2008, in a joint ruling in several Ministry of Interior appeals, the Supreme Court ruled that registration in the OPT population registry was insufficient for considering a person a “resident of the Area”, as “registration in the registry, in and of itself, does not substantiate the security risk underlying the purpose of the Temporary Order Law”.<sup>117</sup> The court ruled that only a narrow interpretation of the term that applied the Law strictly to individuals who were actually residing in the OPT expressed the proper balance between the Law’s security purpose and the need to give the constitutional right to family life the widest possible protection. The court stressed, however, that these findings related only to the original definition in the Law and did not apply to children whose application for status was filed after the 2005 Amendment came into effect.

The question of how to interpret the amended definition of “resident of the Area” was the focus of contention in the Khatib case. Khatib was a Jordanian citizen whose application for family unification had been denied because he was listed in the OPT population registry though he did not live there. In January 2008, the District Court ruled that even after the definition was amended, the Law should not automatically apply to anyone listed in the OPT population registry; rather, each applicant’s ties must be concretely examined:

**114.** See, e.g., AP 822/02 **Gosha et al. v. Regional Population Administration Office Director et al.** (2003); AP 577/04 **al-Qurd et al. v. Minister of Interior** (2004); AP 379/04 **Mansur et al. v. Ministry of Interior – Jerusalem Population Administration** (2005); AP 387/04 **’Aweisat et al. v. Ministry of Interior** (2005); AP 1277/04 **Jit et al. v. Minister of Interior** (2005).

**115.** See, e.g., AAA 5569/05 **’Aweisat et al. v. Minister of Interior et al.** (2008).

**116.** Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Consolidated Version, Sect. 1.

**117.** See supra note 115, Judgment, August 10, 2008.

where they lived for most of their lives, where their family live, where they studied, etc.<sup>118</sup> In January 2011, the Supreme Court overturned the District Court’s judgment, accepting the state’s appeal. The court ruled that the revised 2005 definition of “resident of the Area” applies also to anyone who is listed in the OPT population registry, even if they have never lived there.<sup>119</sup> In so doing, the court endorsed the interior ministry’s interpretation and condemned many children to a life without legal status in their own country – children whose only sin is that they were born in the “wrong” time, at the “wrong” place, or were registered in the “wrong” population registry by their parents.

**118.** AAA 817/07 **Khatib et al. v. Ministry of Interior** (2008), Judgment, January 16, 2008.

**119.** AAA 1621/08 **State of Israel v. Khatib** (2011).

**120.** The protocol was first published as “Decision table regarding grant of status in Israel to a minor only one of whose parents is registered as a resident of Israel (update of August 1, 2005)”. See PIA Protocol No. 2.2.0010, **Procedure for Registration of and Grant of Status to a Child with Only One Parent Registered as a Permanent Resident of Israel.**

### **“The Effective Age” for Granting Status to Children**

To recap, under the 2003 version of the Citizenship and Entry into Israel Law, children defined as “residents of the Area” who had only one Israeli resident parent could receive status in Israel – or, to quote the Law, “a license to reside in Israel, or a permit to stay in Israel” – only if they were still under 12 years old. In the 2005 Amendment, the age was raised to 14, but the Ministry of Interior elected to revise its internal protocol, so that such children would not receive permanent status once the application for their registration was approved. Instead, they would first receive temporary status for two years, and only then permanent residency. If the child turned 14 during this two-year period, the Ministry of Interior would not upgrade the child’s status to permanent residency, and the child would continue living in Jerusalem with nothing but temporary residency status that must be renewed annually subject to stringent examinations. In this, the ministry essentially brought the effective age for status back down to 12, despite the 2005 Amendment.<sup>120</sup>

Since 2008, the District Court has ruled against this protocol in several judgments, on the grounds that it

frustrated the purpose of the Amendment.<sup>121</sup> The court ruled that the effective date for receiving permanent residency status should be the submission date of the child registration application, namely if the application was filed before the child turned 14, the child should receive permanent residency after two years of temporary residency, even if s/he turned 14 in the interim.

For many months, the Ministry of Interior ignored these judgments; it neither appealed nor complied with the rulings, and continued to implement the struck-down protocol, depriving children of the permanent status they were entitled to receive. In June 2009, in an administrative petition filed by HaMoked on behalf of the Srur family, the District Court once again ruled against the protocol.<sup>122</sup> This time, the state appealed the decision to the Supreme Court, claiming, among other things, that the Law did not require granting permanent status to children who had only one permanent resident parent, and that temporary residency was enough to prevent their separation from their parents.<sup>123</sup> In April 2011, the Supreme Court dismissed the appeal and ruled that the interior ministry protocol could not stand, since it “denies the minors the possibility of receiving status directly given to them in the primary legislation. This is a direct and substantive violation of their right that does not conform to the statutory arrangement”. The justices added that “The Minister of Interior is not authorized to create out of nothing a distinction between minors under the age of 12 and minors between the ages of 12 and 14 for the purpose of receiving status in Israel. Such a distinction has no trace in the language of the Temporary Order Law and Regulation 12 or in the legislative history that preceded them, and it is also inconsistent with their underlying objectives”. In conclusion, the court instructed that the guiding principal for interpreting the Law should be that the effective age for granting status is the child’s age on the application filing date.<sup>124</sup> The Ministry of Interior

121. See, e.g., AP 8295/08

**Mashahara v. Minister of Interior** (2008); AP 8336/08 **Zahaikah et al. v Minister of Interior** (2008); AP 1238/04 **Jubran et al. v. Minister of Interior et al.** (2009); AP 8386/08 **a-Sawahra et al. v. Minister of Interior et al.** (2009).

122. AP 8890/08 **Srur et al. v. Minister of Interior** (2009).

123. AAA 5718/09 **Minister of Interior v. Srur et al.** (2011).

124. *Ibid.*, Judgment, April 27, 2011.

codified the court's instruction in the revised child registration procedure, published some 18 months later.

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125. AP 727/06 **Nofal et al. v.**

**Minister of Interior et al.** (2011); see also supra note 120, PIA Protocol No. 2.2.0010.

### **Child registration procedure**

The Ministry of Interior policy on the registration of children who have only one parent who is an Israeli resident was first made public in 2007, following HaMoked's petition to the Jerusalem District Court, filed a year earlier.<sup>125</sup> Until then, the procedures governing the ministry's conduct were kept from the public. Following HaMoked's comments during the hearings in the petition, the Ministry of Interior updated the procedure several times.

In May 2011, the court issued its judgment, instructing the Ministry of Interior to change three aspects of its procedures on child registration: when failing to meet the six-month deadline for issuing a decision in matters relating to children – as stipulated in the updated procedures issued following the petition – the Ministry of Interior must give the children temporary status in Israel, affording them social security rights pending a final decision; the ministry must continue processing applications for children even if a corresponding application for another family member has been denied; finally, the ministry must notify the family both orally and in writing – and in Arabic, as needed – when it is time to upgrade the temporary status to permanent status. However, a year later, the ministry still failed to comply with the court's instructions; so, in May 2012, HaMoked filed for an injunction under the Contempt of Court Ordinance to compel the ministry to amend the procedure. The state replied that it was acting to amend the procedure “without delay” and that the formulation of the amended procedure was in “its final stages”. In September 2012, the amended procedure was finally published.

Under the procedure, a child born in Israel who is considered a “resident of the Area” may be

registered as a permanent resident under Regulation 12 of the Entry into Israel Regulations – subject to proving center-of-life for the two years preceding the application and subject to the restrictions imposed by the Law (whereby a child who is over age 14 may receive DCO permits only, subject to the stringent security background checks).<sup>126</sup> If the child is born outside Israel, the parents must submit a family unification application for the child, who may receive temporary residency for two years, followed by permanent residency – subject to proving center-of-life and the restrictions imposed by the Law.

As stated, the future of children who live in Israel with DCO permits is unclear. Currently, the procedure allows such children to continue receiving permits after turning 18 – provided their center-of-life remains in Israel and subject to security and criminal clearance – but this directive has not been established in law and the Ministry of Interior can change it at its whim.

## Summary of Interior Ministry Protocols on Grant of Status to Children with Only One Israeli Resident Parent<sup>127</sup>

	Unregistered child	Child registered abroad	Child considered resident of the Area (has lived or is registered in the Territories)	
			Under age 14	Over age 14
<b>Born in Israel, center-of-life in Israel</b> (registration under Regulation 12)	Permanent residency	Temporary residency for two years followed by permanent residency		DCO permits only (subject to security clearance)
<b>Born outside Israel, center-of-life in Israel</b> (child family-unification application)	Temporary residency for two years, followed by permanent residency			

**126.** This two-year center-of-life prerequisite means that a 13-year-old child who is not yet registered despite living or having moved to live in Israel, cannot seek Israeli status before age 15 – when s/he is no longer eligible for residency status, just DCO permits; and by age 16, not even that. The District Court rejected HaMoked's petition on this issue in 2011; HaMoked's appeal to the Supreme Court is still pending. See AP 41294-05-11 **Radwan et al. v. State of Israel – Minister of Interior** (2011), and AAA 8630/11 **Radwan et al. v. State of Israel – Minister of Interior**.

**127.** Table based on two separate procedures: PIA Procedure 5.2.0029, **Procedure for Processing Applications for Israeli Residency Visas for Minors Born In Israel with Only One Parent Registered as a Permanent Resident under Regulation 12 of the Entry into Israel Regulations 5734-1974**, and PIA Procedure No. 5.2.0030, **Procedure for Processing Applications for Israeli Residency Visas for Minors Born Outside Israel with Only One Parent Registered as a Permanent Resident**.

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## **Child Registration:**

### **Wadi Hummus Neighborhood, Sur Bahir**

In 1967, Israel annexed most of the land belonging to the village of Sur Bahir, located southeast of Jerusalem, and gave its residents status in Israel. About 10% of the village land – including the area where the Wadi Hummus neighborhood was later built – was arbitrarily left outside the annexation boundaries. For years, this demarcation line appeared only on maps and had no practical meaning. However, Israel’s planned route for building the separation wall inside West Bank lands around Jerusalem threatened to split Sur Bahir in two based on this arbitrary line. In 2003, village residents petitioned the HCJ against the wall’s route.<sup>128</sup> The state acknowledged during proceedings that the residents of Sur Bahir formed a “single organic community”, and revised the route so as not to split the village in two. Thus, all residents of Sur Bahir, including Wadi Hummus, remained on the western – “Israeli” – side of the wall.

In 2004, the NII began sending residents of Wadi Hummus letters informing them that their status as residents under the National Insurance Law had been revoked because they were residing outside the area annexed by Israel.<sup>129</sup> Around the same time, health funds also began sending these residents letters informing them of the cancellation of their health insurance. The residents filed a claim with the Jerusalem Regional Labor Court, whereupon, the NII – under the instructions of the Attorney General – announced it had retracted its decision: Sur Bahir “is a single homogenous village” and so long as the wall separated it from the rest of the West Bank, all its residents would be recognized as Israeli residents for the purpose of their social security rights and come under the National Insurance Law and the National Health Insurance Law.<sup>130</sup>

In 2008, HaMoked petitioned the court on behalf of a permanent Israeli resident from Wadi Hummus to

**128.** HCJ 9156/03 **Jabur et al. v. Seam Line Administration et al.** (2003).

**129.** For more about residency pursuant to the National Insurance Law, see HaMoked, **Activity Report 2011-2012**, pp. 106-108.

**130.** NI 10177/05 **Sur Bahir Village Committee et al. v. National Insurance Institute** (2005).

instruct the Ministry of Interior to register two of the man's children in the Israeli population registry, like their nine other siblings.<sup>131</sup> The Ministry of Interior refused to register the children because the family lived in Wadi Hummus, outside the annexed area. HaMoked argued that the children's center-of-life had been and still was in Jerusalem and therefore, they should be registered as permanent residents of Israel. The District Court dismissed the petition, having accepted the state's position that the family resided outside Israel's sovereign territory, and therefore, its center-of-life was outside Israel.

HaMoked appealed to the Supreme Court, arguing, *inter alia*, that the finding that the children's center-of-life was not in Israel was unreasonable, especially considering the circumstances created by Israel's separation wall trapping the children on the "Israeli" side – the exact same circumstances that had led the state to recognize in two separate court cases that Wadi Hummus was an inseparable part of Sur Bahir.<sup>132</sup> In November 2011, the Supreme Court dismissed the appeal by a majority vote. Justices Edmund Levy and Asher Grunis ignored the complex reality Israel imposed on the residents of Wadi Hummus, and gave Regulation 12 of the Entry into Israel Regulations a narrow interpretation, namely that a person whose home is not in Israel cannot receive status in Israel. The justices also cited the state's assertions regarding the "broad ramifications" of granting the children status in Israel, assertions which had no support in either the state's submissions or the judgment. Then Supreme Court President Dorit Beinisch, in a dissenting opinion, accepted HaMoked's arguments and held that the Israeli separation wall severed Wadi Hummus from the rest of the West Bank, creating a situation in which "the Appellants' center-of-life is effectively in Israel". Beinisch noted that "Clearly, a reality where, in a single family unit, the parent's status differs from the child's status, could undermine the stability and balance which are so vital for the

131. AP 8350/08 *Attoun et al. v. Minister of Interior et al.* (2009).

132. AAA 1966/09 *Attoun et al. v. Minister of Interior et al.* (2011).

formation of a normal family unit, and thus to the proper development of a minor [...]. This situation, in which the children have no status either in the Area or in Israel, is improper [...].”<sup>133</sup>

In December 2011, HaMoked petitioned the Supreme Court for a further hearing in the appeal before an extended panel.<sup>134</sup> In the decision, then Supreme Court Vice President Eliezer Rivlin noted that: “Indeed, the petition points to a complex reality in which the center-of-life of the Petitioners’ entire family is in Israel, while their home is located outside it, and this against the backdrop of the difficulty of establishing a center-of-life outside Israel, given the existence of the separation fence”. Nonetheless, Vice President Rivlin held that there was no room to accept the petition.<sup>135</sup> The court’s ruling left the two children without status anywhere in the world, without social security rights or health insurance, trapped in a small area between the separation wall and the municipal boundary of Jerusalem ■

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**133.** Ibid., Judgment, November 22, 2011, opinion of Supreme Court President Beinisch, §§ 25, 20, 22 respectively.

**134.** AFH 9081/11 ‘Attoun et al. v. Minister of Interior (2012).

**135.** Ibid., Decision, January 17, 2012.

# Stateless Individuals

Many Palestinians who live in East Jerusalem have no civil status anywhere in the world. The circumstances behind the stateless condition are varied, mostly originating in the many obstacles Israel places in the path of Palestinians from East Jerusalem who seek to register their children in the population registry – especially when registration is not done shortly after birth. In other cases, stateless individuals are children of East Jerusalem families who were over 18 when their families returned to live in Jerusalem, so by then had missed the chance of being registering as residents; still others are children who are cared for by relatives who are not their parents. The inaccessibility of the Ministry of Interior, the hard line attitude of its staff and their tendency to avoid handling out-of-the-ordinary cases – combined with the fact that many Palestinian families are afraid to assert their rights in encounters with Israeli authorities – all join to promote the creation and perpetuation of this situation.

The right to civil status is a condition for exercising many other rights, which stateless individuals are also denied. People who have no status in Israel are not eligible for NII services and benefits or healthcare through health funds; they cannot enroll in schools, work legally, open bank accounts, officially own property, get a driver's license or travel documents, and in every encounter with security forces, they may end up under arrest. Consequently, it also becomes difficult for them to start a family and maintain social ties.

The Convention relating to the Status of Stateless Persons determines that the country where stateless individuals reside is responsible for their naturalization

and must make efforts to expedite this process.<sup>136</sup>

Though Israel signed the Convention in the 1950s, the Ministry of Interior has no procedures regulating the grant of status to Palestinians who have been living in Israel for many years without status.<sup>137</sup> Stateless individuals can seek to remain in their homes legally only by applying either to the Humanitarian Committee under the Citizenship and Entry into Israel Law or to the Interministerial Committee for Grant of Status for Humanitarian Reasons.

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### **The Interministerial Committee for Grant of Status for Humanitarian Reasons**

An advisory committee to the Ministry of Interior; the committee reviews humanitarian applications for grant of Israeli status to foreign nationals who do not meet the criteria stipulated in the Entry into Israel Law 5712-1952, with the exception of those who are ineligible for status due to the Citizenship and Entry into Israel Law, whose matters are reviewed by the designated humanitarian committee.<sup>138</sup> The interministerial committee is headed by the director of the Population and Immigration Authority, and among its members are representatives of the NII, the Israel Police, the Ministry of Health and the Ministry of Welfare.<sup>139</sup>

Applications to this committee are submitted to the population authority branch offices, where it is decided, upon review, whether to forward them to the committee. Many applications are rejected at this preliminary stage, mostly without substantive explanation. Moreover, the criteria guiding the committee are unknown; it is the committee members who give meaning to the word “humanitarian” – or rather, empty it of meaning. The committee’s session dates and session minutes are not made public and it is impossible to request to attend these sessions or appear before the committee.

Over the years, the operation of both the ministry and

**136. Convention relating to the Status of Stateless Persons**, 1954, Arts. 12, 27, 32.

**137.** Until 2007, individuals who had been absent during the 1967 census could receive permanent residency provided they proved that they had been living in the city continuously since before the census. In 2007, Government Resolution No. 2492 blocked this possibility. According to this resolution, West Bank residents living in Jerusalem without status continuously since at least 1987 would receive DCO permits – which are not status – provided they applied by the end of April 2008. For more on this, see HaMoked, **Activity Report 2007**, pp. 137-139; HaMoked, **Activity Report 2008-2010**, pp. 50-51.

**138.** For more on the Humanitarian Committee under the Citizenship and Entry into Israel Law, see *infra* pp. 70-71.

**139.** PIA Protocol No. 5.2.0022, **Protocol Regulating the Work of the Interministerial Advisory Committee on Determination and Grant of Status in Israel for Humanitarian Reasons**.

the interministerial committee has been the target of severe criticism, directed, inter alia, at the ministry's arbitrary decisions not to transfer applications to the committee, the committee's inaccessibility, its lack of transparency, its arbitrary unreasoned decisions, the absence of clear criteria for granting status, and the protracted time it takes to issue decisions – which, meanwhile, forces many applicants to remain in Israel without a permit.

The criticism has led to changes in the committee's work protocol in March 2011. The updated protocol stipulates that applicants must be summoned to a hearing at the Ministry of Interior and allowed to present their case there, and that any visas they may have should be extended pending a decision. The protocol also sets a timetable for the various stages of processing but no deadline for final response. But even after these revisions, foot-dragging continues still.

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Despite the clear humanitarian nature of HaMoked's applications to the interministerial committee, the committee's decisions are often patently unreasonable and unfair.

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In 1992, H.H. was found as a newborn baby on the doorstep of an East Jerusalem orphanage with nothing to identify her. The director of the orphanage, a Palestinian resident of Israel, took the baby into her care and raised her as a daughter. The director, who was appointed the child's guardian by the Sharia Court, tried to register the child in the Israeli population registry and have her status in Israel recognized. But her attempts failed, partly, so told her East Jerusalem interior ministry clerks, because the child could not be registered without a birth certificate – which obviously she did not have. In February 2008, when the child was about to turn 16, HaMoked contacted the Ministry of Interior,

requesting she be granted status in Israel. In response, the interior ministry stated it would register her only if she produced a declaratory Family Court ruling regarding her birthplace and parentage. It took three years of legal battles by HaMoked until the ministry retracted the demand and announced that H.H.'s case had been transferred to the Interministerial Committee for Grant of Status for Humanitarian Reasons. For more than six months, the interministerial committee failed to issue a decision in the case; HaMoked, therefore, had to file an application on non-response to the Appellate Committee for Foreigners, but it, too, remained unanswered. In September 2012, HaMoked petitioned the Court for Administrative Affairs.<sup>140</sup> Only then – four years and eight months after her first status application – did the interministerial committee finally decide to give H.H. a tourist visa for two years, at the end of which she could apply to have her status upgraded. As the name implies, this visa is designed for tourists arriving in Israel and confers no rights other than permission to work. Ironically, the young woman, who is without status anywhere in the world, has no passport to which the visa could be affixed.

In December 2012, HaMoked submitted a strong objection to this harmful decision to the Appellate Committee for Foreigners. In November 2013, after almost a year of delays, the appellate committee decided to return H.H.'s case for reconsideration by the interministerial committee. The appellate committee accepted HaMoked's assertion that giving a stateless person a tourist visa offered no solution, and even perpetuated her predicament rather than advanced her case. Nonetheless, the committee decided to leave H.H. with just a tourist visa until the interministerial committee rendered a new decision.

(Case 52923) ■

# The Particular Impact of the Citizenship and Entry into Israel Law on Women

The Citizenship and Entry into Israel Law forces many Palestinians, both men and women, to live with their families in Israel with nothing but stay permits. Without civil status, not even temporary, this population is left without social security rights or access to state health and welfare services. The resulting harm is by far greater in the case of women living in traditional Palestinian society, who are disempowered as it is. By law, it is the Israeli resident spouse who must apply annually to renew the stay permit given to the OPT spouse; so when the latter is a woman, she depends entirely on the goodwill her husband, as he holds the “key” to her continued lawful presence in her own home. This requirement amplifies the unbalanced gender power relationship, and reinforces the dominant position of the male spouse. By forcing women to live without status for years on end, Israel bolsters and anchors patriarchal practices, betraying its obligation to prevent direct or indirect discrimination against women and monitor the extent of the actual harm caused to women. Moreover, under Ministry of Interior protocols, family unification terminates as soon as the marriage “dissolves”.<sup>141</sup> Therefore, in a life crisis such as divorce or widowhood, women still undergoing family unification must also face the threat of being ordered to leave their home of many years and return to the OPT – where, often, they have no one waiting for them. Such cases are referred to the Humanitarian Committee under the Citizenship and Entry into Israel Law.

**141. PIA Procedure No. 5.2.0017, Procedure regarding Termination of Procedure for the Arrangement of Status for Spouses of Israelis.**

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## **The Humanitarian Committee under the Citizenship and Entry into Israel Law**

A Ministry of Interior committee established pursuant to the 2007 Amendment to the Citizenship and Entry into Israel Law; the committee may advise the Minister of Interior to issue stay permits or grant temporary status for “special humanitarian reasons”. It receives applications only from OPT residents or subjects of designated “enemy states”, who may not obtain status in Israel through family unification or child registration due to the Citizenship and Entry into Israel Law.

The Law prescribes narrow criteria for the types of applications that may be brought before the committee and the types and duration of permits and visas it can recommend. The committee accepts applications from individuals suffering from serious physical or mental conditions who cannot obtain status in Israel because of the Law, or individuals who require Israeli status in order to care for immediate relatives suffering from such conditions. It also accepts applications from women who seek status in Israel independent of their spouses due to divorce, widowhood or domestic violence.

Though the Law empowers the committee to grant temporary status, it does so very rarely, usually only following the applicant’s petition to the court. In addition, the Minister of Interior may cap the number of humanitarian cases that can be approved – which is antithetical to the concept of a “humanitarian exception”.

Under the Law, the committee must decide on applications within six months. But, in practice, the committee does not follow its protocols and schedules, and often, HCJ petitions on non-response are needed to get the committee to expedite processing.

In January 2011, HaMoked filed a freedom-of-information application to the Ministry of Interior, requesting figures relating to the committee’s work.

The response revealed that since the committee was established in 2009, it had rejected 421 applications and approved 138; only in 78 of them, applicants were granted temporary status, the rest received stay permits only. The response also indicated that the average processing time was about a year.

In the judgment given in the second round of general petitions against the Citizenship and Entry into Israel Law, the Supreme Court justices criticized the committee's operation and the fact that it avoided using its powers to the full extent. In her opinion, then Supreme Court President Beinisch wrote: "Although it has been argued before us that an attempt to restrict the Law's applicability was made by establishing a review committee for special humanitarian cases, in practice, the small number of permits the committee has granted thus far, indicates that its formation did not shift the balance toward specific examination, as opposed to generalized examination, as we deemed proper in the first judgment".<sup>142</sup>

**142.** See supra notes 59 and 60, Judgment, January 11, 2012, opinion of Supreme Court President Beinisch, §2.

**143.** Today, following Ministry of Interior protocol changes introduced in October 2013, non-Palestinian divorced or widowed women (who apply to a different committee, the Interministerial Committee for Grant of Status for Humanitarian Reasons) are no longer protected from deportation; see supra note 70, PIA Procedure No. 1.6.0001.

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Palestinian women from the OPT whose family unification process was stopped due to a change in their personal circumstances are not shielded from deportation while waiting for the decision of the humanitarian committee in their case.<sup>143</sup> As a result, many live in fear and feel compelled to shut themselves at home, as any encounter with police or border police forces might see them detained, humiliated and even deported immediately.

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In 1994, N.R., a resident of Hebron, married G.S., a resident of East Jerusalem, and moved to live with him in the city. In time, the couple had six children, all of whom registered as permanent Israeli residents. For many years, G.S., who suffered from addiction to both alcohol and hard drugs, neglected the issue of

his wife's status in Israel. It was only in 2006, 12 years after she had moved to Jerusalem, that G.S. finally filed an application for family unification with her. And it was only six years later, in 2012, that the Ministry of Interior finally accepted the application and gave N.R. a renewable stay permit allowing her to remain in Israel.

In January 2013, G.S. passed away and N.R. immediately became an illegal alien in Israel. In March 2013, HaMoked applied to the Humanitarian Committee under the Citizenship and Entry into Israel Law to grant her status in Israel. At the same time, HaMoked also applied to have her stay permit extended pending the committee's decision, but the Ministry of Interior turned down this request.

In August 2013, N.R. was detained by border police officers near Jaffa Gate in Jerusalem, and was asked to show her identity card. She showed them a document from HaMoked stating it was handling her case for legal status in Israel. After being detained for three hours, N.R. was taken by patrol car to the border police headquarters in Atarot, where she was interrogated and released with an order to return on the following day with a document proving she was legally present in Israel. N.R. returned the next day and presented an official document from the interior ministry regarding her ongoing humanitarian application. But when the police called the interior ministry, they were told that the woman was illegally present in Israel and should be deported. The police officers allowed her to go home only after she pleaded with them and explained that she was the sole caregiver for her six children. She was ordered to return in three days' time with a court order or judgment, or else she would be expelled from her home.

Two days later, HaMoked filed an urgent petition to the HCJ to instruct the police not to deport the woman from Israel pending the decision of the humanitarian committee.<sup>144</sup> HaMoked also demanded

144. HCJ 5717/13 **Rajbi et al. v. Chair of the Committee for Special Humanitarian Affairs et al.** (2014).

that the committee urgently decide on the woman's application for status in Israel, submitted five months earlier. HaMoked asserted that given the humanitarian circumstances of the woman and her children and the fact that there was no security or criminal allegation against her, she should not be deported from Israel. HaMoked added that interior ministry procedures discriminated against widows from the OPT whose family unification procedure was terminated. They were left unprotected from deportation, whereas women not from the OPT, who, in the same predicament, applied to remain in Israel through another committee, the Interministerial Committee for Grant of Status for Humanitarian Reasons, were protected under the applicable procedure from deportation from Israel pending a decision in their case.<sup>145</sup>

Despite the extreme distress of the woman and her six children, the Supreme Court opted not to issue an order against her deportation pending a decision in her case. However, the State Attorney's Office announced that the police and border police had been instructed not to deport her for the time being. Following the petition, in January 2014, about ten months after the application was filed, the humanitarian committee decided to allow N.R. to remain in Israel, though with stay permits only. (Case 71333)

**145.** This argument then relevant is no longer valid; see supra note 143.

**146.** Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, Consolidated Version, Sect. 3a1(a).

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The situation created by the Law is much harder for Palestinian widows who have no shared children with their deceased Israeli spouse. In all "exceptional humanitarian" cases, remaining in Israel is possible only if the applicant has a sponsor – spouse, parent or child – who lawfully resides in Israel.<sup>146</sup> Thus, again, Israel discriminates against Palestinian widows as compared to non-Palestinian widows whose applications are considered based on their overall connections to Israel, even when they have no sponsor.

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B.K., a resident of the West Bank, married an East Jerusalem resident in 1995 and has been living in Jerusalem ever since. Shortly after their marriage, the husband applied for family unification with his wife, but received no response for many years. It was only in 2000 that B.K. received her first Israeli stay permit. When the permit expired, she sought to have it renewed, but the Ministry of Interior delayed the process for a year and refused to issue the permit because she had arrived at the office without her husband, who was bedridden at the time. Thus, as a result of the ministry's protracted delays in processing both the initial application and the permit-renewal application, B.K. was deprived of status in Israel – because she was still in the stay permit stage of the process when the Citizenship and Entry into Israel Law came into effect. And so, B.K. remained with her husband in the city, while regularly receiving these permits.

In March 2011, the husband passed away suddenly. Under Ministry of Interior procedures, B.K. now had to leave her home and the city of Jerusalem – after she had made her life there for 15 years. In August of that year, HaMoked applied to the humanitarian committee for status for B.K. HaMoked noted that there was no dispute that the couple's marriage had been genuine and that they had maintained a center-of-life in Jerusalem throughout their marriage.

HaMoked also mentioned B.K.'s poor health, her difficult financial situation and her years of residence in Israel. As to her ties to Israel versus the West Bank, HaMoked asserted that B.K. did not have a close relationship with her father and siblings who resided in the West Bank and that all her ties were in Jerusalem. HaMoked also recalled that the interior ministry's conduct was the reason B.K. had remained without status in Israel when the Citizenship and Entry into Israel Law came into effect.

In June 2013, some two years after the application

was filed, the humanitarian committee responded that the application had been dismissed out of hand because B.K. had “no sponsor, and therefore, the Minister and the committee are not authorised to consider the application”; further, since “you do not have relatives in Israel and your six siblings live in the Area, most of your ties are to the Area”. HaMoked contacted the State Attorney’s Office, which responded that the Ministry of Interior would reconsider the matter, provided B.K. submitted a new application that would first be reviewed by “professionals at the headquarters of the Population and Immigration Authority”, prior to transfer for reconsideration by the humanitarian committee – the same committee that had already declared that given the absence of a sponsor, it had no jurisdiction in B.K.’s case. In effect, B.K. was now required to file a new application and undergo another bureaucratic ordeal, only to be refused once again for having no sponsor. Therefore, in February 2014, HaMoked petitioned the HCJ to resolve the status of B.K., who had been living in Israel for some 20 years, and to issue an interim injunction forbidding her removal to the West Bank until the conclusion of the proceedings. HaMoked also demanded the revocation of the discriminatory requirement for a sponsor lawfully residing in Israel as a prerequisite for applying to the humanitarian committee.<sup>147</sup> The court refused to issue an interim injunction and scheduled a hearing for November 2014. (Case 68983)

147. HCJ 1472/14 **Khalil et al. v. State of Israel et al.** In a similar case, the state informed the HCJ that the interministerial committee would review the widow’s case; see HCJ 1924/13 **Taha et al. v. State of Israel et al.** (2013).

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Women living in Israel with stay permits who fall victim to domestic violence still depend on their spouses’ willingness to continue extending their permits in order to remain in Israel. Thus, the Citizenship and Entry into Israel Law greatly increases abusive husbands’ power over their wives and promotes the subjugation of abuse victims. The Ministry of Interior has introduced a procedure meant to allow non-Israeli victims of

domestic violence to remain in the country independent of their abusive spouses.<sup>148</sup> But, at least when it comes to Palestinian victims, the tendency is to apply the guidelines with rigidity when considering their applications for family unification applications.

148. PIA Procedure 5.2.0019, **Procedure regarding Termination of the Graduated Procedure for the Arrangement of Status for Spouses of Israelis as a Result of Violence on the Part of the Israeli Spouse.**

149. Ibid.

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In 1997, 18-year-old T.A. moved from Hebron to East Jerusalem following her marriage to M.A., an Israeli resident. In time, the couple had four children, all of whom registered as permanent Israeli residents. For many years, T.A. and her children suffered abuse and violence at the hands of M.A., who, as part of his violent control over his wife, refused to take the necessary steps for her to obtain status. It was only in 2008, 11 years after the marriage, that M.A. finally applied for family unification with T.A. and only because he needed to arrange for his wife's status in order to receive rental assistance. The application was approved and T.A. began receiving Israeli stay permits.

In such cases, wives are usually reluctant to initiate divorce or file a domestic violence complaint because they are afraid of the husband's retribution and the Ministry of Interior's reaction.

T.A.'s marriage finally ended in August 2010, after her husband filed for divorce. She was given custody of all four children (the youngest then four, the oldest ten) and continued to care for them on her own. Her stay permit was about to expire in August 2011, so shortly beforehand, HaMoked contacted the Ministry of Interior on her behalf for the permit's renewal.

T.A. was summoned to a hearing, following which the Ministry of Interior announced it would not allow her to remain in Israel because, under the relevant protocols,<sup>149</sup> she had not participated long enough in the family unification process. This decision completely ignored the fact that for the first 11 years of her life in Jerusalem, her abusive husband had refused to arrange for her status.

In August 2011, HaMoked asked the humanitarian committee to grant T.A. status in Israel to enable her to restore her life and raise her children in their home in Israel. In June 2013, the committee decided to grant T.A. Israeli stay permits as she was the children's sole caregiver. (Case 69292) ■

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# Conclusions and Recommendations

On March 19, 2014, the Government of Israel decided to extend for another year the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003, enacted more than a decade earlier as a provisional, temporary order. That same day, the Knesset approved the Law for the fifteenth time (!). The arrangement that was meant to be temporary has long since become permanent, with dire consequences for the lives of thousands of Palestinian residents of East Jerusalem and their families.

The Citizenship and Entry into Israel Law, with its 2005 and 2007 Amendments, is one of the most reprehensible laws enacted by the State of Israel. It restricts and in many cases entirely denies family unification of Israeli citizens and residents – many of whom from East Jerusalem – with spouses from the Occupied Palestinian Territories, in blatant violation of fundamental constitutional rights, primarily the rights to equality and family life. The Law also denies many children who have one parent who is a permanent Israeli resident and another who is a resident of the OPT, the possibility of receiving status in Israel, which constitutes a grave breach of the principle of the child's best interest. The government resolution of 2008 goes even further, stipulating that Gaza residents would no longer be able to acquire status in Israel through family unification under any circumstances, not even through the Law's exemption clauses. The Citizenship and Entry into Israel Law presents many couples with a difficult and cruel choice: if they abide by the Law, they must separate; if they choose to live together in Israel, they do so

illegally – with everything such a life involves and in constant fear that the OPT spouse might be deported.

Those few who have managed to enter the family unification process after the government freeze of May 2002, live in Israel with temporary stay permits only, without social security rights and without any certainty as to their future. They must undergo center-of-life examinations and pass security background checks year after year, with no end in sight. It is therefore no wonder that in the past year, the Supreme Court has urged the legislature to address the predicament of these individuals who have been living in limbo for years on end, and to consider granting them status in Israel.<sup>150</sup>

The state justifies the Law on security grounds, claiming it serves to reduce the risk of terrorist attacks being carried out by OPT residents inside Israel. But, as can be deduced from the Law's draconian provisions, statements by Knesset members and public declarations by cabinet ministers, the main purpose of the Law is demographic. In this sense, the Law is just another aspect of Israel's long-pursued racist policy aimed at ensuring a Jewish majority in the country, especially in Jerusalem.

In view of the ongoing violation of the rights of thousands of East Jerusalem residents, their spouses from the OPT and their shared children, HaMoked again calls on the Government of Israel to repeal both the Citizenship and Entry into Israel Law and Government Resolution 3598 prohibiting all family unification between Israelis and Gaza residents. The state must ensure that applications for family unification with OPT residents are reviewed on their merits, in a fair, efficient and professional manner, in recognition of the rights of all Israeli residents and citizens to marry whomever they choose and live with their spouses and children in the place of their choice ■

**150.** See on this supra note 90, opinion of Justice Vogelman, §§ 17-19, and opinion of Supreme Court Vice President Miriam Naor, §6; AAA 9168/11 **A. et al. v. Ministry of Interior** (2013), opinion of Justice Zylbertal, §23; AAA 4014/11 **Abu 'Eid et al. v. Ministry of Interior** (2014), opinion of Justice Amit, §1, and opinion of Justice Barak-Erez §38.

# Response of the Population and Immigration Authority\*

Population and Immigration Authority  
Office of the Legal Adviser

17 Av 5774  
13 August 2014  
MRA 10506-2014

To  
Ms. Andrea Szlecsan  
Research Department Coordinator  
HaMoked: Center for the Defence of the Individual  
4 Abu Obeida St.  
Jerusalem 97200

Greetings,

Re: HaMoked's draft report regarding the Citizenship and Entry into Israel Law (Temporary Order) – response of the Population and Immigration Authority

Your letter to the Minister of Interior concerning the captioned draft report has been referred to me.

First, I wish to thank you for presenting the comprehensive and detailed report for our consideration.

On the merits, I would like to state at the outset that the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003 has been twice upheld by extended panels of the Supreme Court (HCJ 7052/03 **Adalah v. Minister of Interior** (issued May 14, 2006) and HCJ 466/07 **Gal-On v. Attorney General** (issued January 11, 2012)), wherein it was determined that the Temporary Order was required for security reasons.

Moreover, a periodic situation assessment is conducted prior to each extension of the Temporary Order and even during its validity period, and accordingly, mitigations and amendments have been introduced in the Temporary Order. Thus, in 2005, exemption clauses were inserted with respect to applications by spouses over certain ages as well as minors, and in 2007, a mechanism for grant of status in special humanitarian cases was introduced. In this framework, solutions are provided for individual cases that raise special humanitarian issues.

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\* Translated by HaMoked.

In addition, the Minister of Health and the Minister of Finance have recently signed the National Health Insurance Regulations (Health Fund Registration, Rights and Duties of Recipients of Stay Permits under the Citizenship and Entry into Israel Law (Temporary Order) 5763-2003), 5774-2014, which set forth that a resident of the Area who is an Israeli resident's spouse or minor child who has an Israeli stay permit and who, due to the provisions of the Temporary Order, had his status frozen and did not receive an Israeli residency visa (conferring national health insurance), will be able to receive health insurance following a period stipulated in the regulations, subject to payment of insurance fees. These regulations are currently under revision such that the arrangement would also apply to anyone who has received a permit under the Temporary Order clause allowing for grant of status in special humanitarian cases.

Furthermore, the Minister of Interior has recently decided to grant renewable stay permits for two years each time to residents of the Area in possession of stay permits given pursuant to a family unification application filed before the end of 2006.

With respect to the request for a general status upgrade to all Area residents holding stay permits for many years, a number of petitions have recently been filed on this issue to the Supreme Court, inter alia, by HaMoked. One of the petitions has been scheduled for a hearing on January 1, 2015 and it has been ruled that the hearing of several other petitions would be deferred pending a judgment in the petition scheduled for a hearing. The position of the Population Authority is that in light of the Supreme Court judgments as to the Temporary Order's legality, and in light of the security reasons underlying the decision not to upgrade the status of Area residents in possession of stay permits, there is no room for the requested upgrade.

As indicated above, prior to each extension of the Temporary Order, as well as during its validity period, a periodic situation assessment is carried out and amendments are made accordingly, and this, in the appropriate cases and after consideration of the various relevant aspects, including a review of comments made by various bodies, among them HaMoked, for which we are thankful.

Sincerely,

[signed]

Naama Pelai, Adv.

Supervisor (Entry into Israel)

Copies:

Office of the Minister of Interior

Mr. Amnon Ben Ami – Population and Immigration Authority Director

Adv. Daniel Solomon – Legal Adviser

