At the Jerusalem District Court **Adm. Pet. 8612/08**
Sitting as the Court for Administrative Matters

In the matter of:

1. _____ **Abu Haikal,** ID _____
2. _____ **Abu Haikal,** ID _____
3. _____ **Abu Haikal,** ID _____
4. _____ **Abu Haikal,** Jordanian Passport _____
5. _____ **Abu Haikal** (a minor)**,** Jordanian Passport _____
6. **HaMoked: Center for the Defence of the Individual**
   founded by Dr. Lotte Salzberger – Reg. Assoc.
   Represented by attorneys Yotam Ben Hillel (Lic. No. 35418) and/or Yossi Wolfson (Lic. No. 26174) and/or Hava Matras-Iron (Lic. No. 35174) and/or Sigi Ben-Ari (Lic. No. 37566) and/or Abeer Jubran (Lic. No. 44346) and/or Ido Blum (Lic. No. 44538)
   of HaMoked: Center for the Defence of the Individual
   founded by Dr. Lotte Salzberger
   4 Abu Obeidah Street, Jerusalem 97200
   Tel. 02-6283555; Fax 02-6276317

The Petitioners

- Versus -

1. **Minister of the Interior**
2. **Director, Population Administration**

3. **Director, Population Administration Bureau, East Jerusalem**
   Represented by the State's Attorney's Office, Jerusalem District
   7 Mahal Stree, Jerusalem
   Tel. 02-5419555; Fax 02-5419581

The Respondents

Petition for Order Nisi

Petition for *order nisi* directed at the respondents ordering them to appear and show cause:

A. Why they will not reverse their decision to revoke the residency of petitioner 1, and of petitioners 2 and 3.

B. Why they will not review the application submitted by petitioner 1 for family unification with petitioners 4 and 5.

C. Why they will not determine that the special status of the permanent residents of East Jerusalem does not expire, even when they leave the country and settle in a foreign country.

D. Pursuant to the above: why they will not determine that the provisions of Articles 11(c) and 11A of the Entry into Israel Regulations, 5734 – 1974 do not apply to permanent residents in East Jerusalem.

Introduction

1. This petition recounts the sorrowful tale of petitioner 1 (hereinafter: **the petitioner**), a resident of Israel, whose status was revoked by the Ministry of Interior on the grounds that she had lived, for many years, with her spouse abroad. From the day she discovered the revocation, the petitioner has been knocking on the doors of the Ministry of Interior, hoping that it would deign to acknowledge her and the reality in which she lives, wherein she has returned and linked her fate and her children's fates with East Jerusalem, her hometown. The Ministry of Interior has taken no heed of her pleadings.

2. Even as she was living with her family abroad, the petitioner knew no repose: it was a time when she was far from home, a distance she tried to alleviate with frequent visits to the country. It was also a time when a severe conflict erupted between the petitioner and her spouse, a conflict, which was eventually impossible to resolve. Yet, the worst of it – it was a period which ended on a particularly unpleasant note, with the petitioner imprisoned, almost literally, by her husband, unable to return to her country for three years.

3. Once she finally succeeded in leaving her husband, the petitioner returned to East Jerusalem in order to rebuild her, and her children's lives there. She overcame the hardships of raising and educating the children on her own. Grinding her teeth, she overcame, the financial difficulties caused by the sharp parting from her husband, who had provided for the family until the separation. She overcame the daily reality of a woman raising her children alone in a traditional society.

4. Yet, the petitioner was unable to overcome two things: her misfortune, and the arbitrariness of the Ministry of Interior. Her misfortune struck when the Ministry of Interior decided to revoke her and her children of their residency on 19 December 1994. Those were the early days of the policy which came to be known as the "quiet deportation" under which many residents of East Jerusalem, who had moved away from Israel, were revoked of their residency. Years later, in the framework of a petition filed by HaMoked – Center for the Defence of the Individual, an affidavit by then Minister of the Interior was submitted which stated that the status of residents who met certain conditions could be recognized. Unfortunately for the petitioner, one of the conditions set forth in the affidavit established that status may be restored only for those who were revoked of their status from 1995 and thereafter. Thus, although there is no doubt that her residency was revoked as part of the same policy, indeed, due to a complete lack of flexibility on the part of the Ministry of Interior and minimal desire to correct the wrong done to the petitioner, her status could not be restored. The Interior Ministry's decision, handed down **12 days too early**, as far as she was concerned – sealed her fate.

5. The petitioner was not aware of the Interior Ministry's decision. She was abroad at the time, a prisoner in her husband's home. Yet, even when she managed to return to Israel, in 1997, the petitioner received no sign from the Ministry of Interior regarding its

decision in her case. It was only in 1999, when the petitioner submitted an application for a new identity card (after the one she had was stolen), that she learned that her residency had been revoked. Then, the petitioner embarked on her exhausting and exasperating quest to restore her and her children's status. The petitioner's quest included countless submissions to the Ministry of Interior; both directly and through many attorneys, yet the Ministry adhered to its refusal and insisted that her residency had been revoked in accordance with the law since she had transferred her center of life outside Israel for a period exceeding seven years.

6. The petitioner's quest also included petitions submitted to this honorable court, following which her matter was brought before the inter-ministerial committee for exceptional cases. However, even the committee, on which the petitioner pinned her last hope, did not provide relief. The members of the committee refused to consider the petitioner's claims on issues of principle and dismissed her with only a few lines of reasoning. Even after the all the years in which the petitioner had made East Jerusalem her home, the Ministry of Interior has held on to the claim that her residency had expired in accordance with the law. The Ministry of Interior ignored her claims regarding the applicability of the "Sharansky Affidavit" to her case and regarding the timing – tragic for her – of the revocation of her status, as if these claims were never made.

7. The decision of the inter-ministerial committee vanquished the petitioner. After ten years of a protracted and exhausting battle to restore her status, the petitioner was despaired of the impasse she had reached. Without legal status in Israel, it was impossible for her to continue to work in East Jerusalem, hold on to her position or continue her studies to become a certified kindergarten teacher. The petitioner had to resign her position and withdraw from her studies. Yet, this was not the end of her woes. Her children, who had despaired of the possibility of ever having their status in Israel legalized, had begun to leave East Jerusalem one after the other and move to live with their father in Jordan.

8. The petitioner remained a broken woman. She has recently packed her bags and moved to Jordan herself. After her hope of having her status in Israel legalized were dashed and since the petitioner has no real ties to any other country in the world, she hoped to try rebuilding her relationship with her husband; the same husband who had prevented her return to East Jerusalem in the past; the same husband the petitioner divorced in 2000. On

this matter too, the petitioner's hopes were dashed. Soon a crisis erupted between the petitioner and her husband once more, a crisis which could not be resolved. The petitioner recognizes her mistake now. She wishes to restore her status in Israel and return to East Jerusalem. The petitioner's children – petitioners 2 to 5 – also can no longer bear living in Jordan, and wish to return to their city with their mother.

9. This petition, therefore, relates to the reinstatement of the petitioner's status and the granting of status to her children. Additionally, this petition raises the issue of the legality of the policy of revoking the residency of East Jerusalem residents. In this context, the petition will review the judgment given in HCJ 282/88 **Awad v. The Prime Minister and the Minister of the Interior**, *Piskei Din,* 42(2) 424 (hereinafter: the "**Awad case**"), in which the Supreme Court laid down the first layer with regard to the position of East Jerusalem residents. The judgment established a number of rules regarding the legal nature of the status of residency in East Jerusalem and standards according to which residency is to be revoked. Over the years, it emerged that the Ministry of Interior gave the rule set forth in **Awad** an extremely wide interpretation, turning it into a tool for revoking the residency of thousands of East Jerusalem residents. This policy is consistent with the general policy of abuse toward these residents.

10. The petitioners will claim that the time has come to adjust the rule to the reality of life and prevent the grave consequences resulting from the manner in which the Ministry of Interior has interpreted it, and to adjust it to the norms which apply to East Jerusalem. These norms are the provisions of both internal law and international law – international human rights law and international humanitarian law. According to these provisions, the residents of East Jerusalem are not merely "residents of Israel" under internal Israeli law, but also "protected persons" who are entitled to continue living in the territory. Another norm of international human rights law applies, according to which every person is entitled to return to his country. These provisions must be interpreted along with the changes in internal Israeli law regarding East Jerusalem which have occurred following political agreements to which Israel has committed. All these shed light on the special status of the residents of East Jerusalem.

11. We shall elaborate on these matters in the petition.

The Factual Foundation

The parties

12. The petitioner is a permanent resident of Israel, born in 1953, mother of five. In December 1994, respondent 3 decided to revoke her residency.

13. Petitioners 2 to 5 (hereinafter: **the children** or **the petitioner's children**) are the petitioner's children and reside with her. Petitioners 2 and 3 were born in Israel and are residents. According to respondent 3, their residency was revoked upon the revocation of their mother's residency. Petitioners 4 and 5 were born in Jordan. In 1994, the petitioner filed an application to have them entered in the Israeli population registry, but as their mother's residency was later revoked, it was impossible to have their status in Israel legalized.

14. Petitioner 6 (hereinafter also: **HaMoked – Center for the Defence of the Individual** or **HaMoked**) is a registered non-profit organization which takes action to promote human rights in the Territories and in East Jerusalem.

15. Respondent 1 is the minister in charge, under **the Entry into Israel Law**, 5712-1952 (hereinafter: **the Entry into Israel Law**) of handling all matters stemming from this Law, including the granting of visas and permits pursuant to this Law and their cancellation.

16. Respondent 2 is the director of the population administration in Israel. Under the Entry into Israel Regulations 5734-1974, respondent 1 delegated to respondents 2 and 3 some of his authorities regarding the processing and approval of applications for family unification and for establishing the status of children submitted by permanent residents of the State who reside in East Jerusalem. Respondent 2 also participates in policy making decisions regarding applications for status in Israel under the Entry into Israel Law and the Regulations issued pursuant to it.

17. Respondent 3 (hereinafter: **the respondent**) is the director of the regional population administration bureau in East Jerusalem. In accordance with the **Entry into Israel Regulations** 5734-1974 (hereinafter: **the Entry into Israel Regulations**), respondent 1 delegated to respondents 2 and 3 some of his powers regarding the processing and approval of applications submitted by permanent residents of the State who reside in East Jerusalem regarding their status in Israel.

The Facts

18. Mrs. Abu Haikal, the petitioner, was born in 1953 and has lived throughout her childhood in the Beit Hanina neighborhood of East Jerusalem. In 1970, after and following the annexation of East Jerusalem, she received a permit for permanent residency and an Israeli identity card.

19. In 1978, the petitioner married a resident of Jordan. The petitioner had lived with her family in Kafr 'Aqab, but shortly after her marriage she moved to Jordan to live with her spouse. The petitioner lived in Jordan until 1994, with the exception of two years when the couple lived in Beirut, Lebanon.

20. Over the years when she remained abroad, the petitioner kept close contact with her family in East Jerusalem. She arrived for visits once or twice every year, sometimes for days, other times for months, and even six months. The petitioner gave birth to three of her children in East Jerusalem.

    A copy of a travel inquiry certificate is attached and marked **P/1**.

21. While the family was abroad, severe conflicts erupted between the spouses, due to which the petitioner decided to return to her parents' home in the summer of 1994. It shall be noted at this early point that the petitioner's travel to Jordan stemmed solely from her marital relationship with her husband, and it was on the basis of this relationship that the petitioner remained all those years in Jordan and Lebanon. The petitioner, in fact, did not create any ties whatsoever to these countries. As a result, it was only natural that the deterioration of the couple's relationship would have led the petitioner to return to the only place to which she has ever had an affiliation – her hometown – East Jerusalem. The petitioner returned to East Jerusalem with her children and registered them in schools in Jerusalem with the goal of having them begin their schooling in the city in the 1994-1995 academic year. The petitioner even contacted the respondent's bureau requesting to grant her status to petitioners 4 and 5 who were born in Jordan and were not included in the population registry.

22. That summer, the petitioner's husband asked to see his children. The petitioner went to Jordan, with them, to visit him with the aim of returning with them to Jerusalem before the beginning of the school year. The petitioner's husband, who feared that the petitioner would return to Jerusalem with their children, prevented her from exiting Jordan. Later,

the family again moved to Lebanon, where the husband continued to despicably and disgracefully prevent the petitioner from returning to East Jerusalem. Only in 1997, after three years during which she was a prisoner in her husband's home, did the petitioner manage to release herself from her husband and she returned with her children to East Jerusalem. This was made possible thanks to funds raised for her by her family. Note that the conflict between the spouses terminated in a divorce on 5 October 2000.

23. The petitioner returned with her children to East Jerusalem in June of 1997. With the exception of a short trip to make final arrangements in Jordan in December of that year and another one-day trip to Jordan in January of 1998, the petitioner has not left Israel since (until very recently).

24. As stated, while the petitioner was in East Jerusalem in 1994, she filed an application to grant her status to petitioners 4 and 5 who did not appear in the population registry. This application was rejected in a letter dated 19 December 1994, in which the respondent also gave notice of her decision to revoke the petitioner's residency. The petitioner was unaware of this decision. The letter in question was sent to her counsel at the time and she was not informed of its content. As stated, the petitioner was in Jordan at that time, and later in Lebanon. Additionally, it is superfluous to note that this decision was made without the petitioner's being cautioned in any way regarding the intention to revoke her permit for permanent residency and without her being given the opportunity to challenge it.

25. As further stated, it was only in 1997 that the petitioner was able to release herself from her spouse and return to East Jerusalem. She entered Israel using the exit card she had had, which also serves as an entry visa. At the border crossing, she was given leave to enter as a resident for all practical purposes. Moreover, the petitioner, who wished to bring her young children, petitioners 4 and 5 who were born in Jordan into Israel, was told at the border crossing that she had to obtain visas to enter Israel for them. The petitioner contacted the Israeli embassy in Amman and the visas for her children were issued on the very same day. The petitioner was told nothing of the expiration of her residency neither at the embassy nor, as mentioned, at the border crossing, and it appears that as far as the respondents were concerned, it was as if the revocation had never occurred.

26. As further stated, the petitioner went to Jordan for nine days in December 1997 in order to make final arrangements and for one day in January 1998. On these travels too, the petitioner went abroad and returned to Israel with her exit card, as a resident for all practical purposes, and nothing was implied to her of the apparent revocation of her residency.

27. In 1999, the petitioner's identity card was lost. After she informed the police of this, the petitioner approached the respondent's bureau. It was only during the respondent's processing of her application for a new identity card, that the petitioner first learned her residency was revoked as far back as on 19 December 1994, on the grounds that she had lived outside Israel for a period exceeding seven years.

The petitioner's requests to reinstate her status

28. On 26 January 2000, the petitioner appealed the decision to revoke her residency to the respondent's bureau. On 20 November 2000, the respondent sent her response to the petitioner , according to which, in light of the fact that she had transferred her center of life away from Israel for a period exceeding seven years, her permit for permanent residency had expired. Therefore, the respondent stated, the decision remained. Note that the petitioner never received that letter (a copy of it was submitted during legal proceedings which took place later).

    A copy of the letter dated 20 November 2000 is attached and marked **P/2**.

29. In 2001, the petitioner again requested the respondent's bureau reexamine its decision. On 27 June 2001, the petitioner was informed that there was no change in the decision. A copy of the respondent's letter dated 27 June 2001 is attached and marked **P/3**.

30. On 15 July 2001, the petitioner submitted an objection to the respondent's decision through Att. Mukhlis Abu Alkhuf. In the objection, the petitioner detailed the circumstances of her life from the day she left for Jordan: her close contact with East Jerusalem, the fact that she diligently maintained her residency according to the rules set out by the Ministry of Interior and her circumstances since her return to Israel. The petitioner attached many documents proving her claim that her center of life had been in East Jerusalem since her return.

A copy of the objection and the confirmation of its submission are attached and marked **P/4** and **P/5** respectively.

31. On 28 January 2002, the petitioner again applied through Att. Mukhlis Abu Alkhuf to have her status granted to petitioners 4 and 5 who were born in Jordan and to have them registered in the population registry.

    A copy of the letter sent to the respondent is attached and marked **P/6**.

32. As far as the petitioner knows, no decision was made on her submissions dated 15 July 2001 and 28 January 2002, despite the fact that at least two letters of reminder were sent to the respondent on the matter on 20 November 2001 and on 21 April 2002.

33. In March of 2004, the petitioner contacted the respondent's bureau in order to try to find out what became of her submissions. At the same time, she spoke to the director of the bureau at the time, Mr. Avi Lekah, and again laid out her claims before him. Mr. Lekah insisted on his position, according to which, the petitioner's request to reinstate her residency was not to be approved.

34. In the interim, the petitioner contacted the respondent in late 2003, requesting to allow the entry of her eldest son Farid (note that this petition does not address the son Farid). His entry into Israel had been denied on the claim that his residency had also been revoked. After her request was denied, the petitioner and her son submitted petitions to the Court of Administrative Matters – Adm. Pet. (Jerusalem) 1136/03 and Adm. Pet. (Jerusalem) 832/04 (the second petition was filed after the first petition was deleted in view of the fact that the petitioners had not expressly addressed the revocation of the residency of the son Farid).

35. On 13 January 2005, the honorable court rejected Adm. Pet. 832/04. In the judgment, the Court ruled that the son's permit expired upon the expiration of the petitioner's permit. A copy of the judgment is attached and marked **P/7**.

36. It shall be emphasized that the judgment in Adm. Pet. (Jerusalem) 832/04 addressed only the matter of the son Farid. The judgment did not address the revocation of the petitioner's residency nor the question of whether her status should be reinstated. These questions, as we shall elaborate below, were brought up in a petition submitted to the honorable court later (Adm. Pet. 186/07 (Jerusalem) and were not resolved in that petition.

37. On 20 August 2005, the petitioner again approached the respondent's bureau, carrying a letter in which she detailed her special circumstances and the severe harm to her family resulting from a life with no identity card under the threat of deportation. At the bureau she was told that in order for them to examine the reinstatement of her status she was to file an application for "self family unification" using forms which she was to fill out and submit to the bureau along with a NIS 585 fee. The petitioner followed these instructions and filed her application on 22 August 2005.

A copy of the petitioner's letter and the confirmation for filing the application are attached and marked **P/8** and **P/9** respectively.

38. On 29 December 2005, the petitioner went to the respondent's bureau in order to inquire after her application. The official who was handling her application, Mr. Khaled Salhi, told her that there was no preclusion, either on the part of security agencies or in terms of the evidence she had submitted regarding her center of life being in East Jerusalem, to approve her application. In fact, all that was necessary for approval of the application was authorization from his superior at the bureau. Mr. Salhi, therefore asked the petitioner to return to the bureau on 1 January 2006. The petitioner returned to the bureau as per the request, to find out, to her amazement, that the application had been denied:

Your application was received at our office and examined once more. It was decided that there was no change in the decision as the expiration of your residency was carried out in accordance with the law, as you transferred your center of life outside Israel for a period exceeding seven years.

On the very same day, in a desperate attempt to turn the wheel, the petitioner submitted another letter to the bureau, in which she provided further details attesting to the fact that her center of life was in East Jerusalem.

A copy of the respondent's response and a copy of the petitioner's letter dated 1 January 2006 are attached and marked **P/10** and **P/11** respectively.

39. At this point, the petitioner turned to HaMoked - Center for the Defence of the Individual, petitioner 6. Due to the many submissions she had made to the respondent and in order to acquire as broad a picture as possible on this matter, petitioner 6 contacted the respondent on 14 May 2006, requesting to photocopy documents from the petitioner's file at the bureau.

A copy of the letter is attached and marked, **P/12**.

40. This request received no response. Therefore, petitioner 6 contacted the various attorneys who had represented the petitioner over the years, in order to try and obtain relevant documents. Once petitioner 6 acquired enough material to make a submission to the respondent on this matter, an objection to the decision dated 1 January 2006 was filed on 31 August 2006.

A copy of the objection is attached and marked **P/13**.

41. In the objection, the petitioner once again presented her claims. Emphasis was given to the fact that up to that point, the respondent had not considered the petitioner's circumstances since the day she returned to East Jerusalem. These circumstances compel, by any standard, the reinstatement of her status. The petitioner provided the respondent with all the documentation she possessed which attested to **ten years of living, working and studying in East Jerusalem:**

She provided the **lease agreements for the apartments** where she lived. She provided testimonies of her employment as a **kindergarten teacher's assistant**. She provided proof of her **studies to become a certified kindergarten teacher** at the National College for Professional Training – Sachnin. She provided **confirmations of her children's schooling in East Jerusalem** beginning in 1997, when she returned to Israel with them. In fact, it is difficult to imagine a stronger affiliation and bond of a person to any location: a workplace, a desire to develop and advance in the same occupation (expressed in certification studies), the children's residence and the educational institutions they attend, and above all, the building of a home which is the center of an entire family.

42. In the framework of the objection, the petitioner also explained the **humanitarian implications** of the refusal to reinstate her status. The immediate implication was, of course, her inability to carry on living in East Jerusalem, her city, by permit. However, as in many similar cases, the refusal also affected the petitioner's children. Without legal

status, the children found it difficult to earn a living. The petitioner also stressed that the circumstances of petitioner 5, the youngest son, were most difficult. He was still attending educational institutions in East Jerusalem. His removal from the environment where he grew up and received an education could have ramifications for his mental development.

43. One might have expected that the respondent would finally see fit to address, even with one word, the petitioner's circumstances in the preceding ten years and the humanitarian aspects of the matter. The petitioner's hopes were dashed. In the respondent's decision dated 16 October 2006 (hereinafter: **the decision**) the latter repeated its claims that the petitioner's residency was revoked in accordance with the law and that she was not included among those eligible for review regarding residency reinstatement under the "Sharansky Affidavit". Despite the respondent's claims that "Her matter has been reexamined, including the humanitarian aspects", the decision showed no trace of such an examination. Additionally, the respondent also refused to forward her case for review by the inter-ministerial committee for exceptional cases.

A copy of the decision which arrived at the offices of petitioner 6 on 22 October 2006 is attached and marked **P/14**.

Adm. Pet. (Jerusalem) 186/07

44. Due to the respondent's refusal to reinstate the petitioner's status, while ignoring the petitioner's circumstances since her return to East Jerusalem and the respondent's refusal to forward her case for review by the inter-ministerial committee for exceptional cases, on 30 January 2007, a petition was submitted to the court of Administrative Matters (Adm. Pet. (Jerusalem) 186/07). The petition was filed against the respondent's decision to revoke the residency of the petitioner and her children petitioners 2 and 3. Additionally, the petitioners demanded that the respondent review the petitioner's application for family unification with her son, petitioner 5, on its merits. As an alternative remedy, the petitioners requested that their matter be brought before the inter-ministerial committee for exceptional cases.

A copy of the petition is attached and marked **P/15**.

45. In the petition, the petitioners claimed that the decision not to restore the petitioner's status as resident of Israel contravened the provisions of the "Sharansky Affidavit" which was submitted to the court in March 2000 in the framework of HCJ 2227/98. The affidavit established the following regarding persons deleted from the population registry from 1995 and thereafter:

A person who transferred his center of life outside Israel for more than seven years, and thus, according to the law his permit for permanent residence in Israel expired, and the Interior Ministry informed him of the expiration of his permit for permanent residence, or he was deleted from the population registry file as a result of this, and he visited Israel during the period of validity of the exit card that was in his possession, and has lived in Israel for at least two years, the Minister of Interior shall see him as having received a permit for permanent residence in Israel on the day of his return, this to the extent that he requests to be registered anew in the population registry.

The "Sharansky Affidavit" is attached to the petition and marked **P/16**.

46. As known, the affidavit was given with the purpose of correcting, even if in a small measure, the injustice done to the permanent residents who have been harmed by the sweeping residency revocation policy of the 1990's. According to the policy under which the Ministry of Interior operated beforehand, the permanent residency of residents of East Jerusalem was maintained, so long as they returned to East Jerusalem while the travel document in their possession (an exit card or laissez-passer) was valid. As stated, this is what the petitioner did. It was on the basis of this long standing policy that the petitioner's entry into Israel was made possible throughout the period of her stay abroad – including her most recent entry into Israel in January 1998, which was made possible despite the fact that in the 19 years prior, her center of life, according to the determination made by the respondent, had been abroad.

However, even under the new policy, which first emerged in 1994 and became a sweeping policy beginning in 1995, even those who had made sure they entered Israel from time to time were to have their residency revoked, if a determination was made that their center of life had been transferred abroad.

47. Indeed, the "Sharansky Affidavit" allows the reinstatement of status to persons whose status was revoked from 1 January 1995 and thereafter, yet there is no dispute that this

date does not denote a day on which a directive of any kind was issued by the Minister of the Interior regarding a change of policy. It is an arbitrarily chosen date, on the basis of then Interior Minister, Natan Sharnsky's estimation that this determination would include all residents who had made sure they maintained their residency in accordance with the old policy and who received notice of the revocation of their residency retroactively. This arbitrary determination of dates has resulted in the respondent's refusal to apply the rules detailed in the "Sharansky Affidavit" to the matter of the petitioner and her children. There is no dispute that the petitioner and her children were harmed by the same policy and it is clear that the reasoning behind the provisions of the "Sharansky Affidavit" apply to them also. However, **the petitioner's residency was revoked 12 days before the beginning of the year 1995**, and therefore, according to the respondent, the provisions of the affidavit do not apply to her.

48. As stated, the petitioner made sure she kept very close contact with East Jerusalem and diligently returned to East Jerusalem while the exit card in her possession was valid. The petitioner had no reason to suspect that despite the fact that she adhered to the rules set forth by the respondents, she would be revoked of her residency through retroactive application of the new policy. Therefore, since the petitioner is also a victim of the same policy, it is clear that her matter must be reviewed in a similar manner.

49. The petitioner learned that her residency had been revoked only in 1999, during processing of her application to receive a new identity card to replace the card she had and lost. The petitioner had no reason to suspect, up to that point, that she had been deleted from the population registry. On the contrary – even after the date of the expiration of her residency, as per the respondent's claims, her entries into Israel were made possible without difficulty and with no indication that she was not entering Israel as an ordinary resident. The petitioner first learned of the revocation of her status, two years after the day she returned and established her center of life, in every respect, in East Jerusalem.

50. Therefore, the petitioners argued in Adm. Pet. (Jerusalem) 186/07, that the reasoning which lay at the foundation of the "Sharansky Affidavit" applied to the petitioner and the arrangement included therein must be applied to her. The petitioners also claimed that the provisions of the affidavit must also be applied to the petitioner's children, petitioners 2

and 3. They were residents of East Jerusalem who were minors throughout the period in which they remained in Jordan, and thus, according to the Affidavit, there was no cause to revoke their residency to begin with.

For the complete claims on this matter see sections 44-54 of Adm. Pet. 186/07.

51. Alternatively, the petitioners claimed that even if the Ministry of Interior availed itself of a date with arbitrary qualities to establish its policy, it is impossible to implement policies which are diametrically opposed, as "night and day" to cases which fall on either side of the established date.

52. In our matter, a person whose residency was revoked from 1 January 1995 on, may regain it, on the basis of proof of two years of having a center of life in Jerusalem. The petitioners claimed that this policy must have some implication for those whose residency was revoked a few days before the decisive date. It cannot be that there is no criterion that would allow the reinstatement of a residency that was revoked just a few days before that date. From the case at hand, it appeared that according to the respondents' policy, no circumstances may restore the lost residency if it was revoked even a minute before midnight on 31 December 1994.

53. Therefore, the petitioners claimed, even if the arrangement of the "Sharansky Affidavit" did not apply to the petitioner verbatim, her residency must be reinstated in light of her special circumstances: the complete severance of ties abroad; ten years of a center of life in East Jerusalem; the fact that the petitioner returned to her homeland after years of living under the tyranny of her former husband; her unique circumstances as a single mother; the fact that her children were raised and educated in Jerusalem throughout the years.

54. The petitioners claimed that despite the many submissions made by the petitioner to the respondent, her application for reinstatement of residency was never reviewed such that these unique circumstances were taken into account. The reasoning in the responses of the respondent to the petitioner's submissions was always that the decision on residency expiration, given over 13 years ago, was given, at the time, in accordance with the law.

55. Following the submission of the petition, the respondents agreed to forward the petitioners' case for review by the inter-ministerial committee. This, despite their prior

objection. Consequently, the petitioners agreed to have the petition deleted and that the decision in their matter be issued within 60 days of the judgement.

The decision of the Inter-ministerial Committee for Humanitarian Affairs

56. On 13 August 2007, almost six weeks after the date set forth by the court, petitioner 6 received the decision of the inter-ministerial committee which established the following:

> The claims made by the madam did not convince members of the committee. Her residency expired in 1994 in accordance with the law, following the transfer of her and her children's center of life abroad.
>
> Additionally, the claim regarding alleged imprisonment came after the revocation and without convincing evidence other than her claim.
>
> Pursuant to the abovementioned, her request for status on humanitarian grounds is denied.

A copy of the inter-ministerial committee decision is attached and marked **P/18**.

57. Thus, even after she once again gave a detailed description of her difficult circumstances, and after she provided well-laid reasoning why the arrangement set out in the "Sharanksy Affidavit" should be applied to her, members of the committee refused to address her claims on issues of principle and again dismissed her with only a few lines of reasoning. Even after the petitioner had established her home in East Jerusalem for all those years, the Ministry of Interior still adhered to its claim that her residency had expired in accordance with the law. The Ministry ignored her claims regarding the applicability of the "Sharansky Affidavit" to her matter as if they had never been made.

Developments since the decision of the inter-ministerial committee

58. The petitioner's condition has deteriorated ever since the decision of the committee was handed down. The petitioner's home was in Kafr 'Aqab, a neighborhood which belongs to East Jerusalem but is located north of the Qalandiya checkpoint. This fact made it very difficult for the petitioner to arrive at her workplace which was in East Jerusalem, south of the checkpoint. As a result, the petitioner was forced to resign her position. Additionally, due to having despaired of their status in Israel ever being legalized, the

petitioner's children began to leave Israel one after the other and move to live with their father in Jordan.

59. The petitioner remained a broken woman. Her children had left her. Her workplace, her only source of income, was lost. East Jerusalem, the only city to which she is connected remained distant and beyond reach – on the other side of the Qalandiya checkpoint. The petitioner remained imprisoned in her home.

60. She was vanquished by her difficult situation. On 27 October 2007, the petitioner packed her belongings and moved to Jordan. After ten years of continuous living in East Jerusalem, her city, of building a loving home for her and her children, of working as a kindergarten teacher and studying to be a certified kindergarten teacher – the petitioner succumbed. After ten years of a protracted and exhausting struggle to restore her status, the petitioner despaired of the impasse she had reached and was forced to return to live with her former husband, where her children currently live; the same husband who had prevented her return to Jerusalem at the time; the same husband the petitioner divorced in 2000.

61. After her hopes of having her status in Israel reinstated were dashed, and since the petitioner has no real connection to any other country in the world, the petitioner hoped to rebuild her relationship with her husband, assuming that he was the only, albeit dubious, anchor she had left outside East Jerusalem.

62. On this issue too, the petitioner's hopes were dashed. Another conflict soon erupted between the petitioner and her husband, one that could not be resolved. The petitioner realizes her mistake now. She wishes to restore her status in Israel and return to East Jerusalem. The petitioner's children, petitioners 2-5, can no longer bear living in Jordan and wish to return to their city with their mother.

63. In light of this, petitioner 6 contacted the respondent on 15 May 2008, requesting to resume processing of the petitioner's application and grant her permanent residency. The petitioner also requested that the status of petitioners 2 and 3 be restored and the application of petitioners 4 and 5 for family unification with the petitioner be reviewed in tandem with her application and approved.

A copy of the letter sent by petitioner 6 is attached and marked **P/19**.

64. On 18 June 2008, petitioner 6 received a letter from the respondent which read:

Confirming receipt of your letter referenced herein. Your appeal of the decision made by the inter-ministerial committee was forwarded on 26 May 2008 and on 4 June 2008, the file was returned on the grounds that it is not possible to appeal a decision of the inter-ministerial committee through the desk. For your information.
A copy of the respondent's letter is attached and marked **P/20**.

A Summary of the Events Thus Far

65. The petitioner left the country in 1979 and returned to East Jerusalem in 1994. Throughout the years of her living abroad, the petitioner made sure she kept close contact with East Jerusalem, where she also gave birth to three of her children. The petitioner acted, throughout that period, in accordance with the rules set forth by the respondents at that time, namely, that a person's residency remains intact so long as the person ensures he returns while his exit card is valid. Indeed, the respondents considered the petitioner to be a resident for all practical purpose throughout the years. When severe conflicts erupted between the couple, the petitioner, whose sole affiliation was and remains to East Jerusalem, wished to return to her hometown. After she returned to Jerusalem, and even registered her children in schools in the city, the petitioner arrived, with her children, for a visit in Jordan in the summer of 1994. Her spouse, who was displeased with her decision to return to East Jerusalem, prevented her from doing so until 1997. The petitioner finally managed to release herself from her husband, and beginning in 1997, she lived, until recently, in East Jerusalem and did not leave Israel but for a few days. Since 1997, East Jerusalem has been, in every possible sense, the petitioner's center of life. It is where her home was, where her workplace was and where she studied and this is where the center of her children's lives was.

66. The petitioner discovered that the respondent revoked her residency by chance. When the residency was revoked, the petitioner was in Jordan with no possibility of returning to East Jerusalem and without fathoming that her residency, which she diligently ensured to maintain all those years, was taken from her. She even left Israel and entered it in 1997 and 1998 as a resident for all practical purposes. The petitioner found out about the respondent's decision in her matter only in 1999. Since then, she has tried every way to have her and her children's status reinstated. The respondent has adhered to its refusal to

reinstate the petitioner's residency and her grounds boil down to an insistence on the fact that the revocation was legal, while refusing to address the petitioner's circumstances since her return to East Jerusalem, circumstances which the petitioner reiterated in her submissions to the respondent.

67. When all hope was gone, the petitioner petitioned this honorable court. Following the petition, the respondent did agree to forward the petitioner's case for review by the inter-ministerial committee for exceptional cases, but that yielded yet another bitter disappointment for the petitioner. The respondents once again held fast to their claim that the petitioner's residency expired in accordance with the law. Once again, the petitioner's circumstances since her return to East Jerusalem were ignored. Once again, the respondents decided to leave her detached, in despair and without status in East Jerusalem – her hometown.

68. Finally, and owing to their difficult situation described above, the petitioner and her children left the country. In their despair, the petitioner and her children attempted to live under the same roof with the husband and father whom they managed to escape ten years earlier. Yet, as expected, once again, an irresolvable conflict erupted between the members of the household. The petitioner wishes to restore her status in Israel and return to East Jerusalem. The petitioner's children, petitioners 2-5, also wish to return to their city with their mother.

69. It seems, therefore, that the respondent's position is that the petitioner is not eligible for inclusion in the arrangement established in the "Sharansky Affidavit", nor is she considered by the inter-ministerial committee as a "humanitarian case" which merits restoration of status. According to the respondent, there is no option to appeal the decision of the committee and therefore, the petitioner was left with no choice but to file this petition which brings to the surface the issue of the legality of the policy of revoking the residency of residents of East Jerusalem, including the petitioner's.

The Legal Argumentation

70. The petitioners will claim as follows:

    a. The decision of the Inter-ministerial Committee for Humanitarian Affairs ignored the petitioner's claims that the arrangement established in the "Sharansky Affidavit" must

be applied to her and her children. The committee's decision also ignored the petitioner's circumstances since her return to East Jerusalem.

b. The respondent's unrelenting position in the petitioner's matter requires a review of the rules relating to the status of residents of East Jerusalem. Is it truly possible that the status of residents of East Jerusalem is so fragile that a woman who experienced a failed marriage abroad and seeks to return to her home safely finds herself standing in front of a locked door? Is this indeed the law?

Two decades ago the Supreme Court laid down the first layer with regard to the position of East Jerusalem residents. This was in the **Awad** case. The judgment in the **Awad** case was given against the special and exclusive factual backdrop – both in connection with the facts that pertain to the nature of the petitioner's emigration from Israel in that case and in relation to his activities during the first intifada. The judgment instituted several guidelines regarding the nature of the status of East Jerusalem residency and the criteria according to which residency would be revoked.

With the passing of twenty years, we need to test the abstract analysis of the Awad judgment against the backdrop of the real world and the reality of life. One must also examine the rulings in the Awad case against the backdrop of other norms in the legal arena, especially the norms that apply to East Jerusalem.

Two decades later, the time has come to adjust the rule to the reality of life and prevent the harsh results that have ensued from the manner in which the respondents interpreted it, and adjust it to the norms applicable to East Jerusalem.

From the perspective of the reality of life it has become clear that the respondent has given the **Awad** rule the broadest interpretation, and has turned it into a tool for denying the status of thousands of East Jerusalem residents. This policy forms part of a general policy of abuse towards these residents.

From the perspective of the law, this matter falls under the provisions of international law – international human rights law and international humanitarian law – according to which East Jerusalem residents are not merely "Israeli residents" (as has been held in domestic Israeli law) but are also "protected persons" who are entitled to continue to live in the territory. It is also a norm of international human rights law, that every person has a right to return to his country. These provisions should be interpreted together with the

amendments made to domestic Israeli law with respect to East Jerusalem, which were made as the result of political treaties to which Israel had committed itself. All this sheds light upon the special status of East Jerusalem residents. Even if the status of East Jerusalem residents is derived from the Entry into Israel Law, as was held in the **Awad** case their status is still not the same as the status of any other residents, and most certainly their status is not the same as immigrants who came to Israel. The special circumstances of those whose fathers and mothers lived in East Jerusalem before its annexation to Israel, impacts the law that applies to them.

Below we shall deal with each of these matters respectively.

The decision of the inter-ministerial committee – void

71. As stated above, in Adm. Pet. (Jerusalem) 186/07 the petitioner explained in detail her difficult circumstances and provided clear reasoning why the arrangement established in the "Sharansky Affidavit" should be applied to her. Despite this, the members of the committee refused to address the petitioner's claims of principle and reiterated the claim that the petitioner's residency had expired in accordance with the law. This, despite the fact that the petitioner's petition, following which her case was forwarded to the committee, focused on the petitioner's claims that her status must be restored irrespective of the question whether the status expired in accordance with the law.

72. The petitioner's claims regarding the applicability of the "Sharansky Affidavit" to her case were detailed above, and we shall not repeat them. So too were the petitioner's claims regarding her circumstances since her return to Israel, and even earlier – circumstances which are incontrovertibly humanitarian. The committee chose to ignore all these. Note: the respondent's refusal to apply the arrangement set forth in the "Sharansky Affidavit" makes the committee's ignoring of the humanitarian considerations in the petitioner's matter all the more problematic. Particularly in this situation, in which the respondent claims that the petitioner cannot find a solution through any other source, it would have been appropriate to examine her case most carefully. Particularly in this situation, it would have been appropriate for the committee to consider the fact that all the petitioner's ties in the past ten years have been to East Jerusalem. Particularly in this situation, the committee should have addressed the petitioner's unique

circumstances as a single mother and the fact that her children were raised and educated in Israel. On this very matter it has been ruled:

Humanitarian considerations are designed, by nature, to provide an answer for cases where arrangements created by ordinary legal provisions are insufficient to bring about what is right and just both from a general perspective and from the perspective of the private litigant. I am of the opinion that this perception is also consistent with the manner in which the 'Inter-ministerial Committee for Humanitarian Affairs' was defined in a protocol regulating the work of this committee: "The inter-ministerial committee handles the granting of status to exceptional humanitarian cases who are not eligible for status under ordinary criteria and where the bureaus are not empowered to grant status to these cases. The committee is a recommending body to the director of the population registry'… Thus, **from the definition found in the protocols of the Ministry of Interior we learn that the role of the committee is to examine all those exceptional cases which, to begin with, are not covered by ordinary criteria and provisions and are ineligible under them.**

(Adm. Pet. (Tel Aviv) 2852/05 **Levy v. The Ministry of Interior** *Takdin-Mehozi* 2006(3), 11469, p. 11472. (emphasis added – Y.B.).

See also: Adm. Pet. (Tel Aviv) 2053/06 **Ndolin v. Minister of the Interior** *Takdin-Mehozi* 2007(3), 3161.

73. It appears that the committee chose the easy solution and sought to fulfill its duty by laconically addressing just one of the petitioner's claims, that her return to Israel had been prevented for years by her husband. Note well: this is one of many claims which, together, make up the harsh reality of a woman who lived and whose children lived throughout the years in East Jerusalem. Particularly outrageous is the committee's assertion that the petitioner "**did not present convincing proof**" of her life during the time she was living with her husband. What proof was the petitioner, in the opinion of the committee, to provide? An affidavit from her husband regarding his atrocious behavior? The results of a lie detector test? It seems that the respondent is loyally following its policy of repeatedly demanding individuals making submissions to it to back their claims

with all manner of documents and affidavits, even when this is unnecessary or inherently baselsess; yet when it comes to the respondent, laconic grounds such as "**the madam's claims in the petition did not convince the members of the committee**" are sufficient to sentence a single mother who is down on her luck to a life of detachment, lack of status and constant fear of arrest and deportation.

74. This is not the first case where the inter-ministerial committee has not followed, to understate, its role. The courts have already pointed to a number of failures in the committee's performance. Thus, for example, it was established that:

The Minister of the Interior, as any holder of an administrative position, must conduct a review on the merits of a matter which comes under his discretion and must examine all the relevant facts and circumstances relating to the case. He must arrive at his decisions accordingly. Upon the delegation of his authority to the 'inter-ministerial committee', it must exercise its power and discretion in a manner such that … **as a rule, decisions on applications of this sort must not be handed down as if by conveyer belt and without considering the circumstances of each and every case… a quasi-judicial committee which determines people's fates and decides who is to be deported and who is to remain in the country, must conduct this procedure cautiously and responsibly, while ensuring that every case brought before it is reviewed on its merits and with all relevant details being considered.** (Adm. Pet. (Haifa) 1037/07 **Feldman v. The Minister of the Interior**, *Takdin Mehozi* 2004(1) 2888, population. 2891-2892. (emphasis added, Y.B.).

In the same case the court further ruled that:

In our matter, there is great doubt whether the inter-ministerial committee indeed conducted a real review of the petitioner's case which included consideration of all her circumstances and the change that has occurred recently. Rather, there is cause for concern that the committee acted as a 'rubber stamp' repeating previous decisions without addressing the change of circumstance. (*Ibid*, p. 2893) (Emphasis added, Y.B.).

75. In a case similar to the case before us, in which all information pertaining to the humanitarian aspect was presented to the committee, but it was not possible to understand, with no grounds, why the committee had ruled that there was no cause to grant status on humanitarian grounds, it was ruled:

> In fact, all the information brought before the court was presented to the respondent when the petitioner's matter was reviewed… In a decision bereft of reasoning, the committee ruled, as detailed in the documents, that there was no justification to grant status. As stated, no grounds were provided for this decision and the committee's decision did not clarify why its members were of the opinion that nothing in the petitioner's personal information gave reason to award her humanitarian relief. With no grounds, it is also impossible to accept counsel's claim that the decision, as handed down, is reasonable. No explanation was given as to why the committee did not find humanitarian grounds to allow the continued presence of petitioner 1 in Israel… **a decision without grounds, which does not include references to all the claims brought before the committee, cannot be considered a reasonable decision, and in any case, the phrasing of the decision does not indicate that due consideration was given to all those reasons.** (Adm. Pet. (Haifa) 4112/07 **Paulson v. The State of Israel**, *Takdin Mehozi*, 2007(2) 3262, p. 3264) (Emphasis added, Y.B.)

For more criticism regarding laconic decisions by the inter-ministerial committee see: Adm. Pet. (Tel Aviv) 1285/03 **Luvnov v. Minister of the Interior** *Takdin Mehozi* 2004(1), 10050, Adm. Pet. (Beer Sheva) 313/06; **Physicians for Human Rights v. Minister of the Interior** *Takdin Mehozi* 2006(4) 12059; Adm. Pet. (Haifa) 1042/05 Kreisler v. The State of Israel (Judgment, 23 June 2006); Adm. Pet. (Haifa) 704/02 **Zerah v. Minister of the Interior** (Judgment, 19 November 2002); Adm. App. (Tel Aviv) 2454/04 **Obi v. Minister of the Interior** (Judgment, 6 March 2007).

76. Thus, the committee's decision in the matter of the petitioner and her children is unreasonable must be void.

77. However, the disrespectful manner in which the respondent treats its duties as an administrative authority is but a minute part of the overall picture, which reflects the sorry state of the residents of East Jerusalem who were revoked of their status. This situation is not summarized only by the implementation of one procedure or another, or the respondent' reconciling to make exceptions to its protocols in extreme cases. The issue is the treatment of residents of East Jerusalem and their status, which has become extremely fragile, by the State of Israel in the past decades. The State bases this treatment on the Supreme Court's judgment of two decades ago in the matter of **Awad**. We shall now turn to this matter.

The judgment in the Awad Case and its Consequences

The Judgment in the Awad Case

78. The background to the petition and judgment in the **Awad** case was the decision of the Prime Minister and the Minister of the Interior in May 1988 to deport the petitioner, Mubarak Awad from Israel.

Awad was a resident of East Jerusalem. After the occupation of the West Bank and the annexation of East Jerusalem, Awad was counted in the population census and received an Israeli identity card. In 1970 he traveled to the USA. He studied in the USA, where he acquired citizenship. Awad returned to Israel on a number of occasions over the course of the years. Ever since acquiring American citizenship he entered Israel on his American passport. In 1987 when he applied to the Ministry of Interior with an application to change his identity card that was in his possession he was informed that his residency had expired. His residential permit was not extended. In May 1988, and during the initial days of the first intifada a deportation order was issued against him. The reason for the deportation order is detailed in the judgment, and it would therefore not be superfluous to cite from it:

> …During the petitioner's period of stay in Israel, and especially in the most recent period, in which, in the opinion of the Minister of Interior, he resided unlawfully in Israel, the petitioner openly and intensively worked against Israeli rule

over the regions of Judea and Samaria and the Gaza Strip… in 1983 the petitioner published a book in Arabic and in English titled Non-Violent Resistance: A Strategy for the Occupied Territories. In January 1985 the petitioner established an institute in Jerusalem which he heads, and which is called the 'Center for the Study of Non- Violence'. There are differing reports as to the nature and outlook of this Center. The petitioner argues that he is opposed to Israeli rule in the "Territories" but that his calls for actions against it are only through nonviolent means. Inter alia the petitioner pointed to various nonviolent resistance methods, such as boycotting goods, refusal to work within Israeli frameworks, refusal to pay taxes or to fill in forms, however all the aforesaid measures of resistance should be done, according to the petitioner's outlook, on one condition: no physically violent action should be carried out. The petitioner supports the sovereign existence of the State of Israel alongside the existence of a sovereign Palestinian political entity. And these two states, according to his teachings and his opinions, are liable in the future to exist side by side in peace and harmony. The petitioner even went as far as to suggest on Israeli television (at the beginning of April) that "we should strive for full reconciliation including negotiations with the Palestinians with regard to granting compensation for their abandoned property and opening a new page in relations between the Jewish and Palestinian peoples."

The petitioner considers himself one of the most moderate thinkers among the Palestinian leadership. According to his principles "one must condemn the violent response – even the throwing of stones and Molotov cocktails – which is happening right now in the 'held Territories', and even more

so actions that are more violent than these. By contrast, 'Yossi' – who serves in the Israeli Security Agency in the Division for Countering Sabotage and Hostile Terror Activities in the Jerusalem and Judea and Samaria regions, and whose affidavit is attached to the respondent's response – has stated that "the apparently moderate image that the petitioner has attempted to create for himself is merely a ruse and incompatible with his true goals". The petitioner's political aims, according to 'Yossi', are the "liberation of the Territories from Israeli rule followed by the establishment of a bi-national Israeli-Palestinian State which is liable to bear Palestinian features". According to 'Yossi's account, the petitioner is advocating civilian rebellion, and is calling for and advocating, among other things, boycott of Israeli goods and services, refusal to pay taxes, organized desertion of Israeli workplaces, refusal to carry an identity card, excommunication of collaborators, and similar forms of action. At first the petitioner's activities failed to gain a following in the Arab street. But as soon as the uprising began in the Territories, in December 1987, his ideas were given tangible expression in proclamations issued by the uprising's headquarters, which resulted in practical activity, which was carried out on the ground by the residents of the Territories. These activities included, amongst others, workers from the Territories abstaining from going to work in Israel, non-payment of taxes, resignations of policemen, injuring collaborators, calls to mayors to resign, etc. 'Yossi' points out that the "petitioner himself took part in the publishing of the proclamations which contained, among other things, a call to take up violent and hostile action against the State on the part of residents of the Territories".

> In 'Yossi's opinion "the petitioner's activities at the height of that period are sufficient to cause real harm to security and public order, and his ideas and goals have immediate consequences for what is happening in the Territories. The petitioner's continued residence in Israel constitutes real harm to security and public order". 'Yossi's expert opinion guided the respondent in ordering the deportation of the petitioner from Israel (**Awad** case, 427-428).

79. We remind again: these were the early days of the first Intifada, a time that predated the Oslo accords and predated the establishment of the Palestinian Authority. This was a time when Israel had yet to recognize the right of the Palestinian People in the West Bank and the Gaza Strip to govern itself (as stated in Oslo Accords A and B). Against the background of this reality we shall examine the decision by the Minister of Interior in the **Awad** case.

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

First, does the Entry into Israel Law apply to the petitioner's permanent residence in Israel; secondly, is the Minister of Interior authorized to deport the petitioner according to the Entry into Israel Law, if this Law is applicable; thirdly, was the authority to deport lawfully exercised (ibid. 429).

81. As to the first question, the Court responded that the annexation of East Jerusalem "created synchronization between the State's law, jurisdiction and administration and between East Jerusalem and those located in it". (Ibid. 429). In order to give "validity to this trend" and to anchor it "as much as possible" in the language of the Law (Ibid. 430), the Court accepted the State's claim that East Jerusalem falls under the provisions of section 1(b) of the Entry into Israel which states:

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

In this context the Court held:

> This enshrinement does not arouse any difficulty, since residents of East Jerusalem may be viewed as having received a permanent residency permit. True, generally

> speaking a formal permit document is provided, but this is not essential. The permit may be given without any formal document, and the granting of a permit may be deduced from the circumstances of the case. Indeed by virtue of this recognition of East Jerusalem residents, who were counted in the population census that was carried out in 1967 as lawfully and permanently residing there, they were registered in the Population Registry, and were provided with identity cards. (Ibid. 430)

82. The Court dismissed the petitioner's claim that his status in Jerusalem was a "quasi citizenship", when it noted that:

As is well known, for reasons related to the interests of East Jerusalem residents, Israeli citizenship was not granted to them without their consent, but each one of them was granted the opportunity of applying for and receiving Israeli citizenship, if he so desired. There were those who applied for and received Israeli citizenship. The petitioner, and many like him, did not do so. Since they declined to accept Israeli citizenship, it is difficult to accept their claim with respect to "quasi citizenship", which entails only rights, but no duties… In this respect counsel for the petitioner has claimed that applying the Entry into Israel Law to the permanent residence of east Jerusalem residents is unreasonable, since it implies that the Minister of Interior can, by mere words, deport all of the East Jerusalem residents through the invalidation of their permanent residency permits. This claim has no merit. The Minster of Interior's authority to invalidate residency does not turn permanent residence into custodian residence. Permanent residence is provided under the law, and the Minister may only exercise this authority for practical considerations. It goes without saying that the exercise of this authority is in practice subject to judicial review. (Ibid. 430-431).

83. After stating the above the court went on to determine whether the Minister of Interior was authorized to deport Awad from Israel. The court ruled that the minister was authorized to deport Awad because his permanent residency permit had expired:

> The Entry into Israel Law does not contain any explicit provision according to which a permanent residency permit

shall expire if the permit holder leaves Israel and settles in a country outside of Israel. Provisions in this matter may be found in the Entry into Israel Regulations (hereinafter "Entry Regulations"), which were instituted by virtue of the Entry into Israel Law. Regulation 11(c) of the Entry Regulations states that "the validity of a permanent residency permit shall expire… if the permit holder leaves Israel and settles in a country outside of Israel".

Regulation 11A determines:

"… a person shall be considered as having left Israel and settled in a country outside of Israel if one of the following pertains to him:

(1)He resided outside of Israel for a period of at least seven years…;

(2)He has received a permanent residency permit of that country;

(3)He received citizenship of that country through naturalization".

There can be no doubt that the appellant falls within the framework of Regulation 11A of the Entry Regulations, since he has satisfied each one of the three prescribed conditions; each one of which is sufficient in itself to ensure the expropriation of his permanent residency permit…

The Entry into Israel law explicitly authorizes the Minister of Interior to "prescribe in the visa or in the residence permit conditions the fulfillment of which shall be the condition for the validity of the visa or of the residence permit" (section 6(2)). These "terminating" conditions may be of an individual nature, but may also be of a more general nature. Regulations 11(c) and 11A may be viewed as prescribing terminating conditions of a general nature…

In my opinion it is possible to arrive at this conclusion with respect to the expiry of the validity of the permanent residency permit even without the Regulations and by virtue

> of an interpretation of the Entry into Israel Law. As stated, the Entry into Israel Law authorizes the Minister of the Interior to grant a residency permit. This permit may be valid for the period prescribed in it (up to a period of five days, three months, three years) and may be for permanent residence.
>
> Obviously, a permit with fixed period of validity expires by itself, upon reaching the period's termination, and there is no need for an external "cancellation". Can a permanent residency permit expire "of its own accord", without any act of annulment by the Minister of the Interior? In my opinion, the answer to this is in the affirmative. A permit for permanent residence, inherently, is based on a reality of permanent residence. Once this reality no longer exists, the permit expires. Indeed, a permanent residency permit – as distinguished from an act of naturalization – is a hybrid creature. On the one hand it has a constitutive element, which grants the right of permanent residence; on the other hand it has a declarative nature, which articulates the reality of permanent residence. When this reality disappears the permit has nothing to which to attach itself and is therefore *ipso facto* cancelled, without any necessity for any formal act of annulment (compare HCJ 81/62 **Golan v. The Minister of the Interior et al.**, *Piskei Din* 16, 1969). Indeed, "permanent residence", by its very nature implies a reality of life. However, when this reality disappears, the permit no longer has any meaning, and it is *ipso facto* annulled. (*Ibid.* 431-433).

84. How did Awad's residence permit expire? The Court answers:

A person who has left the country for a very long period of time (in our case since 1970) and has acquired for himself the status of permanent residence in another country… and has even, willingly, acquired citizenship, undergoing all the steps that are required in the United States for receiving American citizenship – cannot be said to permanently reside in this country. This new reality shows that the petitioner has uprooted himself from the country and has replanted himself in the United States. The center of his life is no longer this country but is the United Sates. It goes without saying that it is oftentimes difficult to point to the exact moment when a person ceases to permanently reside in a country, and

there is certainly a period of time when the center of a person's life hovers between his previous abode and his new one. This is not the situation before us. Through his conduct the petitioner has demonstrated a willingness to sever his bond of permanent residence with the State and has a created a new and bold link – permanent residence at first, and then eventually citizenship – with the United States. It may very well be true that the motive for wanting this has to do with the gaining some sort of relief from the United States. It is possible that deep in his heart he has always aspired to return to this country. But the decisive test is the reality of life, as it happens in practice. According to this test at some stage the petitioner relocated the center of his life to the United States, and one can no longer view him as someone who permanently resides in Israel (Ibid. 433).

85. On the basis of these findings the court ruled that the authority to deport was lawfully exercised:

> As we have seen, underlying the respondent's discretion was the recognition that the activities of the petitioner harm the security and public order, for indeed he acts openly and intensively against Israeli rule over Judea, Samaria and the Gaza Strip. We have no need to decide the factual dispute between the two sides in this case, for even according to the appellant's own version, he is acting against Israeli rule over Judea, Samaria and the Gaza Strip. We see nothing unlawful in the position of the Minister of Interior, in terms of which anyone who is not an Israeli citizen and who is found to be living in it unlawfully, and is acting against a State interest – it is befitting that he be deported from Israel (Ibid. 434).

86. As we shall see, over the years, the respondent extracted an abstract, mathematic-like formula from the **Awad** judgment. Rather than having case law develop while taking into account changes which occur over time and the test of practicality, the judgment was reduced to a rigid formula to be followed no matter the circumstances. The judgment, which is merely an attempt to anchor law in reality, was turned into a tool for changing the reality of life in East Jerusalem.

The Authorities' alienation of East Jerusalem Residents

87. The law that the respondents deduced from the **Awad** case resulted in consequences that are too harsh to bear. The implementation of the **Awad** case showed yet another facet of a transparent policy upheld by the governments of Israel throughout the years, which is primarily concerned with attaining a Jewish majority in Jerusalem and pushing the Palestinian residents of the city out. In order to attain this goal, Israel has, over the years, adopted both a policy of denying citizenship rights to residents of East Jerusalem (for example by imposing many restrictions on the family unification process and on registration of children, and also – as in the subject matter of this petition – revoking the residency of residents of the city) and one of deliberate discrimination in various areas. Thus, the residents of the eastern part of the city are discriminated against in anything related to building and planning policy, land expropriation policy, investment in physical infrastructure and in government and municipal services that are provided to them. Before turning to the consequences of the implementation of the **Awad** rule, as the respondents interpret it, we request that we may preface our presentation by painting a picture of the reality in which these things take place – a reality that has made the lives of East Jerusalem residents intolerable and has forced them outside of Jerusalem.

88. According to the law in Israel, permanent residents are eligible to enjoy almost every right that is provided to citizens. The formal system of rights of permanent residents is similar to that of citizens, and their rights are only different in a limited number of fields. Thus, for example, permanent residents cannot elect or be elected to the Knesset (sections 5 and 6 of **Basic Law: The Knesset**). And they are not eligible to receive an Israeli passport (section 2 of the **Passports Law** 5712-1952). However**,** aside from this, the formal rights system of these residents is similar to that of citizens. Resident permits that are given to Palestinian residents have formalized (at least by law) their eligibility to work in Israel, to receive emergency services and benefit from socio-economic resources. They have granted these residents identifying documents (section 24 of the **Population Registry Law,** 5725-1965), social rights (National Insurance pensions are paid according to the **National Insurance Law** [amended version] 5755-1995, to a resident of Israel.

The **State Health Insurance Law,** 5754-1994 applies to anyone who is regarded a resident of Israel in accordance with the **National Insurance Law**), etc.

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

90. It is no secret that East Jerusalem is one of the poorest and most neglected areas, amongst the places in which Israeli law applies. Throughout many years State authorities have avoided investing in and developing East Jerusalem. As a result thereof, the population has suffered from poverty and dire need, from serious deficiencies in the provision of public services, from inferior infrastructure and from harsh living conditions. The Jerusalem municipality has consistently avoided massive and serious investment in the infrastructure and services provided to the Palestinian neighborhoods in Jerusalem, including roads, pedestrian sidewalks, and water and sewage systems. Ever since the annexation of East Jerusalem, the municipality has built almost no new schools, public buildings or clinics, and most of the investment has been in the Jewish areas of the city. Below we shall cite a number of data, which demonstrate the gravity of the situation.

91. **The poverty rate in East Jerusalem** is two and half times that of the poverty rate in the rest of Jerusalem. According to data published by the Central Bureau of Statistics in 2003, **64% of the Arab Palestinian families in Jerusalem lived below the poverty line,** as opposed to 24% of Jewish families from Jerusalem. The incidence of poverty amongst the Arab population in Jerusalem is also noticeably higher than the incidence of poverty amongst the general Arab population in Israel, in which the poverty index stands at 48% of all families.

92. **East Jerusalem experiences overcrowded and harsh living conditions.** Thus, for example in 2003 the population density in the Arab neighborhoods was almost double that of Jewish neighborhoods: 1.8 persons per room as opposed to one person per room amongst the Jewish population. 11.9 square meters per person in the Arab neighborhoods as opposed to 23.8 square meters per person in the Jewish neighborhoods. Ever since 1967, in the context of wide range construction and huge investment in Jewish neighborhoods, construction meant for the Arab population in Jerusalem was suppressed. The Jerusalem municipality has refused for years to prepare future zoning plans for the Palestinian neighborhoods in East Jerusalem. Currently, despite the fact that most of these plans have been completed, few are in the stages of preparation and approval. Even amongst the plans that were approved up until the beginning of 2000, only 11% of the East Jerusalem area is in fact available for construction. Wide swathes of land have been designated as "open village landscape territory", where building is prohibited. On the other hand, the scope of house demolitions in East Jerusalem is unprecedented. According to data gathered by the "Israeli Committee against House Demolitions" (http://icahd.org/eng/) the total number of administrative and judicial house demolitions that were issued by the Jerusalem Municipality and the Ministry of Interior in 2005, reached approximately 1,000. The consequences of these actions are expressed in the living conditions in the Palestinian neighborhoods.

93. The discrimination in **the field of welfare** is expressed, among other things in the human resources standards that were allotted for handling residents of the eastern side of the city. Despite the fact that we are dealing with a third of the Jerusalem population, only 15% of all services are allocated to this population. In addition the number of offices in the eastern part of the city is half the number of offices in the other areas (3 as opposed to 6). This fact makes it even harder to have an adequate distribution of welfare services and reduces access to them, so that many of those who need the services are not at all eligible for them. As a result thereof, the burden imposed upon the social workers is unbearable. Currently, in East Jerusalem there is one social worker in charge of approximately 360 households, while the social workers in west Jerusalem handle on average only 165 households.

94. Another example is the discrimination and neglect in the **field of education.** Because of a serious shortage of classrooms, there are some schools in which teaching takes place in shifts. Other schools are run in overcrowded residential buildings. In some of the schools there are no computers, no library, no laboratories, no exercise hall, and even no teachers' staff room. Approximately ninety percent of the 15,000 children aged 3 and 4 are not integrated into kindergarten (in practice, only 55 children are integrated into the municipal kindergartens, about 1900 are integrated into private frameworks, and the remainder are not integrated into any framework). According to the data released by the office of the Central Bureau of Statistics, 79,000 children in East Jerusalem are of school age. According to data released by the municipal education administration and the Ministry of Education only 64,536 of them are enrolled in a public or private educational institute. This means that more than 14,000 children, almost 20% of school age children are not studying. From data released by the Ministry of Education in 2006 it transpires that only 13.7% of Palestinian school pupils in East Jerusalem received a matriculation certificate, and they are placed at the lower end of the national list.

95. The **Compulsory Education Law 5709-1949** applies to every school age child who lives in Israel, without any regard to his status in the Populations registry of the Ministry of Interior (Ministry of Education, **Circular of Director General 5760/10 (a): The Application of the Education Law on Children of Foreign Workers,** dated 1 June, 2000). In other words, the Law does not distinguish between the status of citizens and that of children with a permanent resident status or any other status, and states that compulsory free education applies to every child or youth aged 5-16. Despite this, and despite a HCJ ruling, that held that children of compulsory school age in East Jerusalem should be allowed to be registered for compulsory studies, as stated in the **Compulsory Education Law** (HCJ 3834/01 **Hamdan v. Jerusalem Municipality and HCJ 5185/01 Baria v. Jerusalem Municipality** (partial judgment dated 29 August, 2001)) the right of thousands of Palestinian children in East Jerusalem to education is currently being implemented only partially, and the education system in the eastern part of the city suffers from grave problems, which require immediate and special treatment. At the center of the current problems in this field is the problem of a **serious shortage of classrooms.** In the 5766 academic year the shortage of classrooms in East Jerusalem

stood at 1,354 and in 2010 it is anticipated that the shortage of classrooms will rise to 1,883 classrooms. Despite an HCJ ruling from 2001 which required the Ministry of Education and the Jerusalem Municipality to build, within four years, 245 new classrooms, as of today only about 40 new classrooms have been built. The result has been that every year more and more children seeking to enroll in a school in East Jerusalem have been rejected and the **dropout rate in the East Jerusalem secondary education system stands at around 50% of all pupils.**

96. **Much of the infrastructure in East Jerusalem is in a very bad state and suffers from many deficiencies** for example **the water and sewage infrastructure as well as the road infrastructure**. The eastern part of the city also suffers from **serious sanitation problems**. The **planning and building division** suffers from constant budgetary constraints, which has created a huge gap between the needs of the population and the solutions provided. In an inspection carried out by *B'Tselem* it was found that in the 1999 Jerusalem Municipality's Development Budget less than 10% was earmarked for the Palestinian neighborhoods, despite the fact that the residents of those neighborhoods constitute approximately a third of the residents of the city. As a result of this lack of investment, the state of the infrastructures in East Jerusalem is grave: entire Palestinian neighborhoods are not connected to the sewage system, and they contain no paved roads or sidewalks. This blatant discrimination is glaring: almost 90% of the sewage pipes, roads and sidewalks in Jerusalem are found in the western part of the city, the west of the city contains 1,000 public parks whereas East Jerusalem contains only 45; in the western part of the city there are 34 swimming pools, whereas East Jerusalem has three swimming pools, in western Jerusalem there are 26 libraries, while East Jerusalem contains two; in the western part of the city there are 531 sporting facilities, East Jerusalem has 33 facilities. (for further data on this matter, see also *B'Tselem*'s website: http://www.btselem.org/english/jerusalem/index.asp)

97. There are also **serious deficiencies in the provision of a wide range of public services,** for example **employment services and postal services.** Thus, for example the 75,000 residents of the north eastern neighborhoods of Jerusalem is served by only one postal officer, and because of this many of them do not receive their mail.

98. The continued neglect and discrimination in budgets and services on the part of the authorities has brought about a situation of deep poverty and systemic problems in many fields. The ramifications of this situation may be seen both in the **long list of harsh social phenomena** which include: harm to the family system; a rise in the level of family violence; a decline in the functioning of children which manifests in the 50% dropout rate from high schools and children's' subsequent entry into the "black" labor market at a young age; a slide into criminality and drugs; health and nutritional problems, and more.

99. In all of these instances the State did not merely violate its basic commitments towards its residents. It marked the residents of Jerusalem as unwanted in their own country. Behind the establishment's neglect of East Jerusalem is an aspiration that the residents of the city will seek their future outside the city, which in turn will serve the official goal of maintaining demographic balance in the city. Indeed many found accommodation solutions in the outskirts of the city, instead of the overcrowded and crime afflicted neighborhoods situated within the boundaries in which Israeli law applies, or left to seek their livelihood and higher education abroad.

Alienation in regards to Population Administration services

100. To all the above must be added the attitude that views residents of East Jerusalem as aliens, whose status may be routinely revoked. The State of Israel established a special office of the Population Administration to handle East Jerusalem residents. This is the only city in the country in which there are two Population Administration offices. "East Jerusalem" includes neighborhoods that are in the northern, eastern and southern parts of the city. Jewish residents who live in the area that was annexed receive their services from the Population Administration office in central Jerusalem. Only Palestinian residents of East Jerusalem – from the north, east and south – are referred to the east Jerusalem office. This inaccessible office has become notorious for its inferior and insufferable service, that flouts the basic ideas of sound administration (see HCJ 278/03 **Jabra v. Minister of the Interior**, *Piskei Din* 58(2) 437; Adm. Pet. (Jerusalem) 754/04 **Bedewi v. Director of the District Office of the Population Administration**, (Judgment dated 10 October, 2004)).

101. The workload at the East Jerusalem Population Administration Office is enormous, and handling applications takes many months and in many cases, many years. More than once, the residents have been forced to wait in a long queue (despite the office having been transferred to a new residence) and sometimes even those who are able to enter the office are sent home without receiving any service. For basic services, such as arranging status for children, fees amounting to hundreds of shekels are collected, and the applicants are required to produce countless documentation. Many of those applying for service are forced to seek the assistance of an attorney, and many are involuntarily forced to turn to the courts in order to receive the services they desire.

102. The residents of East Jerusalem are forced to once more prove their residency in the city to the Ministry of Interior and to the National Health Institute, who conduct investigations and inspections whose whole purpose is to revoke their residencies on the grounds of residence outside the demarcated areas in which "the law, jurisdiction, and administration of the State" apply, and to take away their status. The revocation of status takes place, not infrequently, in an arbitrary fashion, without granting the right of a hearing, and only comes about *ex post facto*, through the filing of an application to receive services.

All of this is a direct result of the respondents' interpretation of the judgment in the **Awad** case. Below we will expand upon this issue.

Easte Jerusalem residents equal to other residents of the Territories: the open bridges policy

103. Over the course of a number of decades after the annexation of East Jerusalem, Israel was scrupulous in applying the same arrangements to residents of East Jerusalem as those which applied to the rest of the residents of the Occupied Territories as regards to leaving the country, returning to Israel and the West Bank, and the status upon return. Underlying these arrangements was the **"open bridges policy"** which the State of Israel instituted in 1967. "The open bridges policy" was designed to encourage the free passage of residents of East Jerusalem and residents of the Territories via the Jordan bridges, subject to security considerations. This policy recognized the needs of the residents of East

Jerusalem and the residents of the Territories to visit and remain in Jordan and other Arab countries, not only for temporary needs and for short periods, such as for visits and commerce, but also for needs that entailed extended periods of stay abroad, including for the purposes of study, work, and family ties.

104. The residents' departure was contingent on obtaining an exit permit. Every resident who upheld the conditions of the exit permit (an exit card which also served as a return visa) was allowed to return, and immediately upon his return his rights as a resident would be restored to him. When a resident returned to East Jerusalem (or to the Territories, as the case may be) he was allowed to once again go abroad, equipped with a new exit card. The exit card was not a travel document like a passport or laissez-passer, and its whole purpose was to provide written proof that he could leave via the Jordanian bridges and was granted the possibility of returning via the same route so long as it was still valid. This was a unique document that served residents of the Territories, which were occupied in 1967 (including East Jerusalem) within the framework of the open bridges policy.

105. This policy allowed thousands of Palestinians – residents of East Jerusalem and the Territories – who worked in the Gulf States and in Saudi Arabia, who studied in Arab countries and who conducted their family life there - to leave and to return without prejudicing their rights. The Israeli authorities recognized, as stated, the many constraints that caused the residents of East Jerusalem to seek a livelihood in the Arab countries, to complete their education there and even to conduct their family life over there.

In this regard, see for example the speech of the then Minister of Defense, Mr. Moshe Dayan to the Knesset (*Knesset Debates*, volume 12, 5730-1970, 697-699).

A copy of the speech is attached to this petition and is marked P/21

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

107. This policy did not only take into account the needs and affiliations of the residents. It also served Israeli interests, because it compensated for the lack of infrastructure in East Jerusalem and the limitations with respect to construction and family unification within the city. The respondents' policy which allowed residents to preserve their status in the city if they lived in the Territories and even if they went abroad, so long as they extended the validity of the exit card in their possession, facilitated this trend and even encouraged it.

Implementation of the Awad Rule Since the end of the 1990s: wholesale revocation of residency

108. In the second half of the nineties, the respondent embarked upon its strict policy, which meant the blocking of the path of return to the city for East Jerusalem residents and the virtual expulsion of the latter from their home, even if they had returned to it in the meantime. This policy was based on a broad interpretation of the **Awad** rule – an interpretation that introduces elements into the formula established in the **Awad** case which makes it absurd.

109. Beginning in the second half of the 1990s, many of the residents of East Jerusalem, who applied to the Ministry of Interior with various requests, were met with refusals to provide the requested service, and were handed a brief standard letter, informing them that their permanent residency permits had expired, since, according to the Ministry of Interior, they had relocated the center of their lives outside of Israel. This "expiry of residency" included, for the most part, the residency of the resident's children. The notice ended by instructing the resident and his family members to return their identity card and to leave the country, usually within 15 days.

110. This policy – which eventually became known as the "quiet deportation" – was also enforced against those who resided in Jerusalem during that period but the Ministry of Interior determined they had relocated the center of their life outside of Israel, as well as against those who at that time were residing abroad, but who were completely unaware that their residency had "expired". The West Bank and the Gaza Strip were also considered for this purpose to be "abroad", in contradistinction to the policy that was

practiced beforehand, in terms of which someone who had moved to the Territories in order to live there had not forfeited his status. It shall be noted that according to the previous policy so long as East Jerusalem residents residing abroad were scrupulous to come to Jerusalem and renew their exit permits before the period had expired, they were guaranteed that their residency would not be revoked. Moreover, those residents who lived abroad were able, according to this policy, to obtain an extension for their exit card through relatives who were living in East Jerusalem.

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

112. The Ministry of Interior argued that this policy is an extension of the **Awad** rule. According to the approach adopted by the Ministry of Interior, the only logical conclusion to be drawn from the **Awad** rule is that the residency of all these persons expired *ipso facto*, and in fact the Ministry of Interior has no discretion in the matter of expiries. According to this claim, the Ministry of Interior has merely accepted the binding case law, and is acting accordingly. A Residency expires "without any human interference" and the Ministry of Interior has no alternative but to view a person as having no status in East Jerusalem. As a result, the Ministry is obliged – barred as it is from exercising its own discretion – to confiscate that person's identity card and to remove him outside the borders of the State.

Thus, for example, in the State's response to a petition filed by a resident of Jerusalem who had resided in Jordan with her husband for years and returned to live in Jerusalem in 1995, it was stated:

> According to the abovementioned, as in our matter, the reality of life indicates that the petitioner's permanent residence in Israel in fact ended in the end of the 1970's… and the permit for permanent residency in Israel which she had, which relied on a reality of permanent residency in Israel lost its significance and, in any case, had expired and was cancelled of itself. (State's Response in HCJ 9499/96 **Najwa Atarash v. Minister of the Interior**). The relevant pages from the State's Response are attached and marked **P/22**).

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

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

114. A reading of the judgment in the **Awad** case as if it were some theoretical mathematical formula could indeed support this absurd line of thinking. However already during that

period the respondent revised his position, apparently in light of an understanding that such a reading of the judgment does not conform with the general principles of justice, and therefore a judicial hearing was ordered (see in this matter, for example: The State's response in HCJ 3122/97 **Darwish v. Minister of the Interior**. The response is attached and marked **p/23;** HCJ judgment 3120/97 **Maqari Oliver v. Minister of the Interior**, *Takdin Elyon* 97(2), 262). It should be noted that in reality there are many occasions when the respondent revokes a residence license without conducting a hearing.

115. Seeking to oppose the "quiet deportation" policy, petitioner 2, along with other human rights organizations and with East Jerusalem residents that were harmed by that policy, filed a petition to the HCJ in 1998 (HCJ 2227/98). Within the framework of this petition the then Minister of Interior, Natan Sharansky submitted an affidavit with the aim of rectifying, if only in a small way, the injustice that was caused to those residents who were harmed by the policy of a comprehensive revocation of residency. Pursuant to what is stated in the affidavit, some of those whose residency was revoked would be able to reacquire their residency if they satisfied certain conditions. The Ministry of Interior undertook not to revoke the status of those who maintained proper contact with Israel in those years in which they resided outside of it (see in this connection – the case of our petitioner in paragraphs 45-52 above).

116. The "Sharansky Affidavit" softens, then, the harsh consequences of the **Awad** rule. The absurd outcome, in which residency was revoked from thousands of people who acted in accordance with the procedures laid out by the Ministry of Interior and who maintained a connection with Israel, was overturned by the fact that the Minister of Interior now viewed them as persons who maintained their status.

117. The need to reverse this policy of residency revocation, and the way in which this need was addressed by the Affidavit issued by Minister Sharansky, indicates a need to make essential modifications to the **Awad** rule in order to avoid the absurd reading that underlay the "quiet deportation" policy.

118. In the wake of the petition and in the wake of the "Sharansky Affidavit", which was given within the framework of this hearing, there was a "relaxation", for a certain period,

of the mass revocation of residency. Nonetheless, the arrangement prescribed by the affidavit did not solve the problem of those whose residency had already been revoked during that period. Only those whose residency was revoked after 1995 and visited Israel within the period of validity that was stamped on their exit card, and who had lived in Israel for at least two years, benefited from the new arrangement. In other words, a person whose residency was revoked even a few days before 1995, as in the case of the petitioner, would not find relief in the provisions of the procedure. This is true likewise regarding a person whose residency was revoked prior to the publication of this affidavit, while he was residing abroad, and the Ministry of Interior did not permit him to return to Israel. It should also be noted that this procedure applies only to those whose status was revoked because they had allegedly resided for a period of more than seven years outside of Israel. The possibility of regaining one's status, according to the procedure, would not apply to those who acquired permanent residence in another country or received foreign citizenship.

119. Moreover – the revocation of the status of residency of East Jerusalem residents has not ceased even for moment, even if a certain "relaxation" has taken place since the year 2000. It appears that we are dealing with a temporary abatement only. According to data that originates from the Ministry of Interior, but which was gathered and compiled by the *B'Tselem* organization, in 2006, the year in which the petitioner's status was revoked, the Ministry of Interior revoked the residency of **1,363 persons,** in other words – almost three hundred more people than 1997, and thus this was the harshest year of the "quiet deportation".

The Data may be viewed on B'Tselem's website:

http://www.btselem.org/hebrew/Jerusalem/Revocation_Statistics.asp

120. However: When *B'Tselem* applied to the person in charge of freedom of information at the Ministry of Interior in order to investigate the reason behind the extremely steep rise in the scope of residency revocations (6x the amount of 2005), it received the following answer:

> …the rise in the latest number of cancellations of residencies in the register, **stems from an improvement in the work and control procedures of the Ministry**, including Israel's border crossings. (Emphasis added)

A copy of the letter by the person in charge of freedom of information at the Ministry of Interior dated 17 April, 2007 is attached and marked **p/24.**

121. If any further proof were necessary to demonstrate the Ministry of Interior's treatment of the permanent residents of East Jerusalem as though they were foreigners - the above quote is once again a prime example. In a government ministry charged with the provision of services to the citizens and residents of the country, an "improvement in the work and control procedures", or "streamlining" is normally directed at the welfare of the applicants and at providing better service. According to the Ministry of Interior's understanding, when the beneficiaries of the service are residents of East Jerusalem, "streamlining" means trapping as many people as possible and placing them within the network of its policy of residency revocation.

122. We shall note that on 4 February, 2008, petitioner 2 applied to the respondents with a request to receive the data on residency revocation in 2007. The respondents' response never came, and on 12 June, 2008, petitioner 2 filed a petition on this issue with the Honorable Court. (Adm. Pet. 8476/08 **HaMoked: Center for Defence of the Individual v. Minister of the Interior et al.**)

The gender aspect in the current implementation of the Awad rule

123. Added to the policy of revoking the status of East Jerusalem residents is the aspect of gender. This policy causes grave harm to women.

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

As is well known, up until the mid nineties Israel did not at all handle family unification applications that were filed by **female** East Jerusalem residents for their spouses. This was the direct result of the discriminatory policy practiced by the respondent, in terms of which only family unification applications filed by **male** East Jerusalem residents were handled. The Ministry justified this policy on the grounds that in Arab society the prevailing custom is that the "woman follows her husband" and therefore there is no reason to grant Israeli status to the male spouse who is a resident of the Territories or a foreign resident. As a result of this, women residents who wished to live with their spouse, were forced to relocate with them to areas outside of the city. Thus, many of them lost their status on the grounds of an extended stay "outside Israel". In 1994 in the wake of a petition to the HCJ which was filed by applicant 2 (HCJ 2797/93 **Gerbit v. Minister of the Interior**) this discriminatory policy was finally cancelled.

124. However the harm to permanent residents – as women – was not confined to this aspect. In a traditional society (and it is definitely possible to describe male East Jerusalem residents, generally speaking, as living in a society with traditional values), most of the woman's world, in her capacity as a wife, is concentrated around the family home. If the ties between the spouses are rent asunder then the whole family unit disintegrates, and the wife has no real choice but to return to her parents' home or to reside in proximity to her brothers and sisters, or in her hometown, East Jerusalem. A woman whose marriage falls apart, and, in addition, whose residency was revoked, is in effect deprived of the anchor she requires for a life in which she would have some degree of dignity, stability and support.

125. The petitioner's matter emphasizes, more than anything, the terrible trap in which these women find themselves. As recalled, the petitioner's marital relations deteriorated and only after some years did she manage to release herself from the burden of the marriage and return to East Jerusalem. Yet, because of her prolonged stay abroad, the respondent revoked her status. Thus, the petitioner was forced to raise her children by herself, as a single mother, which, in addition to all her woes, she became a person without status.

126. For ten years, the petitioner toiled to have her status reinstated while raising her children and providing for them on her own. She made countless appeals to the respondent,

directly as well as though many attorneys, and even petitioned the Honorable Court. Every time, the petitioner came up against a brick wall. The final note, so far, has been the inter-ministerial committee's decision that "**the madam's claims in the petition did not convince the members of the committee**". This last decision broke the petitioner's spirit. Her residence on the north side of the Qalandiya checkpoint did not permit her to lead a normal life without a permit. She was forced to withdraw from her studies and resign her position. Her children left East Jerusalem one after the other, despaired of the possibility they might one day be able to obtain status and live with their mother.

127. As occurs to many women in this world who experience a patriarchal and dependent spousal relationship (which often involves physical or mental abuse), the petitioner returned to live with her former husband - the same husband who prevented her from returning to Jerusalem; the same husband the petitioner divorced in 2000. After her hopes of having her status in Israel legalized were dashed and since she had no real connection to any other country in the world – the petitioner hoped to rebuild her relationship with husband, but the petitioner's hopes on this matter too, were dashed. An irresolvable conflict soon erupted again between her and her husband. The petitioner now realizes her mistake and wishes to return with her children to her hometown.

128. Thus, the respondent's policy does not only improperly discriminate between permanent residents of East Jerusalem and Israeli society at large, it creates a distinction among permanent residents such that the principal "addressees" of the residency revocation policy are the resident women, who are a disempowered group to begin with. Under the cover of the policy that the respondent has deduced from the **Awad** rule, the harm caused to women, who are generally the principle victims when a marriage breaks up or reaches a point of conflict or crisis, is intensified.

Summary up to this Point

129. The judgment in the **Awad** case was handed down two decades ago. The judgment was given against the backdrop of the outbreak of the first intifada, and related to a decision of the Minister of the Interior to deport from Israel a resident of East Jerusalem, who for years had lived in the US where he had acquired status, and where he organized political activities aimed at ending Israeli occupation of the Territories. The Court held that the

annexation of East Jerusalem to Israel turned the residents of East Jerusalem into permanent residents of Israel. This residency, according to the judgment, expires upon the relocation of the center of one's life. Because of this, it was ruled that the Minister of Interior was permitted to deport **Awad**, who was residing in Israel without a permit and was "acting against the interests of the State".

130. The respondent who, for years, allowed East Jerusalem residents to leave the city and return to it, for the purposes of work, studies and family, changed its policies following the judgment and launched a policy of massive revocation of residence permits in East Jerusalem. This policy combines with the State Authorities' deliberate alienation of East Jerusalem residents. The respondent expropriates the statuses of East Jerusalem residents as a matter of "efficiency". All East Jerusalem residents are exposed to this policy and its consequences, although it is especially harmful for women-residents.

131. Two decades after the judgment in the **Awad** case, there is a need to reexamine the judgment in the context of its consequences. It must also be examined against the backdrop of other norms in the world of law, especially the norms which apply to East Jerusalem.

132. The "synchronization" which the court has sought to create between the law that applies to Israel and that which applies to East Jerusalem has shut its eyes to the other normative standards which apply to East Jerusalem. Moreover, over the course of the past years since the judgment was given other standards were added, which we cannot continue to ignore. East Jerusalem is no longer a region of Israel and its residents are not the same as all other residents in Israel.

133. Before describing the normative framework in full, the petitioners seek to redefine the dispute and to clarify their position with relation to the judgment in the **Awad** case and the general status of East Jerusalem residents:

The petitioners are willing to assume that ever since the annexation of East Jerusalem, the status of the residents of East Jerusalem, according to Israeli law is that of permanent residents who hold a permanent residency permit which was given to them according to a

law that was duly legislated by the Knesset. Indeed, as was held in the **Awad** case their status is grounded by law and not by grace. However, the status of East Jerusalem residents is a special status that includes by its very nature the condition that the permits never expire.

The petitioners concede that the tests with respect to the expiry of residency that were established in the **Awad** case, and the provisions of the Entry into Israel Regulations with regard to the expiry of residency could possibly apply to **immigrants** who entered Israel of their own free will and who acquired a permanent residency permit upon their request, and generally: **to any person who acquired a permanent residency permit not through the annexation of his or her place of residence to Israel as a result of military occupation.**

The application of identical rules for revocation of the residencies of immigrants who acquired their status of their own free will, and those of East Jerusalem residents, who received their status as a result of the annexation of East Jerusalem after its occupation, unlawfully ignores the special status of East Jerusalem residents. It forces upon the residents of East Jerusalem the life of a ghetto which one must not leave, so as not to lose the residency status, or alternately, unlawfully coerces them to become naturalized Israeli citizens. There is good reason for East Jerusalemites reluctance to become Israeli citizens whose status is protected from arbitrary revocation. The State of Israel is not permitted to force citizenship upon them, and is not permitted to coerce them to naturalize and espouse loyalty to the State.

We must read a stipulation into the granting of permanent residency to East Jerusalem residents: residency does not expire when a resident leaves the country or relocates the center of his life.

The aforesaid does not involve changing the **Awad** rule but rather developing it as necessary. The **Awad** rule itself recognized the possibility that Israeli residency permits shall include general conditions, and that these conditions, like the permits themselves, would not be explicitly written into the permits but would be inferred from the general

rules. The **Awad** rule itself sought to see to it that the attributes of an Israeli residency permit would correspond to the realities of life and would not clash with them.

We shall detail our position in full below.

The special status of East Jerusalem Residents and the Prohibition to Revoke their Residency

Introduction

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

135. Residence permits grant Palestinian residents, prima facie, protections that are similar in many aspects to those enjoyed by Israeli citizens. In practice Israel has reduced the provisions of these protections, and in fact – has alienated itself from Palestinian residents of East Jerusalem and has encouraged their connections to the Territories. Over the course of the years Israel has, in many aspects, acted towards East Jerusalem residents as it has towards residents of the West Bank. From the time it signed the Oslo Accords Israel has recognized the fact that East Jerusalem is a region which is located at the heart of the dispute, and that the Palestinian residents of East Jerusalem are part and parcel of the Palestinian Nation in the West Bank and Gaza Strip. Israeli legislation was drafted in such a way as to enable this connection between East Jerusalem residents on the one hand and the Palestinian Nation and the Territories, on the other.

136. Because of the importance of normative arrangements and political treaties to an understanding of the special status of East Jerusalem residents, to the definition of their system of rights and to the definition of the obligations of the State of Israel towards them

– we would like to elaborate further on the legal status of East Jerusalem and on the purpose of the residency which was granted to East Jerusalem residents.

The Legal Status of East Jerusalem

137. In June 1967 the State of Israel conquered the West Bank. Immediately after the war the Government of Israel decided to annex to Israel about 70,500 dunam from the occupied territory to the north, east and south of Jerusalem ("**East Jerusalem**"). Pursuant to a Government Resolution passed in the Knesset on 27 June, 1967 an amendment was made to the **Law and Administration Arrangements Ordinance** and within its framework a new clause was added to section 11b that states: "The law, jurisdiction and administration of the State shall apply to all the area of the Land of Israel which the government has determined by Order." The next day on 28 June, 1967 the government instituted the **Law and Administration Arrangements Order (No. 1), 5767-1967,** which applies the "law, jurisdiction and administration of the State", to East Jerusalem. That day by proclamation made under the Municipalities Ordinance, the annexed territory was included in the boundaries of the Jerusalem Municipality.

138. **Basic Law: Jerusalem, Capital of Israel,** which was enacted in 1980 added and established in section 1 thereof that "Jerusalem, complete and united, is the capital of Israel". In 2000, the Basic Law was amended so that a section 5 was added which stated that the "borders of Jerusalem include, for the purposes of this Basic Law, among other things, the entire territory described in the annexure to the Proclamation on the Expansion of the Jerusalem Municipal Area which was dated 20 Sivan 5727 (28 June, 1967) and which was enacted pursuant to the Municipalities Ordinance". In section 6 of the Basic Law it was established that "there shall not be transferred to any foreign agent, political or governmental, or to any other similar foreign agent, whether permanently or for a defined period, any authority that relates to the border of Jerusalem and which was lawfully granted to the State of Israel or to the Jerusalem Municipality." In section 7 of the Basic Law it states that "the provisions of sections 5 and 6 may only be amended by a Basic Law passed by a majority of the members of Knesset. (See also Amnon Rubenstein

and Barak Medina, *The Constitutional Law of the State of Israel* (sixth edition, Schoken, 5765) 926-927, 932 -935 (hereinafter: **Rubenstein and Medina)).**

139. According to **Israeli domestic law**, therefore, Israeli law applies to the territory of East Jerusalem. As we will see later this does not negate the protection to which East Jerusalem residents are entitled, in light of the fact that Israeli rule is based on a military victory. Nonetheless, it bears mentioning that over and above what has been said, "the territory of a State, or its sovereign borders, are a matter to be decided by International Law", and not according to the domestic law of the state (Rubenstein and Medina, 924). According to international law sovereignty is acquired in two ways: through brokering an agreement with the bordering states, or through acquiring sovereignty over territory in which there is no political sovereignty of any kind (*Ibid.*). The unilateral application of the "law, jurisdiction, and administration" upon a territory that has been occupied is not recognized by international law as a way of applying sovereignty.

See in this regard:

Eyal Benvenisti, *The International Law of Occupation* (Princeton University Press, 1993), pp. 5-6; Orna Ben-Naftali, Aeyal M. Gross & Keren Michaeli, "Illegal Occupation: Framing the Occupied Palestinian Territory". 23 *Berkeley Journal of International Law* 551, 574 (2005).

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

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

Furthermore:

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

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

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

142. And indeed, **international law** does not recognize the unilateral annexation of East Jerusalem or the legal validity of the normative steps that Israel adopted to apply sovereignty over East Jerusalem. In a long series of pointed decisions the international community and international institutions have repeatedly stressed that the practical and normative steps adopted by Israel in its annexation of East Jerusalem contravene to the rules of international law, and East Jerusalem is an occupied territory (see, *inter alia*: United Nations General Assembly Resolution 2253 (ES-V) and 2254 (ES-V) (both of July, 1967); United Nations General Assembly Resolution 35/169E (December 1980),

United Nations General Assembly Resolution A/61/408 (December 2006); United Nations Security Council Resolution No. 252 (May 1968); No. 267 (July 1969); No. 271 (September 1969); No. 298 (September 1971); No. 478 (August 1980); and No. 673 (October 1990)).

143. The International Court of Justice (hereinafter: the "**ICJ")** adopted the Security Council Resolutions of the United Nations and held in their Advisory Opinion to the General Assembly of the United Nations, in 2004, with respect to the Separation Barrier, that East Jerusalem is an occupied territory like the rest of West Bank and the Gaza Strip, and the steps which Israel has adopted have no validity under international law [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion (International Court of Justice, July 9, 2004), 43 IL M 1009 (2004) (paragraphs 75-78 of the Opinion) hereinafter: the "**ICJ Opinion"**)). The court held:

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

144. This position of international law is shared by states across the world. There are 72 foreign embassies in Israel. All states which conduct diplomatic relations with Israel on the ambassadorial level do not recognize the annexation and therefore are not prepared to situate their embassies in Jerusalem (in recent years the embassies of Costa Rica and el Salvador, the last embassies in Jerusalem, have left Jerusalem).

See also: Rubenstein and Medina 924-927, and 933; Yoram Dinstein, "Zion Shall be Redeemed by International Law' (in Hebrew) *HaPraklit* 27 (5731) 5; **Ben-Naftali, Gross**

& Michaeli, p. 573, David Herling "The Court, the Ministry and the Law: **Awad** and the Withdrawal of East Jerusalem Residence Rights", 33 *Israel Law Review* 67, 69-70 (1999).

The Status of East Jerusalem Residents According to International Law

145. A longstanding rule before the Honorable Court holds that residents of the Territories which were occupied by Israel in 1967 have the status of "protected persons" according to the Fourth Geneva Convention, and are entitled to protections that international law grants protected persons (see in this regard, for example: HCJ 1661/05 **The District Council of the Gaza Beach et al. v. The prime Minister - Ariel Sharon et al.**, *Piskei Din* 59(2), 481, 514-515; HCJ 606/78 **Iyyov v. Minister of Defense**, *Piskei Din* 33(2), 113, 119-120; HCJ 785/87 **Apu v. Commander of the IDF Forces**, *Piskei Din* 42 (2), 4, 77-78).

The powers of the military commander, whom the State appointed over the Territories, even when those powers are enshrined in army legislation, are also subject to the rules of international law which enshrines the rights of protected persons (see: HCJ 393/82 **Jimayat Ascan Almalmon al-Makhduda al-Masuliya v. Commander of the IDF Forces**, *Piskei Din* 37 (4), 785, 790-791) (hereinafter: **the Al Masuliya case**).

And what is the law that pertains to East Jerusalem residents? The Court has never examined the question of whether or not they enjoy the "protected" status alongside their status as Israeli residents. The answer to this question may be derived from the provisions of international humanitarian law.

146. International humanitarian law, which is concerned with protecting citizens during times of dispute, has adopted the pragmatic approach when it comes to implementing this basic principle, and holds that use of force cannot lead to, or cause any transfer or change in sovereignty. And this is the language employed in **Article 47 of the Fourth Geneva Convention:**

> Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the

> benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the Occupied Territories and the Occupying Power, **nor by any annexation by the latter of the whole or part of the occupied territory**. (Emphasis added)

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

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

This is an approach which the petitioners request the Honorable Court to adopt: the petitioners do not request that the Court rule that Israeli law does not apply to east Jerusalem, but rather that the application of Israeli law does not deprive the residents of the eastern part of the city of their special rights as protected persons.

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

148. The position of international law is not given any mention in the **Awad** case, yet it should still have some impact today. The opinion of the International Court of Justice "**constitutes the interpretation of international law, made by the highest judicial body in international law**", and therefore, "**the interpretation that this court gives to international law should be accorded the maximum consideration that befits it**". (HCJ 7957/04 **Mara'abe v. The Prime Minister of Israel**) (judgment dated 15 September, 2005, paragraph 56 of the judgment by Chief Justice Barak, and see also paragraphs 73 and 74 of the judgment. (Emphasis added) (hereinafter the "**Mara'abe case**")). According proper consideration can only mean that the practical status of residents of an annexed territory must be taken into account.

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

149. **According to international law**, the law that applies to the territory that was occupied and annexed to Jerusalem is that of belligerent occupation. The residents of the occupied region, according to international law, are protected persons. Since they are protected persons, the occupying power is saddled with the duty of protecting their rights both by virtue of the detailed obligations that are enshrined in international humanitarian law (**The 1949 Fourth Geneva Convention and the Hague Regulations)** and by virtue of the general obligation of the occupying power to preserve public life and order, which is enshrined in **Regulation 43 Additional to the Hague Convention Respecting the Laws and Customs of War on Land 1907**.

150. Case law has extended the positive obligation imposed on the occupying power such that it is responsible for the rights and quality of life of residents of the occupied territory (see **Almalmon** case at 797-798; HCJ 202/81 **Tabib v. Minister of Defence**, *Piskei Din* 36(2) 622, 629; HCJ 3933/92 **Barakat v. Commanding Officer, Central Command**, *Piskei Din* 46(5) 1, 6; HCJ 69/81 **Abu Aita v. The Regional Commander of Judea and Samaria**, *Piskei Din* 37(2) 197, 309-310.)

151. In addition to the rules of international law, the State, as an occupying power, must also abide by the basic principles of Administrative Law (**Almalmon** case, at 810; HCJ 5627/02 **Sayef v. Government Press Office**, *Piskei Din* 58(5) 70, 75; HCJ 10536/02

Hass v. Commander of the IDF Forces in the West Bank, *Piskei Din* 58(3) 443, 455; **Mara'abe** case, paragraph 14 of the judgment). Likewise there are certain undertakings by the State to international human rights law which also apply (see **the ICJ opinion,** paragraphs 102-113).

152. International law perceptively recognizes the relationship between the occupying power and the protected persons, who are under its rule, and establishes guidelines. Among these is **Clause 45 of the Hague Regulations forbidding the occupying power to compel residents of the occupied territory to swear allegiance to it:**

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

153. **Article 49 of the Geneva Convention prohibits the occupying power from carrying out any type of "forcible transfer" on the protected persons.** This prohibition is absolute, and is in force regardless of the motive that underlies the intention to carry out a forcible transfer. Paragraph 78 of the Geneva Convention recognizes, however, the authority of the Occupying Power to adopt the step of "special residences" with respect to protected persons within the borders of the occupied territory, but only as an exceptional and necessary step for security considerations. According to case law, it is not possible to adopt such a step unless the security risk, which is foreseen to emanate from a person against whom it is adopted, may only be removed by means of adopting this step. In any event this step should not be adopted as a means of punishment but only as a deterrent (see HCJ 7015/02 **Ajouri v. Commander of the IDF Forces in the West Bank,** *Piskei Din* 54(6) 352).

154. The application of **Israeli law** to the East Jerusalem area and to its residents does not diminish the protections that international humanitarian law grants them. So long as the State of Israel seeks to view East Jerusalem and its residents as part of Israel, it is choosing to apply to East Jerusalem and its residents extra strata of normative protections, whose force is no lesser than that of international humanitarian law. Israeli law carries its own baggage of constitutional protections, as well as Israel's undertakings in accordance with the provisions of international human rights law. Thus the application

of Israeli law to East Jerusalem, provided that the State of Israel stands by this application to East Jerusalem and its residents, means that Israel by its own admission is applying the basic rights that are enshrined in Israeli law, as well as Israel's undertakings to International Human Rights Law.

155. The status that was given to Palestinian residents of East Jerusalem was given against their will. The ramification of refusing that status was the deprivation of a right to continue to live in their homes and the risk of being forcibly deported. Indeed, the residence permit first and foremost grants Palestinian residents of East Jerusalem the right to permanently reside in their homes and immunity from deportation. This is not merely an entry visa, like that given to immigrants who have recently arrived in Israel (**Awad** case 429-430) but is a permit that attests to the reality of life and gives it legal force (*Ibid.* at 433) Precisely because of this the **permit, in the words of the HCJ is given to Palestinian residents of East Jerusalem by law and not by grace** (*Ibid.* at 431). The dicta that the court articulated in the **Awad** case is consistent with the special status of East Jerusalem residents.

156. However the additional step that the court adopted in **Awad** – when it held that East Jerusalem residents are like all other residents, so that should they desire they may become naturalized citizens, but if they do not so they are at risk of losing their status – subverts that special status.

157. Although East Jerusalem residents may request to become naturalized citizens of Israel (provided they are able to overcome the bureaucratic hurdles) very few of them actually do so. Though the majority of them satisfy the conditions of naturalization that are laid out in section 5 of the **Citizenship Law 5712-1952** (excluding, perhaps some knowledge of the Hebrew language), they see themselves, and this is perfectly justified in terms of international law, as residents of occupied territory, whose status in Israel has been forced upon them. They feel connected to the West Bank, and therefore have no desire for Israeli citizenship. Moreover, the acquisition of Israeli citizenship through naturalization requires swearing allegiance to the State of Israel (section 5(c) of the Law), and very few

are comfortable with this. **The State of Israel, as aforesaid, is prohibited from forcing this upon them**.

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

158. In the absence of an obligation to naturalize, it is clear that the permit that is given to East Jerusalem residents cannot imprison them in East Jerusalem or in Israel, as a condition for the preservation of their status. East Jerusalem residents – residents who have a special status – are entitled, like any other person, to leave their home and to return to it, without thereby being at risk that their travels abroad or their departure to the Territories, and even their acquisition of status in another country, will lead to the deprivation of their rights to return to their homeland.

159. The reality of life often calls upon people to move to foreign countries and to live there, for various periods of time and for various motives. This does not mean that in all instances the connection with the country of origin has been severed (see in this regard: J. Page, S. Plaza, "Migration Remittances and Development: A Review of Global Evidence", *Journal of African Economies*, Volume 00, AERC Supplement 2, 245-336. And see also P. Gustafson, "International Migration and National Belonging in the Swedish Debate on Dual Citizenship", *Acta Sociologica* 2005; 48; 5). The provisions of international law in this case support the rights of persons to return to their country, even if they are not citizens.

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

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

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

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

With respect to article 12(4) and to the concept of "arbitrarily deprived", the **United Nations Human Rights Committee General Comment** to the provisions of the Covenant stated:

> In no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. (The Human Rights Committee's General Comment 27, CCPR/C/21/Rev.1/Add.9 of 2 November1999, para.21). (Hereinafter: "**General Comment 27**").

162. In our context, the interpretation that was given to the words "his own country" is especially important as it will be noted, that it was not merely by chance that this term was chosen (that is to say, it was copied verbatim from the version that appeared in the Universal Declaration of Human Rights). Attempts made to limit the extent of this term, so that the right would only apply to those persons who were citizens of the country to which they wish to return, were dismissed. This, in order to avoid the possibility where those wishing to return to a country, whose domestic law did not recognize them as citizens, are barred from doing so. (See in this regard: H. Hannum, *The Right to Leave and Return in International law and Practice*, Dordrecht, Martinus Nijhof, 1987, p.56 (Hereinafter: "**Hannum**").

163. In this regard the learned **Bossuyt** adds that the decision to deliberately choose the term "his own country", and not the term "a country of which he is a national" was accepted in light of the desire of many countries to place before those who did not even bear the status of permanent residents, or of citizens the right of return to their country (M. J.

Bossuyt, *Guide to the "Travaux Preparatoires" of the International Covenant on the Civil and Political Rights* (1987), 261). The choice of this broad term, i.e. “his own country” conforms with the general spirit of Article 2(1) of the **International Covenant on the Civil and Political Rights,** in terms of which each State Party to the present Covenant undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind.

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

> The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his own country". **The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a**

> **broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence**. Since other factors may in certain circumstances result in the establishment of close and enduring connections between a person and a country, States parties should include in their reports information on the rights of permanent residents to return to their country of residence. (General Comment 27, para. 20). (Emphasis added)

165. In order to remove any doubt it should be noted in this context, that the prevailing opinion among the scholars is that the right to return according to Article 12(4) of the Covenant, is a right that is available to individuals. We are not dealing with the rights of large groups of people, who were deported or immigrated to foreign countries as a result of wars or other conflicts. Jagerskiold points out in this context:

> There was no intention here to address the claims of masses of people who have been displaced as a by product of war or by political transfers of territory or population, such as the relocation of ethnic Germans from Eastern Europe during and after the Second World War, the flight of the Palestinians from what became Israel, or the movement of Jews from Arab countries… The covenant does not deal with those issues and cannot be invoked to support a right to 'return'. These claims will require international political solutions on a large scale. (S. A. F. Jagerskiold, **The Freedom of Movement, in L. Henkin (ed.) The International Bill of Rights**, New York, Colombia University Press, 1981, p. 180).

See also **Hannum**, 59.

The special status of East Jerusalem residents since the Oslo Accords

166. The judgment in the **Awad** case closed its eyes, as stated, to the normative aspects that apply to East Jerusalem. These aspects require us to reexamine the rule as it relates to East Jerusalem residents. Moreover – over the course of the years that have elapsed since the judgment in the **Awad** case was decided other normative strata have been added with regard to East Jerusalem residents, which also demonstrate the need to reexamine the rule as it applies to East Jerusalem residents and which prompt us to ask how it is that Israeli law would still be able to request "synchronization" of their civilian status in such a way that shuts its eyes from the special situation that pertains to East Jerusalem.

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

168. An example of the fact that the State of Israel relates to East Jerusalem residents like the residents of the rest of the Occupied Territories is Israel's decision to impose upon East Jerusalem residents the same arrangements that is imposed on the residents of the rest of the West Bank with respect to their departures abroad, and their return to Israel and the Territories, as well as their status upon their return (The "open bridges policy" which we discussed). This policy recognized, as stated, the needs of the residents of East Jerusalem and of the Territories to live in Jordan and in other Arab countries, and not only for temporary needs or for short periods, like visits or commerce, but also for those needs associated with continuous living abroad, including for study purposes, work, and family ties. Since 1967 until today one may only leave abroad and return back via an exit card

which also constitutes a return visa. This applies equally to East Jerusalem residents as it does to the residents of the Territories. Both leave and return in the same manner.

169. The State of Israel's shunning of the Palestinian residents of East Jerusalem and the encouragement of their forging links with the Territories was given concrete expression in the Oslo Accords, in the legislation for its implementation and in prescribing the manner for practically implementing them. Within the framework of the Oslo accords which were signed between the State of Israel and the PLO, Israel thereby explicitly recognized that East Jerusalem lies at the core of the dispute, and that there is a complete affiliation between the Palestinian residents of East Jerusalem and the rest of the Palestinian residents in the Territories of the West Bank and the Gaza Strip.

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

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

172. As stated, even the most recent elections, that took place at the beginning of 2006, saw the participation of East Jerusalem residents. On 17 January the then Acting Prime Minister, Ehud Olmert clarified the decision to allow East Jerusalem residents to participate in the elections. Below is a verbatim transcript of his words, as they were published on the Internet website of the Office of the Prime Minister:

> I want to remind you that in both 1996 and 2005, elections were held in Jerusalem. The responsible approach that I supported both in 1996 and in 2005 said that while we do not concede our authority and sovereignty over all parts of Jerusalem, we certainly have an interest in maintaining East Jerusalem residents' link to a Palestinian state and not to the State of Israel. We never thought that the State of Israel's interest is that all East Jerusalem Arabs will participate in the elections in it. It is impossible to deny them the right to vote in Palestinian Authority elections. Since we are not interested in having them vote in Israeli elections, we certainly need them to agree to participate in the Palestinian Authority elections and therefore the decision was correct then and it is still correct today […]. I assume that most Israelis prefer that East Jerusalem Arabs not participate in Israel's elections but in the elections of the state with which they identify, i.e. the

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

173. The Implementation of the Oslo Accords Laws – whose practical implementation was approved, as stated, by the HCJ – introduced into the law the distinction between the status of East Jerusalem residents and the status of other residents of Israel.

How is it possible that in the current situation, where Israel views East Jerusalem residents as kinsmen of the Palestinian People and encourages their links with an independent Palestinian Administration – an independent Palestinian Administration, which apparently was something which even Mubarak Awad had striven to establish in 1988 - the **Awad** rule, as interpreted by the respondents, still remains intact. Is it possible that one may still speak of a "synchronization" of East Jerusalem and its residents with Israel, as interpreted by the court on the basis of legislation from 1988? Clearly, the changes made to the law and to the current situation cannot sanction the same attitude towards the status of East Jerusalem residents which regards them as having been "swallowed" by the laws of status in Israel, viewing them as immigrants like all other immigrants.

Development of the Awad Rule in Light of the Reality of Life

174. We have seen that we need to expand the **Awad** rule so that it may be reconciled with other norms of Israeli law, which imbibes the principles of human rights and international humanitarian law. The expansion of the **Awad** rule is also required within the framework of drawing lessons from its implementation until today and within the framework of tailoring it to the lifestyles of the modern world.

175. In the **Awad** case the court assumed a reality in which a person relocates the center of his life from one country to the next. For a certain interim period the center of his life "sort of hovered between his old place of abode and his new one", however by the end of this interim period the disconnection was complete. This assumption does not always pass the reality test. As we have seen in the case at hand, for a woman in a traditional society,

moving to live with a husband in a different country, does not mean cutting off ties to her homeland. This is her natural and only refuge should the spousal relationship be rendered asunder.

Other examples petitioner 6 comes across are, for instance, cases where individuals go abroad for studies or work, even if for an extended period, but wish to return to their homeland when children are born and reach kindergarten or school age. The connection to the country of origin, even if loosened over the years, reappears in full force once a child is to be sent into the education system. Another example is people who live abroad for many years but wish to return to their city in their old age.

176. In a modern world where humans interact in a global village, an extended stay abroad is a frequent phenomenon. It does not cancel out the constant and deep connection between man and the country of his birth. In a wide range of circumstances of man's life (for instance when he must deal with a crisis, or at the opposite end of the spectrum, when he establishes a family or reaches the age of pension) the urge to "come home" is reawakened in him in full force.

177. In the years that have passed since the **Awad** judgment, it has become clear that the analytical implementation of the **Awad** rule does not lead to the removal from East Jerusalem of people who have no true ties to it, or who had arrived in the city as nothing more than political agents. Those who have paid the price for the technical implementation of the **Awad** rule are the same people for whom East Jerusalem was a home to which to return.

178. And perhaps even more serious than this; the **Awad** rule contained within it dangerous ramifications for the future. Already as early as 1967 Israel recognized, within the framework of the open bridges policy, that it was necessary for East Jerusalem residents to stay abroad for an extended period of time in order to acquire an education and a livelihood that were not available in Jerusalem, and to preserve their societal and familial links with Arab States. Israel also saw the possibility of these residents actualizing themselves abroad as a powerful Israeli interest. Nowadays, when the entire world is like one global village, the self actualization of human beings is more and more dependent on their mobility across international borders.

179. Continuing with the literal implementation of the **Awad** rule places East Jerusalem resident between a rock and a hard place: their rights to self realization, to education, to a livelihood and to participation in the life of modern society clashes with their rights to a home and to a homeland. The **Awad** rule turns it into a quasi judicial cave that seals off the possibility of East Jerusalem residents from being mobile like everyone else, and which confines them to the narrow and deserted space in which they born.

180. In light of the harsh results that flow from the **Awad** rule, and in order to tailor it to the legal rules that apply to East Jerusalem residents, it needs to be expanded.

There is no need to amend the ruling that East Jerusalem residents live in Israel by virtue of their permanent residency permits that were granted to them as a whole, in accordance with the Entry into Israel law.

There is no need to amend the ruling that Israeli permanent residency permits, in the event that they are granted to an immigrant from a foreign country, include a general stipulation that the validity of the permit is dependent upon the reality of being a permanent resident.

However so long as we are dealing with East Jerusalem residents, for whom this piece of earth is their first home, and who enjoy the status of protected persons according to international humanitarian law, it must be established that their residence permits in Israel include a general stipulation that the permit does not expire even in the wake of continuous living abroad or the acquisition of status in another country

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181. The residency revocation policy cannot be viewed in dissociation with the normative and factual aspects which we have outlined. As stated in the **Awad** judgment, the respondents may subject the granting of permits for permanent residency to conditions (Article 6 of the **Entry into Israel Law**). The condition that has been read into the permits for

permanent residency which the respondents had granted the residents of East Jerusalem was that they were revocable due to exiting the country or transferring center of life.

182. The petitioner is a resident of East Jerusalem. Her status was granted to her following the annexation of East Jerusalem. As such, her status is unique. It includes immunity from forced deportation. The State of Israel may not demand of the petitioner, as all other residents of East Jerusalem, to remain in East Jerusalem in order to avoid losing her status. The petitioner is entitled to exit the country, exit East Jerusalem, and return to her homeland without fear of her status being revoked and her being deported.

183. **In light of all of the above, the court is hereby requested to issue an *order nisi*, as requested in the beginning of the petition and after hearing the response of the respondents, to make it a decree absolute. Finally, the court is requested to order the respondents to pay the petitioner's expenses and legal fees.**

Jerusalem 24 July, 2008, **Adv. Yotam ben Hillel**

Counsel for the petitioners

[T.S. 41949]