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B'Tselem – The Israeli Information Center for Human Rights in the Occupied Territories

Perpetual Limbo

Israel's Freeze on Unification of Palestinian Families in the Occupied Territories

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Researched and written by Antigona Ashkar

Edited by Yehezkel Lein

Data coordination by Maha Abu Salah, Yael Handelsman, Meysa Horani,
Roni Peli

Fieldwork by 'Itaf Abu a-Rob, Musa Abu Hashhash, Salma Dab'i, Iyad
Haddad, 'Abd al-Karim a-S'adi

Assistance on legal issues by attorneys Gil Gan-Mor and Yossi Wolfson

Translated by Zvi Shulman

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a-S'adi, B'Tselem)

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רחוב התעשייה 8, ת.ד. 53132, ירושלים 91531, טלפון 6735599 (02), פקס 6749111 (02)

8 Hata'asiya St. (4th Floor), P.O.Box 53132, Jerusalem 91531, Tel. (02) 6735599, Fax (02) 6749111

mail@btselem.org

<http://www.btselem.org>

Introduction

Amal and Muhammad al-'Amleh got married in Beit Ula, a village in Hebron District, in 1995. They have four children: Hiba, 9, Ghadir, 8, Adam, 7, and Arwa, 5. The children last saw their mother four years ago, when Adam was two years old and Arwa only ten months old.

Amal was born in Jordan and does not hold an identity card given to residents of the Occupied Territories. To enter the West Bank, she needs a visitor's permit issued by Israel. In May 2000, when she was living with her husband and children in the West Bank, she went to Jordan to visit her sick father and others in her family. Since then, she has been unable to return to the West Bank because Israel refuses to issue her a visitor's permit. She communicates with her husband and children only by telephone. Muhammad has difficulty supporting his children, his parents, and his wife in Jordan, and does not have the money needed to take the children and go to Jordan to spend time with their mother.¹

Amal, Muhammad, and their four children are one of tens of thousands of Palestinian families that are separated because of Israeli policy.

This report deals with Israel's prohibition on family unification in the Occupied Territories. Shortly after the outbreak of the second intifada, Israel decided not to process requests submitted by Palestinian residents for family unification with their spouses and family members living abroad,² and not to issue visitor's permits to these non-residents³

¹ For Muhammad al-Amleh's testimony, see Chapter Three.

² Every request for family unification may include the spouse and their minor children. According to the military law, a person under sixteen years old is considered a minor.

³ A permit to visit in the Occupied Territories is like a visa given to a tourist visiting a foreign country. The permit is for a fixed period of time, usually up to three months, and can be renewed upon approval by Israel. Tourists visiting in Israel can also visit in the Occupied Territories, but Israel generally refuses to grant tourist visas to persons who have family in the Occupied Territories.

(hereafter: the freeze policy). Israel has not explained the reason for the new policy, stating only that, "... because of recent incidents [the outbreak of the second intifada], the handling of requests for family unification in Judea and Samaria has stopped..."⁴

* * *

Despite the many changes in Israel's control of the Occupied Territories since the beginning of the occupation, in 1967, Israel continues to maintain almost complete control over the registration of persons in the population registry of the Occupied Territories and over the granting of permits to visit the area. The powers relating to family unification and visitor's permits that were transferred to the Palestinian Authority in the framework of the Oslo Agreements mostly involved mediating between the Palestinian population and the Israeli authorities. The substantive powers remained in Israel's hands. Israel's withdrawal from the Gaza Strip, in August 2005, as part of the disengagement plan did not change the situation significantly. Although the crossing between the Gaza Strip and Egypt (the Rafah crossing) has been administered by the Palestinian Authority since then, the PA is not allowed to permit the entry of persons who are not listed in the population registry, unless they have a visitor's permit issued by Israel in advance.⁵

Persons not listed in the population registry can lawfully and permanently live in the Occupied Territories only after Israel approves a request for family unification. Only a first-degree relative who is a resident of the area may submit the request. Most of the requests are submitted by a Palestinian man who marries a Jordanian national of Palestinian origin.

⁴ Letter of 24 April 2001 to HaMoked: Center for the Defence of the Individual from the office of the legal advisor for the West Bank.

⁵ According to the IDF Spokesperson's Office, the Rafah crossing "is intended for the movement of persons holding Palestinian identity cards only and for diplomats, foreign investors, foreign representative of recognized international organizations and humanitarian cases only" (letter of 29 January 2006 from the IDF Spokesperson's Office to Attorney Sari Sahi, of the non-profit organization Gisha).

The large number of such families, in which one of the spouses is a resident of the Occupied Territories and the spouse a "foreigner," results from the continuing ties between residents of the Occupied Territories and the Palestinian diaspora and from Israeli policy, which forced residents of the Occupied Territories to find work, study, and build families abroad.

The family unification procedure is closely tied to another bureaucratic procedure: obtaining a visitor's permit. First, only a person who is physically present in the Occupied Territories may be registered in the population registry and obtain an identity card, if the request for family unification is approved. Therefore, the ability to exercise the permit given by Israel depends on obtaining a visitor's permit that enables entry into the Occupied Territories. The requisite presence for purposes of registration applies also to the registration of children born abroad to parents who are residents of the Occupied Territories, so in this matter, too, the two procedures are closely linked. Second, given that the family unification procedure has always taken several years to complete, many families need to repeatedly obtain the permits that will enable them to live together in the Occupied Territories, even for short periods. Even female spouses of residents of the Occupied Territories, who, following petitions to the High Court of Justice were granted the status of "long-term visitor," which enables them to live in the Occupied Territories lawfully until their requests for family unification are processed, are unable to exercise this status unless they renew the six-month visitor's permit that was issued to them.

International humanitarian law and international human rights law require Israel to respect the right of residents of the Occupied Territories to marry and found a family. The right to family life necessarily includes the right of all persons to obtain a lawful status for their spouse and children in their native land. However, the right to marriage and family life, like most human rights, is not absolute, and countries may restrict the right in certain situations.⁶

⁶ For an extended legal discussion on this issue, see Chapter Four.

This report deals with Israel's freeze policy since the outbreak of the second intifada, in September 2000: the suspension of the handling of requests for family unification and visitor's permits, except in exceptional cases. The purpose of the report is to document the principal characteristics of the policy over the past five years and point out the severe violation of human rights this policy causes, in flagrant violation of Israel's obligations under international law.

The report updates and expands a report published by HaMoked: Center for the Defence of the Individual (hereafter: HaMoked) and B'Tselem in 1999.⁷ The report does not deal with the separation of families in which both spouses are residents of the Occupied Territories (for example, where one spouse is registered in the West Bank and the other in Gaza).⁸ It also does not deal with family unification of residents of the Occupied Territories with Israeli citizens or residents of East Jerusalem.⁹

The report has four chapters. Chapter One provides the background, focusing on Israel's family unification policy from 1967 to the outbreak of the second intifada. Chapter Two documents and analyzes Israel's policy prohibiting family unification since September 2000 and the problems raised by Israel's policy. Chapter Three describes the economic, social, and emotional effects of the freeze policy on the lives of the torn Palestinian families, and presents testimonies of Palestinians harmed by the policy. Chapter Four analyzes Israel's policy from the perspective of international law.

⁷ B'Tselem and HaMoked: Center for the Defence of the Individual, *Families Torn Apart: Separation of Palestinian Families in the Occupied Territories*, July 1999.

⁸ On this subject, see B'Tselem and HaMoked: Center for the Defence of the Individual, *One Big Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan*, March 2005, Chapter Three.

⁹ On this subject, see B'Tselem and HaMoked: Center for the Defence of the Individual, *Forbidden Families: Family Unification and Child Registration in East Jerusalem*, January 2004.

Chapter One

Residence and family unification: Israel's policy until the second intifada

Background

Shortly after the occupation began, in June 1967, Israel took a census of the population in the West Bank and Gaza Strip. Every person living and present there at the time of the census was recorded in the population registry and recognized as a resident. Persons sixteen and over received an identity card, and children under sixteen were listed in their parents' identity card. As a rule, everybody subsequently born to parents both of whom were officially listed in the population registry was also entitled to be registered in the population registry.

Resident status entitled the holders to reside in the Occupied Territories and live their lives there – to move about within the Occupied Territories, take trips abroad, and return to the area, to work, and the like – subject to restrictions that Israel imposed in the framework of the military government it had instituted. The status did not grant any political rights. Also, until 1995, Israel revoked the Palestinian residency of persons who resided outside the Occupied Territories for more than six consecutive years.¹⁰

As noted above, persons who are not registered in the population registry can acquire residency status in the Occupied Territories only through the family unification procedure. The procedure is intended to enable the registration of various groups of people, such as Palestinians residing in the area who were not counted in the census because they were abroad at

¹⁰ About 100,000 Palestinians lost residency for this reason. The figure was provided to human rights organizations at a meeting with the executive director of the Supreme Committee for Civil Liaison, of the Palestinian Authority, on 19 June 1996. Following the signing of the interim agreement between the PLO and Israel, in September 1995, this ground for revocation was cancelled.

the time or for some other reason;¹¹ first-degree relatives of residents who became refugees following the 1967 war; Palestinians whose residency was revoked following their prolonged stay abroad; and children born abroad, or whose mother was not a resident, and Israel therefore refused to register them.

However, the largest group in need of family unification is composed of families wanting to live together in the Occupied Territories and one of the spouses is not a resident.

The body in charge of administering the population registry in the Occupied Territories and issuing visitor's permits is the Civil Administration.¹² In the command structure, the Civil Administration is subject to the directives of the OC Central Command, and in organizational and professional matters, to the coordinator of government operations in the Territories. The Civil Administration's staff officer for interior affairs is responsible, among other things, for registering persons in the population registry, processing requests for family unification, and issuing visitor's permits.¹³

Until the signing of the Interim Agreement (Oslo 2) between Israel and the PLO, in September 1995, Israel administered the population registry on its own. Following the Agreement, with responsibility for accepting requests and paying the relevant fees having been transferred from the Civil Administration to the Palestinian Authority, contact between the Palestinian resident and the Civil Administration decreased.¹⁴ The Palestinian District Coordination Office (DCO) was established, and its

¹¹ More than 250,000 persons are estimated to be in this category. See, *Guide to UNRWA* (Vienna, April 1992), 6.

¹² The Civil Administration was established following a decision reached in October 1981 to reorganize the military administration and separate its security and civil activity. See Order Regarding the Establishment of the Civil Administration (Judea and Samaria) (No. 947), 5741 – 1981.

¹³ State Comptroller, *Annual Report 44 for 1993 and the 1992 Fiscal Year*, 1008.

¹⁴ Interim Agreement, Annex III, Article 1(2)(b)(3).

tasks included transferring the registration requests to the corresponding Israeli DCOs. After receiving approval from the Israeli DCOs, the Palestinian DCOs issued approvals that the Palestinian residents took to obtain identity cards or visitor's permits at the Palestinian Interior Ministry.

Family unification policy, 1967 – 2000

Israel has always contended that family unification in the Occupied Territories is not a vested right, but a "special benevolent act of the Israeli authorities."¹⁵ On the basis of this conception, Israel implemented a rigid and unreasonable policy regarding family unification and visitor's permits until the outbreak of the second intifada. This policy led, at best, to many years' delay in approving requests, and at worst, to complete denial of the family's right to live together in the area. While this fundamental conception did not change, over the years its application changed.

In the first five years of the occupation (1967-1972), Israel allowed area residents to submit requests for family unification for their first-degree relatives who had become refugees following the war, except for males aged 16-60, who were not permitted to return.¹⁶ In this framework, from 45,000 to 50,000 persons were permitted to return pursuant to the 140,000 or so requests that were submitted.¹⁷

In 1973, new and harsher criteria that remained confidential were established for approval of requests for family unification. Because of the stricter criteria, the number of approvals fell sharply. According to one estimate, the authorities approved only about 1,000 requests per year

¹⁵ HCJ 4494/91, *Sarhan et al. v. Commander of IDF Forces in Judea and Samaria et al.*, Response of the State Attorney's Office of 18 November 1992, Section 7.

¹⁶ For further discussion on this point, see *Families Torn Apart*, 29.

¹⁷ A request for family unification may be submitted for one person or for a number of first-degree relatives.

from 1973 and 1983. In 1979, for example, some 150,000 requests for family unification were pending.¹⁸

At the end of 1983, the authorities reevaluated the policy of family unification in the Occupied Territories. They contended that the reevaluation was required because, "over the years, the type of requests for family unification changed significantly, and deviated from the original objectives of the said policy, dealing instead with families that had been created after the war."¹⁹ The authorities used these terms to describe requests for family unification submitted by residents for their non-resident spouses. In the Arab culture, the woman traditionally moves to her spouse's country, so most of the requests were made on behalf of women.

Following the reevaluation, the authorities adopted a policy whereby family unification requests would be examined according to two criteria: (1) administrative considerations, which generally meant favoring families of collaborators, and, infrequently, wealthy Palestinians who promised to invest in the Occupied Territories, and (2) exceptional humanitarian considerations, though no definition of the term was given.²⁰ Following further restrictions, the number of approvals for family unification fell by one-third. Figures published by various sources indicate that only a few hundred requests were approved annually after 1984.

The family unification procedure was expensive, complicated, and prolonged. The resident had to submit the request on a form that was purchased at the post office, take it to various authorities, such as police, income tax, and town offices, and pay a fee of 358 shekels (in 1995) to the Civil Administration. If Israel approved the request, the resident had to submit a request for a visitor's permit for the spouse or other family

¹⁸ Meron Benvenisti, *Judea and Samaria Lexicon* (Jerusalem: Cana, 1987), 21.

¹⁹ *Sarhan*, Response of the State Attorney's Office, Section 6.

²⁰ HCJ 673/86, *Al-Sa'udi et al. v. Head of the Civil Administration in the Gaza Strip*, *Piskei Din* 41 (3) 138, 140, where the judgment refers to the response of the State Attorney's Office.

member to enable their entry into the Occupied Territories to arrange their status, and pay a fee of 479 shekels upon submitting the request. During the years-long waiting period prior to approval, the spouses and family members needed a visitor's permit to see their spouse or family and live together for short periods. The permits were generally valid for up to three months. However, this track also involved numerous obstacles: many requests were rejected, others received no response, and those that were approved were usually for the summer months for a period not exceeding three months. In certain periods, Israel required the resident Palestinian to deposit monetary guarantees in large sums to ensure that the visitors leave the Occupied Territories when the permit expires. Those who left and wanted to visit again had to wait months abroad until a new request was submitted and approved. As a rule, whoever remained in the area after the visitor's permit expired, and ultimately left, was not allowed to return.

In 1985, matters worsened. The Civil Administration required that the non-resident not live in the Occupied Territories from the time that the request is made until the time that the decision is given.²¹ Following introduction of the new condition, the Civil Administration discontinued the handling of requests that had been submitted for persons (primarily women) who were living in the area at the time. In light of the foot-dragging in processing requests and the impossibility of renewing their visitor's permits, many who were waiting for approval of their requests remained in the area with their spouse and children after their visitor's permits expired. These persons were therefore deemed to be "persons staying illegally" in the area.

In May-December 1989, Israel deported more than 200 women who had stayed after their permits had expired. Their children, who were not allowed to be registered, were deported along with them. Human rights organizations petitioned the High Court of Justice to stop the deportation,

²¹ See HCJ 683/85, *Mishtaheh v. Military Commander in the Gaza Strip*, *Piskei Din* 40 (1) 309, 310.

and in June 1990, Israel made a special arrangement that would allow these women to return, and grant them, and everyone in a similar situation (even if they had not been deported and had left of their own accord), the status of "long-term visitors."²² Their visitor's permits were renewed at six-month intervals. In 1991, Israel again deported women and children who had entered the Occupied Territories on visitor's permits after June 1990 and remained after their permits had expired. The state contended that the arrangement did not apply to them.²³ Following petitions filed by HaMoked in the High Court of Justice, the state agreed to expand the arrangement to apply to spouses (husbands and wives) and children of residents who entered the West Bank or Gaza Strip from the beginning of 1990 to the end of August 1992 (hereafter: the first High Court population).

Testimonies given to HaMoked in late 1992 indicate that Civil Administration officials threatened to deport persons who were not included in the arrangement. In January 1993, HaMoked petitioned the High Court on behalf of the persons who faced deportation. In August 1993, the state informed the High Court that it was expanding the earlier arrangement: it would approve all requests for family unification of spouses and children in the first High Court population, except where there were specific security reasons for denial. The state also indicated that, in light of the peace talks then taking place, a quota of 2,000 requests for family unification would be approved yearly, and that the quota would not be affected by approvals given for the first High Court population.

In February 1994, following HaMoked's demand, the state informed the court of the decision to grant long-term visitor status to foreign residents who were married to residents of the Occupied Territories and had lived

²² The original term was "permanent visitor." Later, it was changed to "long-term visitor." This arrangement initially applied only to women, and only to spouses of residents of the West Bank (and not to spouses of residents of the Gaza Strip).

²³ See B'Tselem, *Renewal of Deportation of Women and Children from the West Bank on Account of "Illegal Residency,"* September-October 1991.

with them, or had received a visitor's permit, between 1 September 1992 and 31 August 1993, and to exempt them from the conditions imposed in 1985, which prohibited the non-resident spouse or child to remain in the area until a decision was reached (hereafter: the second High Court population). According to this decision, the requests would be considered in the quota framework. Although the quota arrangement did not meet the real needs of the population, it was important in that it showed that Israel recognized marriage as legitimate grounds on its own, and not as a "humanitarian" consideration, or some other reason, to warrant the processing of family unification requests.

However, it is one thing to make a commitment to the High Court of Justice and another to implement it. Despite the state's undertaking that persons in one of the High Court populations and classified as long-term visitors would be granted a visitor's permit that is renewable every six months, there were many cases in which Israel issued permits for one month only. Also, from November 1995 to August 1996, Israel did not extend the visitor's permits for the two High Court populations, and suspended the processing of family unification requests of families in the first High Court population.

Furthermore, complaints received by HaMoked indicated that the Civil Administration would not process requests by the High Court populations if the non-resident did not remain outside the area. This requirement rendered meaningless the state's commitment to allow members of the second High Court population to remain as long-term visitors until their family unification requests were approved.²⁴

Following the signing of the Interim Agreement in 1995, the Palestinian Authority was established. In family unification matters, the PA served as a broker between the Palestinians and the Israeli authorities. However, the PA was authorized to set priorities on requests forwarded to Israel for approval, and to reject requests outright. The PA was also empowered to

²⁴ For further details, see *Families Torn Apart*, 69-71, 87-89.

extend for four months the validity of three-month visitor's permits that Israel had issued.²⁵

Already in 1995, the PA demanded that Israel cancel the annual quota, or at least increase it substantially. Israel refused. In protest, in early 1996, the PA refused to forward family unification requests to Israel for approval. It was not until early 1998 that the PA again forwarded requests to Israel, which were based on the quota that had been set in 1993.²⁶

According to press reports, in mid-1998, Israel and the PA had more than 17,500 requests for family unification waiting to be processed.²⁷

In October 1998, in the framework of the Wye Agreement between Israel and the PA, Israel raised the quota to 3,000 a year, not counting the requests submitted by members of the first High Court population. In early 2000, in the framework of peace negotiations between the parties, Israel again raised the quota, to 4,000 a year.²⁸ This policy remained in effect until the outbreak of the second intifada, in September of that year.

Restrictions on child registration

Over the years, Israel has imposed various restrictions on the registration of residents' children in the population registry. From 1967 to 1987, Israel permitted the registration of children under sixteen, provided they were born in the Occupied Territories, or were born abroad and one parent was a resident of the Occupied Territories. At about the time of the outbreak of the first intifada, the military commander issued an order denying the right of children whose mother was not a resident of the area to be

²⁵ Interim Agreement, Annex III, Article 28(12)(13).

²⁶ Regarding the quota policy and its implementation up to 1998, see *Families Torn Apart*, 51-58.

²⁷ Amira Hass, "Families by Quota," *Ha'aretz*, 15 June 1998.

²⁸ M'aruf Zahran, director-general, and Ayman Qandil, head of the statistics department in the Palestinian Authority's Civil Affairs Ministry, provided this information to B'Tselem on 14 August 2005.

registered, even if the child was born in the Occupied Territories. In addition, the order denied the right of children over five years' old born abroad to a mother listed in the population registry to be registered as residents.²⁹ This order created an absurd situation, in which children who were listed in the population registry at the time the order was signed are considered residents, while their brothers and sisters born after that date are deemed to be staying illegally in the area.

Eight years later, in January 1995, an order was issued canceling the restrictions.³⁰ However, the order included a new requirement: to register a child in the population registry, it was not sufficient that at least one parent was a resident of the Occupied Territories. Applicants now had to prove that their permanent residence was in the Occupied Territories. Complaints to HaMoked reveal that Civil Administration officials ignored the new order and refused to register children who did not meet the harsh criteria set forth in the 1987 order. A few months later, the situation changed with the signing of the Interim Agreement. The Interim Agreement authorized the Palestinian Authority to register children under sixteen without Israel's approval, provided that at least one of the parents was listed in the population registry. The PA was also required to inform Israel that the child had been registered.³¹

In addition, the 1995 order raised the relevant age for registration from sixteen to eighteen. This change, too, was not implemented, and requests to register minors aged 16-18 were usually denied. In April 1997, HaMoked petitioned the High Court to enforce the change. In its response, the state contended that child registration had been transferred to the Palestinian Authority pursuant to the Interim Agreement, thus the

²⁹ Order Regarding Identity Cards and Population Registry (Judea and Samaria) (No. 297), 5729 – 1969, Section 11A, as amended by Order No. 1208, of 13 September 1987. A similar order was issued for the Gaza Strip.

³⁰ Order Regarding Identity Cards and Population Registry (Amendment No. 23) (Judea and Samaria) (Order No. 1421), 5755 – 1995.

³¹ Interim Agreement, Annex III, Appendix 1, Article 28(12).

provisions of the 1995 order relating to children aged 16-18 were no longer valid. Although HaMoked's demand was rejected in principle, the state agreed to examine each case on its merits. Following this understanding, the petition was rejected.³²

Israel's refusal to register these children compelled thousands of families to enter the long and exhausting, and at times fruitless, family unification process.

Israeli policy on residency in the Occupied Territories: 1967-2000

Period	Policy			Family unification requests approved
	Family unification	Visitor's permits	Child registration	
1967 – 1972	First-degree relatives who became refugees following the war, except for males aged 16-60, are allowed to return	Issued primarily for the summer months, up to three months. Renewal dependent on three-month waiting period (six months for Gaza) abroad.	Up to age 16 for children regardless of place of birth, provided one of the parents is a resident of the Occupied Territories.	45,000 – 50,000 persons, from a total of 140,000 requests. ³³
1973 – 1982	Strict confidential criteria.	Unchanged.	Unchanged.	About 1,000 requests approved yearly. In early 1980s, 150,000 requests remain unanswered. ³⁴
1983 – August 1992	Requests are based on administrative and humanitarian needs. In 1985, the procedure is changed to require the subject of the family unification to remain abroad until approval of the request.	As previously. Now visitor's permits were renewed at six-month intervals for the first High Court population (1990-31 August 1992). In many cases, permits were issued for only one month. In 1991, relatives of non-members of the High Court population were required to deposit a NIS 5,000 guarantee as a condition for issuing the permit.	In 1987, a military order is issued prohibiting registration of a child whose mother is a non-resident.	A few hundred requests yearly.

³² HCJ 2151/97, *Shaqir et al. v. Commander of IDF Forces in the West Bank et al.* (not reported).

³³ Benvenisti, *Judea and Samaria Lexicon*, 21.

³⁴ *Ibid.*

September 1992 – October 1995	In August 1993, Israel sets a quota of 2,000 requests a year. The requests of members of the first High Court population are not included in the quota. In 1994, the second High Court population alone is exempted from the requirement that the non-resident remain abroad while the request is being processed.	As in previous years. In addition, granting of visitor's permits renewed every six months is approved for the second High Court population (1 September 1992-31 August 1993). In practice, many permits are issued for only one month.	In January 1995, Israel cancels the 1987 military order, but the Civil Administration ignores the change.	No more than 2,000 requests are approved yearly. Precise figures for each year are unavailable.
November 1995 – 1997	Even after the Interim Agreement, Israel continues to have power over requests. From November 1995 to August 1996, Israel freezes the processing of requests by the first High Court population.	Permits are conditioned on prior approval of Israel and are given for three months. The PA has the power to extend permits once for four months. Israel has power to renew permits for the first High Court population. From November 1995 to August 1996, Israel refuses to renew permits of the High Court populations.	PA has power to register children under 16. Children over 16 must be handled through the family unification procedure.	A few requests for the first High Court population are approved, from August 1996 to the end of 1997.
1998 – September 2000	In 1998, the quota rises to 3,000 a year, and in 2000, to 4,000 requests a year.	Unchanged.	Unchanged.	According to PA figures, requests were approved up to the quota in effect, except for the year 2000, in which 3,600 were approved.

Chapter Two

Israeli policy since the outbreak of the second intifada

Freeze on processing family unification requests

With the outbreak of the second intifada, at the end of September 2000, Israel stopped accepting requests for family unification and froze the handling of requests that had been forwarded to it by the Palestinian Authority, aside from exceptional cases. Most requests by HaMoked to the Civil Administration to approve specific family unification requests were rejected outright. Furthermore, in many cases in which the request had been approved prior to the change in policy but the non-resident had not yet entered the Occupied Territories, Israel refused to grant a visitor's permit, thus preventing the family's unification.

In isolated cases, the Israeli authorities agreed to process requests that were classified as "exceptional humanitarian cases." However, Israel has consistently refrained from stating the relevant criteria in determining whether a case comes within this category. The responses to requests submitted by HaMoked regarding requests for family unification since the beginning of the second intifada reflect an extremely arbitrary policy.

In addition to the vague contention regarding the purported connection between the security situation in the Occupied Territories following the outbreak of the second intifada and the freeze policy, Israel contended that, according to the Oslo Agreements, the Palestinian Authority was responsible for processing the requests and transferring them to Israel for approval, which the PA failed to do.³⁵ This is not true. The Palestinian side transferred the requests to Israel for handling, but Israel refused to accept them, claiming that the situation in the area made processing and

³⁵ HCJ 4332/04, *Odeh v. Commander of IDF Forces* (not reported).

approval by Israel impossible.³⁶ Israel also refused to handle requests that had been forwarded to the state before the intifada began.

In general, Israel has refused in specific cases to delineate the threat to security if the request were approved. Almost every case in which Israel agreed to arrange a status in the Occupied Territories followed the intervention of HaMoked or an attorney retained privately by the family. In more than half of the cases HaMoked filed in the High Court, the state agreed to arrange the non-resident's status in the Occupied Territories. Fearing that the High Court would rule on the issue and force the state to change its policy, Israel effectively admitted that its refusal was not based on security reasons.

Another indication of the state's arbitrary behavior, as appears from the state's responses to HaMoked's requests, is the inconsistency in defining "exceptional humanitarian cases." Almost identical requests receive different responses, with no explanation given. For example, compare the following two cases.

K.A., a foreign resident, married a resident of the West Bank in 1987 and has since then entered and left the West Bank on visitor's permits. She is a member of the first High Court population.³⁷ While in the West Bank, she gave birth to four children, all whom were registered in the population registry. Over the years, her husband filed on her behalf requests for family unification, some of which were rejected and others left unanswered. The last request was submitted in April 2000. After HaMoked became involved, the Israeli authorities indicated, in April 2001, that the request would be

³⁶ Letter of 28 June 2001 to HaMoked from Ayman Qandil, head of the statistics department in the Palestinian Authority's Civil Affairs Ministry in Ramallah.

³⁷ As noted above, the first High Court population includes persons who entered the Occupied Territories from the beginning of 1990 to the end of August 1992. The second High Court population relates to persons who entered the Occupied Territories or received a visitor's permit from 1 September 1992 to 31 August 1993.

dealt with as an exceptional case.³⁸ In July 2001, the request was approved and K.A. was issued an identity card.

N.J. was born in Jordan and married a resident of the West Bank in 1983. In 1987, she entered the West Bank on a visitor's permit, and has gone abroad only once since then, in 1994. She and her husband had four children. Like K.A., she is a member of the first High Court population. Before the first intifada, a number of requests for family unification were submitted on her behalf. All were rejected, the last in 1997. After HaMoked repeatedly sought information on the last request, the Civil Administration replied, in June 2004, that it was being considered but, "in light of the political-security situation, the Israeli side is not currently handling requests for family unification in the region. Therefore, we are unable to respond favorably to the request in this matter."³⁹

Similar cases, different results.

In addition to the lack of consistency and the failure to explain the reasons for rejection, Israel consistently drags its feet in the handling of family unification requests that come within the "exceptional humanitarian" category. In most of these cases, HaMoked has to turn to the Israeli authorities many times just to obtain acknowledgment that the request has been received and is being processed. At times, HaMoked is compelled to petition the High Court to get the authorities to handle the matter at all.

In preparing this report, we examined dozens of requests involving residency in the West Bank that were handled by HaMoked since the outbreak of the second intifada. The examination showed that it took six months to receive a reply to the first correspondence. Generally, the first response was standard and confirmed receipt of the request. The wait for a substantive response in almost all cases took more than a year and sometimes a number of years. With the passage of time, more and more

³⁸ Letter of 24 April 2001 to HaMoked from Lt. Asaf Yakobovich, on behalf of the legal advisor for the West Bank.

³⁹ Letter of 6 June 2004 to HaMoked from Captain Amit Zukman, consultant officer, Interior Department, on behalf of the legal advisor for the West Bank.

people who turned sixteen in the meantime lost the opportunity to be registered in the population registry by the normal procedure, and had to turn to the frozen family unification procedure.

The number of family unification requests that have accumulated in the offices of the Israeli and Palestinian Authority authorities since the beginning of the freeze policy is not known, but estimates have been made. Despite Israel's policy, the Palestinian Authority continues to accept requests from Palestinians, in accordance with the provisions of the Interim Agreement. According to the estimate of the PA's Ministry for Civil Affairs, since the outbreak of the second intifada, it received more than 120,000 requests for family unification.⁴⁰ There are also a few tens of thousands of requests that were waiting to be processed when the freeze policy took effect.

According to a survey commissioned by B'Tselem that was conducted by the Palestinian Center for Policy and Survey Research in October 2005 among Palestinian residents of the Occupied Territories, 17.2 percent of the respondents have at least one first-degree relative (father, mother, brother, sister, wife, or child) who is not registered in the population registry and therefore is prevented from obtaining an identity card. Among the participants in the survey, 78.4 percent stated that the family unification request filed on behalf of those persons had not yet been processed.⁴¹ These figures show that more than 72,000 nuclear families in which at least one family member had a family unification request filed on his or her behalf are directly affected by Israel's freeze policy.⁴²

⁴⁰ See footnote 28.

⁴¹ The survey included a representative sample of 1,300 persons over age eighteen. The Palestinian Center for Policy and Survey Research, which has its offices in Ramallah, specializes in conducting surveys and research involving the Palestinian population in the Occupied Territories. See its Website, www.pcpsr.org.

⁴² The calculation is based on the size of the Palestinian population in 2005 as determined by the Palestinian Bureau of Statistics, which totaled 3,762,500 people, and an average of seven persons in a family. See www.pcbs.gov.ps.

Population affected by the prohibition on family unification

(by percentage)

	West Bank	Gaza Strip	Entire Population
Nuclear families in which at least one member is not listed in the population registry and is prevented from obtaining an identity card	17.6	16.4	17.2
Of the above families, the families that submitted a family unification request for the non-resident family member	79.6	76	78.4

If Israel would begin again to handle family unification requests and apply the quota set in 2000 (4,000 a year), it would take at least thirty years to process the more than 120,000 requests that have accumulated.

The freeze on granting visitor's permits

Not only did Israel freeze the processing of family unification requests, it has stopped issuing visitor's permits almost completely since the beginning of the second intifada. This measure has blocked the only way open to a family with a non-resident spouse to live together in the Occupied Territories even for short periods, until its family unification request is processed.

Residents from abroad who were in the Occupied Territories when the freeze was instituted faced a cruel choice: either remain in the Occupied Territories after the permit expires, separated from their family abroad and subject to deportation by Israel for staying illegally in the Occupied Territories, or leave the area and spouse, and sometimes also the children, for an indefinite period of time.

Given that every family unification request may include a spouse and minor children, the above computation provides a minimum figure because it assumes that the family unification request was submitted for only one family member.

Often, the spouses were unable to live together abroad. The Kingdom of Jordan, which is the homeland of most of the foreigners married to residents of the Occupied Territories, does not grant residency to Palestinian residents of the Occupied Territories, and causes difficulties for Palestinians living within its borders. Residents of the Occupied Territories who enter Jordan generally receive a visa for only two weeks, which may be renewed for an additional two-week period.⁴³

The new Israeli policy on freezing visitor's permits also applies to members of the High Court populations who were not in the Occupied Territories when the populations came into effect. So long as the members of the High Court populations remain in the Occupied Territories, Israel continues to extend their visitor's permits. However, if they go abroad for any reason, Israel does not allow them to return, in flagrant violation of the long-term-visitor arrangement, which calls for renewal of the permit every six months. Many wives who were abroad (mostly in Jordan) on family visits at the time the policy was instituted became detached from their spouses, and at times from their children, who remained in the area. Israel refuses to issue visitor's permits to members of the High Court populations, just as it refuses to issue visitor's permits for the general Palestinian population whose requests for family unification were approved prior to the second intifada, but were not implemented because they were abroad.

Over the past five years, HaMoked has represented dozens of persons belonging to the High Court populations who had gone abroad and were not allowed to return to their homes and families in the area. HaMoked's requests that these cases be deemed "exceptional humanitarian cases" have usually been rejected. In a few cases, and after a petition to the High Court, the authorities granted the request. Notice of the approval was always phrased the same way: "Although not required by law and in

⁴³ The extensions are usually given only in cases involving a stay for prolonged medical care, and are deemed exceptional cases. The information was provided to B'Tselem by Iyad Haddad, of the Palestinian Authority's Interior Ministry, on 6 December 2005.

light of the specific humanitarian circumstances," a visitor's permit will be granted.

An illustrative case involves R.A., who was born in Jordan and, in 1990, married a resident of the Occupied Territories. At the time, Israel recognized R.A. as a member of the first High Court population and granted her a visitor's permit, which was renewed every six months. With the passage of time, the couple had three children, who were registered in the population registry in the Occupied Territories. In January 2001, R.A. took the children to Jordan for a family visit and has not been permitted to return to her home in the area. Her children, as residents of the Occupied Territories, are entitled to return. At the same time, Israel did not let her husband go to Jordan via Allenby Bridge, contending he was a security risk. HaMoked's appeals to the Israeli authorities remained unanswered. In July 2002, after the family had been separated for about a year and a half, HaMoked sent a pre-petition to the High Court of Justice Petitions Department, in the State Attorney's Office, demanding that R.A. be allowed to enter the Occupied Territories on a visitor's permit or, in the alternative, allow her husband to go to Jordan. In August 2002, the legal advisor for the West Bank informed HaMoked that, "for security reasons," it was decided to reject the two proposed options.⁴⁴ HaMoked petitioned the High Court in November 2002.⁴⁵ Two months later, the state announced that, "it was decided to permit, although not required by law, and in light of the exceptional specific humanitarian circumstances," R.A. to return to the West Bank.⁴⁶

As with requests for family unification, in the case of requests for visitor's permits, Israel has not clearly indicated the criteria for "exceptional humanitarian" requests. Study of the variety of cases handled by

⁴⁴ Letter of 11 August 2002 from Captain Sam Hier, on behalf of the legal advisor for the West Bank.

⁴⁵ HCJ 9926/02, *Al-'Adem v. Commander of IDF Forces in the West Bank*.

⁴⁶ Letter of 26 January 2003 from the High Court of Justice Petitions Department to Attorney Yossi Wolfson, of HaMoked.

HaMoked over the past five years shows that the fixed “criterion” is not related to the specific details of the individual case, but to whether a High Court petition is pending.

At a meeting held on 20 December 2005, the coordinator of government operations in the Territories, Major-General Yusef Mishlav, informed HaMoked that “the freeze on issuing visitor’s permits... *had been removed*, and a number of categories for granting visitor’s permits were set, including persons invited by Abu Mazen, *humanitarian cases, entry of foreign spouses, and investors.*”⁴⁷ This has not been the practice, however. Apparently, the “compromise” does not cover more than a few hundred visitor’s permits, among them permits intended to enable the registration of children who were born abroad and one of their parents is a resident of the Occupied Territories, and, in the case mentioned by Major-General Mishlav, to members of an orchestra that wanted to perform in the West Bank.

A new criterion – “center of life”

Despite the sweeping freeze on the processing of requests for family unification and visitor’s permits, Israel has continued, even after the outbreak of the second intifada, to process the requests of family members of residents to recognize them as belonging to one of the High Court populations. As noted, persons in these groups are given long-term-visitor status, i.e., a visitor’s permit that is renewed every six months. Renewal of these permits (new permits were not granted to non-residents who had left for abroad) also continued during the intifada.

However, to reduce the number of persons entitled to this status, in 2004, Israel added a new criterion for being declared a member of the High Court populations: the applicants had to prove that during the period

⁴⁷ Summary of the meeting held on 20 December 2005 between the coordinator of government operations in the Territories and the executive director of HaMoked, letter of 27 December 2005 to HaMoked from Lt. Col. Orly Malka-Rotem. The emphasis is in the original.

determining membership in the High Court populations (from the beginning of 1990 to August 1993), their center of life was in the Occupied Territories. Israel instituted the change unilaterally and in violation of the arrangement the parties had made and which had been approved by the High Court. The condition is especially ironic because Israel's policy prior to the High Court agreements was intended to prevent the applicants' establishing a center of life in the Occupied Territories, and the High Court agreements came to provide a solution for persons harmed by that policy.

In certain cases, Israel applied the new condition retroactively and revoked the long-term-visitor status of persons in the two High Court populations. S.Z., for example, who married a resident of the Occupied Territories in 1976, was living in the area at the determining time, and in January 2000, Israel recognized him as belonging to the first High Court population. A month later, a family unification request was submitted on his behalf. Some four years later, in response to a letter sent by HaMoked regarding the request, the legal advisor for the West Bank replied that, "there was an error, and by mistake membership in the first High Court population was confirmed," inasmuch as those persons did not remain in the area in a continuous and prolonged manner during the determining period.⁴⁸ For this reason, S.Z. was denied his entitlement to a renewable six-month visitor's permit.

Although Israel turned the center-of-life criterion into a decisive factor in determining membership in the High Court populations, it did not clearly state how a person meets the test. In its responses to HaMoked regarding center of life, the Civil Administration joins the words "during the determining period," ostensibly indicating that a person who could prove a continuous stay in the Occupied Territories during the relevant period for one of the High Court populations would meet this test.

⁴⁸ Letter of 17 January 2005 from Gilad Naveh, consultation officer, on behalf of the legal advisor for the West Bank, to Attorney Yossi Wolfson, of HaMoked.

However, a recent letter that HaMoked received from the Civil Administration regarding a group of persons that had submitted requests to be recognized as members of the High Court populations indicates that the requirements for the "center of life during the determining period" test are more difficult: it is not sufficient to prove that the non-resident was staying in the Occupied Territories during the determining period, but that the stay in the Occupied Territories was continuous, both before and after the determining period. The reason for rejecting the requests referred to in the Civil Administration's letter involved an examination that had been made:

In the said examination, we checked the period that the aforementioned persons' stay was continuous and prolonged together with their spouses in the area, from the beginning of the 1970s to the present time. The results of the check clearly show that these persons had transferred their center of life to outside of Israel prior to the onset of the said arrangement.⁴⁹

Not only does this far-reaching interpretation of "center of life" not appear in the arrangements agreed on in the High Court, it places a clearly unreasonable requirement that is intended to keep people from being deemed members of the High Court populations. As we see from the preceding chapter, over the years, Israel has intentionally and systematically made it hard for the non-resident family members to remain in the area for extended, continuous periods. For example, Israel prevented for a long period of time (until the signing of the Interim Agreement) the registration of the children of these families, and conditioned the issuance of visitor's permits on a long period of stay abroad after visiting in the area. Israel even implemented an official policy in which family unification requests would not be processed so long as the non-resident was staying in the Occupied Territories.⁵⁰ In other words, Israel conditioned the processing of family unification requests on proof that the center of life was outside the Occupied Territories.

⁴⁹ Letter of 2 March 2006 from the office of the legal advisor for the West Bank.

⁵⁰ See footnote 21 and its accompanying text.

Furthermore, application of the center-of-life test since the outbreak of the second intifada is especially ironic, given that many persons who meet the original criteria for membership in the High Court populations, and who were living abroad when the intifada erupted, are not given visitor's permits to enable them to return to their homes in the Occupied Territories. Thus, we have a situation in which Israel does not permit a substantial segment of the High Court populations to return to the area, while at the same time it claims that they moved their center of life abroad, and are therefore not entitled to live in the area.

The intolerable ease with which Israel changes and adds to its requirements sends a clear message that it shuns no means or contention, however absurd, to reduce as much as possible the number of persons entitled to enter the area to live together with their spouses and children.

Preventing deportees from returning

One of the consequences of the policy not to issue visitor's permits is prevention of entry of Palestinians whom Israel had deported from the Occupied Territories (in the years immediately following the beginning of the occupation), whose deportation order had expired in recent years. The residency of these Palestinians was not revoked, but given that their identity cards had been taken from them when they were deported and that they did not obtain approval to leave the Occupied Territories, they needed a visitor's permit to enter the area and obtain a new ID card.

In August 2001, in response to a request submitted by HaMoked on behalf of a group of deportees whose return had been permitted, the legal advisor for the West Bank stated that, "we sat down with and instructed the relevant officials at the Civil Administration to allow the return of the deportees mentioned in your request, by issuing them visitor's permits."⁵¹ Despite this announcement, the Civil Administration continued to deny many applications for visitor's permits, and the deportees needed to seek

⁵¹ Letter of 6 August 2001 to HaMoked from the office of the legal advisor for the West Bank.

HaMoked's assistance or retain attorneys in private practice to enable them to return.

An example is the case of N.K., 55, who was born in the West Bank and in 1970 was deported to Jordan. In March 2001, following HaMoked's request, the army cancelled the deportation order against him, and he was allowed to return.⁵² About six months later, the military commander in the West Bank informed HaMoked that he had instructed the DCO in Hebron (the area in which N.K.'s family lives) to issue a visitor's permit.⁵³ Despite this, in February 2002, the Israeli DCO informed its Palestinian counterpart that the request for a visitor's permit had been rejected, without explanation. On 22 February 2004, HaMoked again wrote to the legal advisor and requested that N.K. be permitted to enter the area. HaMoked did not receive a response to its request. It also did not receive a response to the reminder letter it sent in September 2004. In November 2004, the organization petitioned the High Court of Justice. The petition is pending.⁵⁴

Given that during their years of exile many deportees married foreigners and established families, upon obtaining approval to return they have to submit a family unification request for their spouse and children. However, the freeze policy makes this impossible. K.K., for example, now 60, was detained in 1968, held for a year and a half in administrative detention, and was deported to Jordan. In April 2001, following HaMoked's request, the legal advisor for the West Bank stated that the deportation order against him had been cancelled.⁵⁵ The Civil Administration issued K.K. a visitor's permit and he returned to the Occupied Territories and received a

⁵² Letter of 29 March 2001 to HaMoked from the office of the legal advisor for the West Bank.

⁵³ Letter of 17 October 2001 to HaMoked from the commander of IDF Forces in the West Bank.

⁵⁴ HCJ 10849/04, *Khilawi v. Commander of Military Forces in the West Bank*.

⁵⁵ Letter of 30 April 2001 to HaMoked from Captain Asaf Yakobovich, on behalf of the legal advisor for the West Bank.

Palestinian identity card. He then submitted a family unification request for his wife and children, but because of the freeze, the authorities refused to process the request. K.K. had no choice but to return to Jordan.

Prohibition on child registration

The Interim Agreement transferred to the Palestinian Authority the sole power to register children under age sixteen in the population registry, even children who were born abroad, provided that one of the parents was a resident of the Occupied Territories. Thus, the Palestinian Authority did not need to obtain Israel's prior approval, but only had to inform Israel afterwards. In practice, Israel set a condition: the child had to be physically present in the Occupied Territories. This condition flagrantly violated the arrangement set forth in the Interim Agreement.⁵⁶

Israel honored this arrangement until December 2002, when it stopped recognizing the registration of children from five to sixteen who were born abroad to residents of the Occupied Territories. This new policy applied to children in this category even if they were in the area at the time of registration. In November 2003, Israel ostensibly diminished the severity of its harsh requirement set a year earlier and announced that it would recognize the registration of children in this age group who were born abroad, provided that they were physically present in the Occupied Territories at the time of registration. However, the entry of children over age five, for whatever purpose, including registration in the population registry, and also when accompanied by a resident parent, depended on obtaining a visitor's permit issued by Israel. The freeze on issuing visitor's permits made this impossible, so the children were unable to exercise their entitlement to be registered in the population registry.

Since the second intifada began, many Palestinian children have turned sixteen while abroad. The legal advisor for the West Bank informed HaMoked that they were no longer entitled to be registered in the population registry through the normal procedure and to obtain a

⁵⁶ Interim Agreement, Annex III, Appendix 1, Article 28(12).

Palestinian identity card.⁵⁷ To enable them to reside lawfully with their family in the Occupied Territories, the parents must file a family unification request. As stated, this route has been blocked since September 2000.

Many families who were abroad when the freeze policy went into effect and had children over five years old who were not yet registered in the population registry were unable to return with the child and had to separate. An illustrative case involved the family of S.B. Her parents were born in the Daheishe refugee camp, in Bethlehem. After they married, the couple went to live in Saudi Arabia, where they had seven children, all of whom were registered in the Palestinian population registry during their visits in the Occupied Territories. In 1998, the family moved to Jordan, where S.B. was born. In July 2004, the family decided to return to the Occupied Territories. When they reached Allenby Bridge, which leads into the West Bank, they were informed that Israel would not let S.B. enter because she was six years old and was not registered as a resident. S.B. had to remain with distant relatives in Jordan. In October 2004, HaMoked wrote to the Civil Administration's legal advisor, requesting that S.B. be registered in the population registry without her being physically present.⁵⁸ About seven months later, the legal advisor responded to HaMoked that, "after reviewing the facts, we inform you that the couple's request is approved and a visitor's permit will be issued for their daughter to enable her to enter the area and be registered in the population registry."⁵⁹

⁵⁷ Letter of 29 January 2006 from the office of the legal advisor for the West Bank. The case involved a youth who turned sixteen during the freeze. Following the refusal to register him, petition was filed on 14 March 2006 to the High Court of Justice (HCJ 2324/06, *Qanam v. Commander of Military Forces in the West Bank*).

⁵⁸ Letter of 17 October 2004 from Attorney Gil Gan-Mor, of HaMoked, to Lt. Col. Yair Lotstein, legal advisor for the West Bank.

⁵⁹ Letter of 5 April 2005 to Attorney Gan-Mor from Sandra Ofinko, head of the Population Registry Department, on behalf of the legal advisor for the West Bank.

Over the past few years, HaMoked has written often to the Israeli authorities regarding residents who are unable to register their foreign-born children. Most of the requests were not answered. HaMoked then petitioned the High Court to require the state to issue the petitioners' children visitor's permits immediately so that they can become registered, and to register children who, because of the freeze, had turned sixteen and were no longer entitled to be registered, even if permitted to enter the area. In almost all these cases, Israel agreed to issue visitor's permits for the petitioners' children and allowed the children who had turned sixteen to enter the area and be registered, provided that the request was made before they had turned sixteen. However, the state rejected HaMoked's demand that an arrangement be made to enable all children in these situations to be registered.⁶⁰

In mid-August 2005, in a response filed in the aforementioned case, the state announced that, "recently decisions had been made to ease somewhat matters involving the population registry... including the issuing of visitor's permits in the area..."⁶¹ In early September 2005, the State Attorney's Office informed HaMoked that, "it was decided to again approve requests for visitor's permits for minors who had not yet turned sixteen."⁶² Despite the subsequent improvement, many residents whose children had turned sixteen encountered difficulties in obtaining visitor's permits, even if they made requests to register them before they turned sixteen. The difficulties were much greater in cases where such a request had not been made.

Israel's refusal to register minors over age sixteen also affects minors who were born in the Occupied Territories to two parents who are residents

⁶⁰ In light of the state's refusal, HaMoked did not withdraw its petition, which is still pending. See HCJ 7425/05, *Shweiki et al. Commander of Military Forces in the West Bank*.

⁶¹ *Shweiki*, Supplemental Response on Behalf of the State, 15 August 2005.

⁶² Letter of 6 September 2005 from the office of the legal advisor for the West Bank.

and have never left the area, but for some reason were not registered in the population registry. During the course of 2000, the Palestinian Authority and Israel sought to resolve this problem by instituting a "late-registration procedure." However, with the outbreak of the intifada, Israel put its handling of the problem on hold. Persons who were in this situation had to use the family unification procedure to become registered in the population registry. As far as Israel is concerned, these persons are staying illegally in the Occupied Territories, even though some of them have no other home and no status anywhere else. They do not have an identity card, so any time they encounter Israeli soldiers or police, they are subject to arrest. But, as noted above, they have no status in any other country, so Israel is unable to deport them.

Chapter Three

The freeze policy and its effects on Palestinian families

Israel's freeze has forced a new reality on tens of thousands of Palestinian families. For the first time since the occupation began, Israel completely prohibited – for many years – persons from abroad from visiting their families in the Occupied Territories, and blocked couples and children of Palestinian residents from entering the Occupied Territories and arranging their status and living together.

One of the harsh consequences of this policy is the forced break-up of the family unit: division of the nuclear family in which one of the spouses is not a resident of the Occupied Territories, and/or separation of the nuclear family in the Occupied Territories from first-degree relatives living abroad, especially parents and siblings of the spouse. Foreign spouses who lived in the area before the family unification request submitted on their behalf was approved, and who were staying abroad when Israel implemented the freeze policy, have been "stuck" outside the area since then, far from their homes and families. Israel's refusal to issue visitor's permits prevents many of them who are living in the Occupied Territories from visiting their families abroad, out of fear that they will not be allowed to return to their children and spouse.

Israel's policy since 2000 has forced thousands of spouses of residents of the Occupied Territories to become "persons staying illegally" in their homes. They cannot renew their visitor's permits or arrange their status by means of the family unification procedure. As "persons staying illegally" in the area, they cannot live normal lives, but live like prisoners in their homes and villages, a constant threat of expulsion hanging over their heads.

The freeze policy affects all areas of life, from harsh effects on the social, economic, and health situation of individuals, to the serious and at times irreversible impairment of the mental health of children and parents.

In some cases, the policy destroys the family unit. In some families torn apart against their will, the couple divorce. There are families in which the husband took a second wife to assist him in caring for the children who remained with the father in the Occupied Territories.⁶³ Where the families do not fall apart, they turn into single-parent families, at a heavy financial cost resulting from the necessity of running two households, one in the Occupied Territories and the other abroad. In addition to the household costs, the couples also have the expenses entailed in the periodic travel by the residents of the Occupied Territories to visit their families "stuck" abroad, in addition to the telephone expenses, which usually amount to hundreds and even thousands of shekels.

The freeze policy has forced many families into poverty, and in some cases the husband loses his source of income, which leads to further deterioration of an already bad situation.

Because Israel refuses to issue visitor's permits, foreign spouses living in the Occupied Territories refrain from obtaining necessary medical treatment abroad, even at the cost of suffering irreversible harm, out of fear that they will not be allowed to return to their families in the area. Those whose medical condition required that they go abroad for treatment are unable to return to the Occupied Territories.

The children in particular suffer emotionally when the family is divided. They need a supportive and stable environment to develop properly. Undermining the family unit and separating a child from one parent causes, among other things, anxiety, loss of concentration, insomnia, and bedwetting.⁶⁴ Research studies show that the magnitude of changes in a

⁶³ Bigamy is permissible according to Islam and is not a criminal offense in the Occupied Territories.

⁶⁴ The information given below is based on the psychological literature. See Y. Elon, *A Delicate Balance – Coping with Family Stress* (Sifriyat Poalim, 1983), 142-195; S. Smilanski, *Psychology and Education of Children of Divorced Parents* (Masada Publishing, 1990); K.L. Alexander, D.R. Entwisle, C.S. Horsey, "From First Grade Forward: Early Foundations of High School Dropout," *Sociology of*

child's life that accompany a division of the family is of course a principal variable in causing mental-health problems and in their severity. The smaller the change (for example, the child continues to live in his or her house, continues to go to the same school, and the family's income does not change), the lesser the likelihood of harm to the child. In some families forced to separate as a result of Israel's freeze policy, the changes experienced by the children are immense. An appreciable number of these children, who are no longer able to return to their homes in the area, are completely separated from their natural surroundings.

Dozens of files in which HaMoked was involved and the many testimonies given to B'Tselem illustrate the harsh effects of Israel's policy on the mental, social, and economic condition of divided Palestinian families. Sample cases follow.

The Abu J'afer family, Nablus

In 1996, 'Abd a-Nasser Abu J'afer, who was eighteen years old at the time, went to visit his family in Jordan, where he proposed to Arij, his cousin. When she finished her university studies, Arij and her family obtained visitor's permits and went to Nablus, where the two married. In his testimony to B'Tselem, 'Abd a-Nasser relates how, as a result of the freeze, he was not permitted to live with his wife and children, and how the policy affected the family's life.

I am twenty-six years old, live in Nablus, am married and have two children who now live in Jordan. On 11 August 2000, I married my cousin 'Arij in Nablus. In advance of the wedding, she obtained a visitor's permit for three months, and when it expired, she renewed it for four more months. When it once again expired, Arij traveled to Jordan... On 30 March 2001, I submitted a request for family unification on her behalf. Whenever I went to the Interior Ministry to check the status of the request, they told me that there

Education, 70: 87-107 (1997); R. D. Barr, W.H. Parrett, *Hope at Last for At-Risk Youth* (Boston: Allyn and Bacon, 1995).

wasn't anything new, and that the Israelis weren't approving requests. I did not think that it would be dragged out for a long time.

A few months before we married, I bought a house in Nablus for my wife and me. I furnished it nicely. Before she traveled to Jordan, I would finish work early and return home to be with her. After she went to Jordan, and they [the Israelis] stopped handling requests for family unification and visitor's permits, I felt that I couldn't live in our house. In the past year and a half, I did not enter the house even once. I went to live with my mother and my three brothers.

I went to Jordan as often as I could. In the first year after Arij went to Jordan, I went there once a month. After that, when the army's actions in Nablus continued, I went every two and a half months, each time for a few days. Each visit costs more than a thousand dinars, because of the travel expense and presents for my wife and her parents. I also spend a lot on telephone calls. One of my telephone bills was for 1,400 shekels.

On 25 December 2002, our first son, Jamal, was born. Our second son, Ihab, was born on 24 April 2004. They were both born in Jordan. Since then, the situation has gotten much worse. I worry about my wife and children and long for them.

When I got married, I was in very good financial shape. I have a men's clothes shop and earned a good living. But my situation is getting worse day by day. I no longer have a desire to work and am unable to concentrate at work. I was once a great salesman, with my own special style. Now I don't have the patience to deal with customers. Whenever my wife calls, she is sad because of the situation, and she asks me to go to her. I don't have enough money to make the trip. Two years ago, I tried to move to Jordan. Arij was pressuring me and I didn't have another solution. My mother begged me not to go. She said that she doesn't want to die when I am far away. She is seventy years old and ill. I was torn between my wife's pleas, the longing for my children, and the insistent pleading of my mother. I convinced my mother that I was leaving for a short time, until the intifada ends. I went to Jordan, rented a shop and lived with my wife's family. I planned to live there until I made a steady living. But the clothes shop that I opened did not succeed, and I had trouble acclimating. I really missed my mother, family, friends, and my city. I returned to Nablus.

I feel so sad when I speak with Jamal and he asks, "Daddy, when will you come?" I was sad and cried when my wife told me about the time that the children were playing with her brother's children, and when their father came, the children ran to him, and Jamal told her, "My daddy will come tomorrow." The saddest thing that comes to mind is that a few days after Ihab was born I returned to Nablus. Two months later, I again went to Jordan, and when I got to Arij's parents' house, and approached Ihab, I saw that he had changed, that he had grown and had clear, small, and beautiful facial features. My mother-in-law told me jokingly, "He is not your son." I flinched and was shocked. She immediately said that he was my son and that she had been joking. I rushed over to my son, hugged him, and cried. How can a father not recognize his son? Some time passed before I stopped crying.

I have not gone to Jordan for three months now because I don't have the money to pay for the trip. I cut back on telephone calls. We speak every four or five days. I don't know what to do. I never threw a stone or took part in a demonstration. A month ago, a few army jeeps entered the city, and for the first time in my life, I picked up a stone and threw it at the jeeps. I even stood there facing a jeep, hoping the soldiers would fire at me and kill me, but that isn't what happened. I started to smoke a lot. I smoke more than fifty cigarettes a day. When I see my friends with their wives and children, I am frustrated that I don't live as they do. How long do I have to wait?⁶⁵

The 'Amleh family, Beit Ula, Hebron District

In 1995, Amal 'Amleh and her parents came from Jordan for a family visit in Beit Ula. She had married her cousin, Muhammad 'Amleh, 43, earlier that year in Beit Ula. Until the freeze took effect, Amal used to visit her parents and return to the West Bank with a visitor's permit. With the outbreak of the second intifada and the start of the freeze policy, she was afraid to go to Jordan out of fear that she would not be permitted to return to her husband and children. Following a long period of separation from her family in Jordan, Amal went to visit her parents, but since then has been unable to return to the West Bank to her husband and

⁶⁵ The testimony was given to Salma Dab'i at the witness's house on 8 February 2005.

children. In his testimony to B'Tselem, Muhammad 'Amleh described his life and his children's lives without his wife.

I am a teacher in one of the schools in Beit Ula... In August 1998, I applied for family unification on behalf of Amal, but the request was denied. I have not submitted another request, and after the intifada began, it was worthless to try because the Israelis froze the handling of requests.

We lived in our home in Beit Ula until 2002. In the meantime, we had four children, the eldest being Hiba, who is eight years old. On 29 May 2002, my wife went to Jordan. She knew that she couldn't return, but she missed her family and wanted to see her father, who had fallen and fractured his spine. Since then, she has remained in Jordan. She is in a very bad emotional state because she is far from the children and me. She constantly asks me when she can return. I am still waiting, but the Israelis have stopped granting visitor's permits and family unification. The children ask when their mother will return, and I calm them and say that the day shall come when they'll see their mother again. Amal left when our baby daughter was ten months old.

I have trouble managing with work and taking care of the small children. I make about 1,800 shekels a month, which is barely enough for me... I constantly hear the children crying and mentioning their mother. I send a hundred dinars (about 600 shekels) a month to my wife, and our telephone calls cost me about 100 shekels a month. I also take care of my parents, who live with me. It is because of my poor financial condition that I have not visited Amal since she left.

I don't understand my children, my wife, and me are being denied the right to live in the same place, like everybody else in the world. Relatives and friends suggested that I take a second wife, so that she could take care of the children and my parents. I don't want to harm my wife, and, in addition, I can't take a second wife due to my poor financial condition. It would cause me unnecessary expenses, not to mention the social and emotional problems that a second wife would cause for me, the children, and my wife.

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⁶⁶ The testimony was given to Musa Abu Hashhash in Hebron on 13 February 2005.

The "R" family, Jenin

In 1997, F.R., 38, who was born in Jordan, married a relative who lived in the Occupied Territories. F.R. obtained a visitor's permit and entered the area with his wife, found work, and settled in Jenin. Before the intifada began, he used to visit his parents in Jordan and return to Jenin with his visitor's permit. After the intifada began, F.R. decided to remain in the Occupied Territories out of fear that, if he left, he would not be allowed to return. In doing so, he was forced into becoming a "person staying illegally" in the area. For more than five and a half years, he has not seen his father. In his testimony to B'Tselem, F.R. describes his severe mental suffering resulting from being separated from his family.

I am from the town of a-Zarqaa, in Jordan. I have a Jordanian identity card and passport. In 1996, I received a visitor's permit and entered the West Bank so that I could sign a marriage contract with my cousin on my mother's side, who lives in Jenin. In 1997, she came to Jordan and we married there. The same year, I returned with her, on a visitor's permit, to the West Bank. I began to work at a gas station in Israel. Until 2000, I went and visited my father a few times, and each time I entered with my visitor's permit. In July 1997, I submitted a request for family unification. Since then, I have made sure not to leave the West Bank more than I was allowed to according to the permit, so that the Israeli authorities would not make it hard for me to get their approval for family unification. In February 2000, I entered the West Bank with another visitor's permit, and when the intifada began, I decided to remain, even though my visitor's permit had expired. I had two infant children and was afraid that I would not be allowed to return and see them.

I was afraid during the intifada, mostly when the Israeli army invaded Jenin. I began to take tranquilizers to calm me. In recent years, I underwent a few difficult situations. The army entered our house more than four times. Each time, they detained me for a few hours... I was lucky that they released me each time.

In recent years, things happened with my family in Jordan which made it hard for me not to be with them. A few of my brothers married, and my father's medical condition deteriorated over the past few months. When I hear that something happened to him, I become tense. I am in close contact

with my father and am afraid that something bad will happen to him when I am not by his side.

I constantly monitor my request for family unification at the Ministry for Civil Affairs... More than once I considered going to Jordan and giving up my job and house here. I felt this way primarily when my father's medical condition was poor... My wife and I fear that if I leave for Jordan, the Israelis will not let me come back. I am waiting for this matter to end, so that I can live like everybody else.⁶⁷

The Yihya family, al-Bira, Ramallah District

In September 1997, Hassan Yihya, 39, married his cousin, 'Abir Abu Nasrah, a Jordanian resident. 'Abir and her parents entered the West Bank on visitor's permits and the couple set up a household in al-Bira. 'Abir's visitor's permit was not renewed, so that, according to Israel, she was staying in the area illegally. With the outbreak of the second intifada, family unification was no longer possible. Hassan described to B'Tselem his family life in the shadow of 'Abir's remaining in the area without a permit, and how the pressure became so great that she went back to Jordan, leaving her children behind.

Three months after we got married, 'Abir's visitor's permit expired. I did not renew the permit, and she became a "person staying illegally" in the area... I made sure that she didn't leave Ramallah so that the soldiers would not arrest her and deport her. I preferred that she stay inside the city because if they deported her, she wouldn't be able to return. She couldn't visit her parents in Jordan, and they kept in touch only by telephone. When she spoke with them, I felt how much she suffered from not being able to see them. She was worried and sad all the time...

When the second intifada began, the Israelis froze the handling of requests for family unification. We lived our lives in the normal manner, for better or worse, like everyone else. But recently the situation became intolerable.

'Abir was in a terrible emotional state. I would come home from work at the

⁶⁷ The testimony was given to 'Atef Abu a-Rob on 10 July 2005. The name and particulars of the witness are on file at B'Tselem.

vegetable market and see her crying or brooding. She yearned to be with her parents and was tense all the time. About three months ago, I came home and she told me that she had packed her clothes and that if I wanted to go to Amman with her, I could come. About a month later, she went to Amman. She left on 6 June 2005, without notice. I was really angry. I realized that she was hurt and things were bad for her, but what did the children do [to deserve this]? They remained with me. The smallest child is eighteen months old, still an infant. I spoke with my wife by phone and told her that I was angry over what she had done. She said that she wanted to see her parents and go to the wedding of her brother, who was the only boy among ten children. She cried and felt bad that she left the children. She said she was very sorry and that it was clear to her that she had almost no chance to return to the West Bank.

Now I live alone with the children. I had to take the children to my mother to live, even though she is sixty years old and has arthritis in her legs. I went to live with my parents to be with the children. My life changed completely. I am frustrated and depressed. When I look at the children, I feel sad, especially when one of the children wakes up at night and asks for his mother.

Also, I don't have a wife to share my problems with, or who can help me. When I talk with 'Abir by telephone, she begins to cry... Her sister told me that she holes up in the house and cries when she sees small children. I don't have the words to describe how bad the situation is. I also worry about my mother's condition, and what would happen if she were unable to continue to take care of the children. What would I do in that case? Stop work and take care of them? And how would I support them?⁶⁸

The Daqa family, 'Attil, Tulkarm District

In 1994, Mwafaq Daqa, 43, a resident of the West Bank, was working in Saudi Arabia. While there, he married Iman Safi, a Jordanian resident. The couple had two children. In 1997, Mwafaq finished his work in Saudi Arabia and went with his family to Jordan. As a Palestinian resident, the Jordanian authorities refused to grant him Jordanian nationality or a

⁶⁸ The testimony was given to Iyad Haddad in al-Bira on 2 August 2005.

permit to work in Jordan. He left his wife and children in Jordan and returned to his home in 'Attil. Upon his return, he submitted a request for family unification. In his testimony to B'Tselem, Mwafaq tells about how he lives separated from his family.

I live in 'Attil, which is in Tulkarm District. I am married, have two children, and work as director of the research department in the Palestinian Finance Ministry in Tulkarm. In 1994, when I was living in Saudi Arabia, I married Iman Safi. In 1995, we had a son and named him Nidal. Our second son was born in 1996, and we named him 'Abd a-Rahman. Both children were born in Saudi Arabia. My wife is from a Palestinian family, but she was born in Jordan and holds Jordanian citizenship. She does not hold Palestinian residency or a West Bank identity card. I have a Palestinian identity card.

In the summer of 1997, I finished my work in Saudi Arabia and went to Jordan with my wife and two sons... I couldn't get Jordanian citizenship or work in Jordan, so I couldn't remain there. I came back to my hometown, to 'Attil, to work and provide for my family... Since then, I have been detached from my wife and children, who are in Jordan.

The first time that I submitted a request for family unification was on 13 August 1997, when I was already living in the West Bank. I went to the Palestinian Interior Ministry once a week on average to check on my request.

Until June 1999, I traveled to Jordan once every two weeks, for a day or two, to visit my family... On 7 June 1999, my wife and children came to visit me in the West Bank. While they were here, I recorded the children in my identity card and they received residency status and were entitled to live in the West Bank... When Iman and the children left, I filed a request for another visitor's permit and received it from the Palestinian Civil Administration... My wife and children returned to the West Bank in January 2000 and lived with me in 'Attil for six months. They again left the West Bank in 18 June 2000...

Since the al-Aqsa intifada began, the Israeli authorities have not issued visitor's permits... Now I am far from my wife and children. They need me, and I need to be with them, to take care of them and raise them. I visit them in Jordan every three months or so, for two weeks. A two-week visit costs me about 1,000 dinars, which is 6,000 shekels. This includes the travel, the gifts and expenses on the children, when I take them out. I feel

that I have to compensate for being so far from them, though it isn't my fault. Other than my household expenses in 'Attil, I pay 150 dinars (900 shekels) a month rent for Iman in Jordan. I earn only 3,400 shekels a month.

The children and my wife also suffer. The children miss me and want to feel that they have a father, like the rest of the kids. When I visit them and take them to school, they joyfully introduce me to their friends, as if to prove that they have a father, like the others. They latch on to me all the time. When I have to go back to the West Bank, they ask me not to go, and to stay with them, and they cry. It hurts a lot when this happens. I can't stay and live in Jordan because I have Palestinian citizenship, which means that I can't work there.

My situation is one of never-ending suffering. In 2002, Iman had to be operated on at the Jordanian university hospital, and I wasn't there to care for her. Procedures on the Jordanian and Israeli sides made it impossible to go. Only one bus a day goes from Israel to Jordan. In August 2004, my son 'Abd a-Rahman, who was eight years old at the time, contracted meningitis, an often fatal illness. He was hospitalized for ten days. When I learned he was ill, it took me three days to get a document indicating I was not prevented from entering Jordan, and I couldn't leave until the fourth day. Only somebody who has undergone such suffering can understand what I went through at the time. The medical costs for the treatment were high: the hospitalization cost 3,500 dinars (about 22,000 shekels) because my children are registered as residents of the West Bank, so they are not entitled to state health insurance in Jordan.

The same holds true for schooling. Palestinian students cannot study in state schools, but only in private schools. I pay 1,000 dinars a year for my two sons' schooling. I don't know how long this suffering will continue, this separation from my family, and not being allowed to live together in dignity.⁶⁹

The Abu Saleh family, Nablus

⁶⁹ The testimony was given to 'Abed al-Karim S'adi at the witness's house on 8 February 2005.

Ocsana Bik, from Russia, and Tarif Abu Saleh, a resident of the Occupied Territories, met as students in Russia and married in 1993. Their daughter Arij was born in Russia on 13 December 1994. When Ocsana completed her studies, she and Arij moved to Nablus to live with her husband. She entered the area on a visitor's permit. In her testimony to B'Tselem, Ocsana described her life under the constant threat of deportation after her permit expired.

My husband completed his studies in 1998 and returned to Nablus. I stayed in Russia with our daughter, Arij... I finished my studies the following year, and my husband obtained a permit for me to visit in the West Bank. I arrived in Nablus in August 1999. My permit was for seven months, and I stayed there for eight months. I went back to Russia in April 2000. My husband requested another visitor's permit for me. This time the request was denied, because I remained in the area after my previous permit had expired. He had to make three more requests before I got the permit.

I arrived in Nablus in early October 2000. When the permit expired, I did not return to Russia. I didn't want to leave my husband and Arij, and I was afraid that if I left, the authorities wouldn't let me back in...

On 5 June 2001, I gave birth to our daughter Diana at al-Makassed Hospital, in Jerusalem. She was born there because I received special treatment at the hospital during the last three months of my pregnancy and Diana was born prematurely. Each time, I went by ambulance from Nablus to 'Anata, from which I walked over an extremely hilly path. Even though I had medical documents, I was afraid I would get caught and be deported. I had no choice but to trek hours on foot... I was constantly afraid that soldiers would catch me and I would be deported. If that happened, not only wouldn't I be able to return here any more, my life and that of the fetus might be at risk. Our third daughter, Sarra, was born on 6 June 2004...

In April 2004, my husband submitted a request for family unification on my behalf. Over the years, he checked with the Palestinian Interior Ministry about the possibility of requesting family unification, but they told him that Israel was not accepting requests. When our situation became intolerable, he went and made the request. The officials at the Interior Ministry told him they would hold on to the request and hand it

over to the Israeli side when the Israelis begin processing family unification requests again.

Arij, who was born in Russia, is recorded in my identity card. Diana and Sarra are recorded in their father's identity card.⁷⁰

The Shumar family, Kafr Far'on, Tulkarm District

Ayman a-Shumar, 34, met Daniella Larisa in Romania. In 1997, they married in Far'on. In his testimony to B'Tselem, Ayman described how Israel's freeze policy separated Larisa from her family in Romania, and how their daily lives are affected by the constant fear that Larisa would be deported from the Occupied Territories.

In 1990, I went to Romania to study pharmacy at Iasi University. When I finished my studies, I met Daniella Larisa, whom I later married. We have three children. I am a pharmacist in Far'on. She is a Romanian national, twenty-nine years old.

When I decided to return to my home in the West Bank, we agreed that I would start the procedure to get her a visa from the Israeli embassy so that she could enter Israel and then the West Bank. A friend who studied with me in Romania helped me. He is an Israeli citizen. He requested a visa for her to enter Israel. We were not married at the time, so I couldn't submit a request for a visitor's permit on her behalf. She came via Ben-Gurion Airport and received a tourist visa that was valid for a month. She arrived in the West Bank on 6 April 1997, and we got married four days later.

Since then, Daniella has lived with me in Far'on. In May 1997, about a month after she arrived, I submitted a request for family unification at the Palestinian Interior Ministry in Tulkarm. I was given a document confirming the request and the number of the application. I checked weekly at the Interior Ministry and the Ministry of Civil Affairs in Tulkarm about the request, but there was no news. When the intifada began, I lost hope completely because the Israelis froze the handling of family unification

⁷⁰ The testimony was given to Salma Dab'i at al-Makassed Hospital on 26 July 2005.

requests. From the time that Daniella arrived, we have not been able to visit her family in Romania. If she leaves, she will not be allowed to return.

We have three children: Amir, 8, Yasmin, 3, and Zina, who is one year old. All three are registered in my identity card.

The restrictions on my wife's movement make things very difficult for her. I can't take her and the children outside of Tulkarm because there are checkpoints at the entrances to the city. We live in constant fear. She lives like a prisoner, without the detention and the prison.

When she speaks with her family in Romania, especially after she speaks with her mother and sister, she is very sad. They tried a number of times to get a visa to enter Israel, so they could visit us, but the Israeli embassy in Bucharest denied the visa application. I hope that the relations between Israelis and Palestinians become normal once again, so that all the problems can be resolved, especially the matter of family unification.⁷¹

⁷¹ The testimony was given to 'Abd al-Karim S'adi at the witness's pharmacy on 18 August 2005.

Chapter Four

The freeze policy from the perspective of international law

The right to family life

The two branches of international law that apply to Israel regarding its actions in the Occupied Territories – international humanitarian law and international human rights law – require that Israel respect the right of residents to marry and found a family.⁷²

The Universal Declaration of Human Rights states:

Article 16

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. ...
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to protection of the law against such interference or attacks.

⁷² For a discussion on the application of these branches of international law in the Occupied Territories, see International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004. See, also, Orna Ben-Naftali and Yuval Shani, "Living in Denial: the Application of Human Rights in the Occupied Territories," *37 Israel Law Review* (2004) 1.

The International Covenant on Civil and Political Rights, of 1966, which Israel ratified in 1991, states:

Article 23

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

Article 17

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

The International Covenant on Economic, Social and Cultural Rights, of 1966, which Israel ratified in 1991, requires, in Article 10.1, that states protect and assist the family, while being responsible for the care and education of dependent children. The Hague Regulations of 1907 require, in Article 46:

Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.

Article 27 of the Fourth Geneva Convention of 1949 states that,

Protected persons are entitled, in all circumstances, to respect for their person, their honor, their family rights, their religious convictions and practices, and their manners and customs...

The right to marry and found a family entails the right to have the person's spouse and child receive a lawful status in the person's native land. This was the conclusion, for example, of the Human Rights Committee, which is responsible for interpreting the International Covenant on Civil and Political Rights. The Committee held that normal family life depends first and foremost on the family members being able to live together.⁷³

⁷³ Human Rights Committee, General Comment 19, "Protection of the family, the right to marriage and equality of the spouses," Thirty-ninth Session, Par. 5 (1990).

Israel's Supreme Court, too, has recognized the inherent connection between the right to family life and the right to family unification inside Israel:

The State of Israel recognizes the right of a citizen to choose a spouse, according to the citizen's free will, and to found a family together in Israel. Israel is committed to protecting the family unit pursuant to international conventions... and where these conventions do not require one policy or another regarding family unification, Israel recognized, it recognized and recognizes, its obligation to protect the family unit also by granting permits for family unification.⁷⁴

A similar conclusion was reached by the European Court of Human Rights, which held that making it impossible for a family to live together, and the unwillingness of a state to approve a request for family unification, render meaningless the right to family life, which is enshrined in the European Convention on Human Rights.⁷⁵

The right of Palestinian residents to have their spouses and children obtain a status enabling the family to live together in the Occupied Territories is also derived from Israel's obligation as an occupying power, set forth in Article 43 of the Hague Regulations, to ensure, as far as possible, the proper functioning of daily life, which includes immigration. There is no doubt, as discussed above, that the ability to live together with one's family members under one roof is an essential element of life in every society.

Obviously, a state may take security considerations into account in deciding whether to permit a non-national to enter (in our case, when a particular person is a threat to the occupation forces). In addition, the policy in these matters should be based on the right of residents of the Occupied Territories to family life, the state's resources, the labor market, and the social, cultural, and family ties between residents of the area and

⁷⁴ HCJ 3648/97, *Stemkeh et al. v. Minister of the Interior*, *Piskei Din* 53 (2) 728, 789.

⁷⁵ *Tuquabo-Tekle and Others v. The Netherlands* (Application no. 60665/00), Judgment, 1 December 2005.

the person wanting to enter. These issues are civil matters. Israel delegated to the Palestinian Authority responsibility for civil affairs, but as occupier, it continues to bear overall responsibility for these issues.

The International Committee of the Red Cross's official commentary on the Fourth Geneva Convention's provision requiring that the occupying state respect the family rights of residents of occupied territory states that the provision is intended to safeguard the marriage ties and the community of parents and children which constitutes a family, which is "the natural and fundamental group of society."⁷⁶

The obligation of states to allow the unification of families that became separated as a result of war is expressly enshrined in international humanitarian law. The Fourth Geneva Convention states, in Article 26:

Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible.

In addition, the First Protocol to the Geneva Conventions, of 1977, states, in Article 74:

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

Although these provisions do not deal directly with the situations involved in this report, they give another indication of international recognition of the states' duty to enable family unification, even during war.

The obligation to enable family unification is also derived from the Convention on the Rights of the Child, which states, in Article 10.1:

⁷⁶ Jean S. Pictet, (ed.), *Commentary: Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva: International Committee of the Red Cross, 1958), 202.

... applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by State Parties in a positive, humane and expeditious manner.

According to Article 10.2 of the said Convention:

A child whose parents reside in different states shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents....

According to Article 3.1 of the Convention on the Nationality of Married Women, ratified by Israel in 1957, Israel is required to facilitate the naturalization of women married to nationals of the state and enable them to adopt their husband's nationality.

The right to marry and to family life, like most human rights is not absolute. States may place restrictions on exercise of this right in certain circumstances. Article 17.1 of the International Covenant on Civil and Political Rights, for example, provides that interference with family by the state must not be arbitrary. In addition, the Covenant allows, in Article 4.1, State Parties to derogate from the obligations only "in time of public emergency which threatens the life of the nation," and then only "*to the extent strictly required* by the exigencies of the situation." This requirement is referred to as the principle of proportionality and is recognized, in one wording or another, in all international human rights conventions, as well as in Israel administrative law. According to decisions of Israel's Supreme Court, the principle of proportionality requires that the injury bear a rational connection to the declared objective, that the injury be no greater than necessary, and that there be a proper relationship between the injury and the anticipated benefit that leads to the injury.⁷⁷

International humanitarian law dealing with occupation authorizes states to derogate from some of their obligations to meet their imperative military needs. The Fourth Geneva Convention, for example, at the end of

⁷⁷ HCJ 2056/04, *Beit Sourik Village Council et al. v. Government of Israel et al.*, Judgment, written by Supreme Court President Aharon Barak, Section 41.

the aforementioned Article 27 regarding the protection of family rights, states:

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

The official commentary on this provision points out that, despite the relative freedom given to states to impose restrictions, "what is essential is that the measures of constraint they adopt should not affect the fundamental rights of the persons concerned."⁷⁸

The ability to maintain a proper family life also greatly affects a person's ability to exercise other human rights, such as the right to mental health and to an adequate standard of living. It is almost inevitable that there will be emotional and economic harm from separation of the spouses and of children from one of their parents, as well as from the frequent trips abroad and from maintaining two households.

The International Covenant on Economic, Social and Cultural Rights states, in Article 12.1:

The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

In Article 11.1, the said Covenant states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.

The Convention on the Rights of the Child states, in Article 27:

1. States Parties shall recognize for every child the right to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. ...

⁷⁸ Pictet, *Commentary*, p. 207.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.
4. ...

Is Israel's infringement of the right to family life legal?

Does Israel's family unification policy since the outbreak of the second intifada meet the test of proportionality and the prohibition on arbitrariness, as set forth in international human rights law, and the test of military necessity, as required by international humanitarian law, and thus entitle Israel to impair the ability of residents of the Occupied Territories to exercise their right to marry and to family life?

Israel has consistently refused to clearly explain its policy on this issue. In its laconic statements on the subject since the second intifada began in 2000, the state has alleged a connection between security in the area and the decision to freeze the processing of family unification requests. However, other than general, vague statements in this regard, Israeli officials have not explained how this policy serves its security needs. Failure to explain the connection makes the policy arbitrary and, therefore, illegal.⁷⁹

In a number of cases, Israel explained that requests were not being processed because relations between Israel and the Palestinian Authority had been severed and the mechanism for handling the requests had broken down.⁸⁰ Factually, this contention is wrong, and it provides no legal justification for violating these rights. Following petitions to the High Court of Justice, non-residents whose requests were not being processed

⁷⁹ Under Israeli administrative law, a public authority must explain its decisions. See, Amendment of Administrative Arrangements (Decisions and Reasons) Law, 5719 – 1958.

⁸⁰ *Odeh*.

because of the freeze were allowed to enter, thus refuting the claim that relations between Israel and the Palestinian Authority had been severed. Israel's refusal to process requests that it received prior to the intifada is a clear indication that the contention is false.

On a few occasions, Israel justified its refusal to grant visitor's permits on the grounds that, in the past, recipients of permits did not leave the area when the permits expired. According to this argument, the presence of these persons in the area "... entails great risk, both to the security of the area and to the security of Israel."⁸¹ However, despite the explicit reference to a security threat, Israel has not indicated the nature of the threat. Furthermore, the claim is surprising, for Israel takes no action to locate and deport the visitors who remain illegally in the area after their permits expire.

"Persons staying illegally" in the area, as such, do not create any security threat. The state has the means to cope with cases in which a person threatens its security, whether or not the person is staying legally in the area. The question of immigration and persons staying illegally in the area is primarily a civil, and not a security, matter.

The extreme lack of transparency regarding the motives for the policy raises a strong suspicion that there is no real connection between the infringement of the right and the security objective that the infringement ostensibly seeks to achieve. Without such a connection, the human rights infringement cannot be considered proportionate.

Even if Israel proved its security need in this regard, the infringement of the right would still fail the test of proportionality, given that the infringement is not reduced to the minimum extent needed to achieve the objective. As described in Chapter Two, the prohibition on the entry of spouses and children of Palestinian residents, either by means of visitor's

⁸¹ HCJ 11439/03, *Nadal Hassan Harmas v. Commander of IDF Forces in the West Bank*, Response of the Respondent, Section 12; HCJ 7607/05, *Jamal 'Abdallah v. Commander of IDF Forces in the West Bank*, Judgment, 23 November 2005, Section 6.

permits or by family unification, is sweeping and indiscriminate. The requests are not examined on a case-by-case basis, or in regard to the degree of danger inherent in the particular person who seeks to enter the area. In most cases that go to court, Israel retracts its refusal, a fact that reinforces the conclusion that the original refusal was not based on security reasons.

The lack of proportionality is particularly evident from the long period of time of the violation of the right to family life. A short-term restriction on a human right is not the same as a restriction that lasts for more than five and a half years. The lack of certainty as to when the violation will end aggravates the distress suffered by the victims of this policy.

As an occupying power, Israel also breaches its obligation to enable, as far as possible, the proper functioning of daily life. In establishing an immigration policy for the Occupied Territories, as appears from the question of family unification, Israel completely ignores the relevant civilian considerations. It permits uncontrolled immigration of Israelis into the area, while completely blocking the entry of relatives of Palestinians. Breach of the obligation to ensure the proper functioning of daily life is especially evident in matters involving the arrangement of a status for family members. The freeze on all procedures related to the entry of foreigners is one such breach. This policy has continued for more than five years. During this time, people have married, had children, made and changed plans for their lives together. The policy, therefore, freezes the lives of these people, in breach of the Supreme Court's express prohibition.⁸²

Improper considerations

⁸² HCJ 393/82, *Jam'iyyat Iskan al-Mu'aliman al-Mahddudat al-Mas'uliyah, Teachers Housing Cooperative Society v. Commander of IDF Forces in the Judea and Samaria et al.*, *Piskei Din* 37 (4) 785.

The lack of an explanation, or, in the alternative, the grounds that Israel raised regarding the freeze policy having been rebutted, make it likely that political and demographic reasons dictated the policy.

It may be that Israel wants to preserve one of its "bargaining chips" with the Palestinian Authority in negotiations over the right of return. As far back as the Declaration of Principles, signed between Israel and the PLO in 1993, this question was one of the subjects to be discussed by the sides. Support for this claim appears from the comments of the coordinator of government operations in the Territories, Major-General Yusef Mishlav, to representatives of HaMoked at a meeting on 20 December 2005 that dealt, in part, with family unification in the Occupied Territories. Major-General Mishlav mentioned that the some sixty thousand Palestinians presently staying in the Occupied Territories illegally "have already exercised the right to return through the back door." Statements of this kind are often heard also in the context of family unification between Israeli Arab citizens and residents of the Occupied Territories.⁸³

However, recognition of the status of the spouses and children of residents of the Occupied Territories as part of the family unification procedure is entirely different from recognizing the right of refugees who abandoned, or were expelled, from their homes during the 1948 war or the 1967 war, or the right of their offspring. Blurring this distinction gives the misleading impression that the right of every resident to live with his or her foreign spouse and children in the area is no more than a "gesture" or "bargaining chip" that Israel can use (or not use) in negotiations with the Palestinian Authority. Inasmuch as the right of people to live together with their families in their native land is enshrined in international law, breaching this right for political reasons is improper and illegal.

It also may be that Israel uses the freeze policy to advance improper demographic objectives. The policy directly restricts the growth of the Palestinian population in the Occupied Territories, both by preventing the

⁸³ See *Forbidden Families*, pp. 15-20.

entry of spouses and children of residents, and by stimulating emigration from the area. In doing so, the policy, albeit indirectly, serves the territorial aspirations of Israel in the West Bank, in general, and its settlement policy, in particular.⁸⁴ The logic is clear: the larger the Palestinian population, the greater the problems in gaining control of additional areas in the West Bank, and vice versa.

A hint at a consideration of this kind is seen in the investigative report recently published by *Ha'aretz*, indicating a "blacklist" of Palestinians living abroad who own land in the Jordan Valley and are not allowed to enter the Occupied Territories. In the past, Israel illegally took control of these lands to build settlements and army bases, so the authorities worry that if those Palestinian are allowed to enter, they would be able to sue for their property. According to the report, "their requests for family unification with their families in the Occupied Territories, and even for summer visits, were rejected outright, all, of course, for security reasons."⁸⁵

Another indication comes from Israel's treatment in recent years of residents of the area whose registered address is the Gaza Strip. Israel formulated an illegal policy that allows only residents of the West Bank whose names appear in the population registry to stay in the West Bank. Residents listed in the population registry as residing in the Gaza Strip who are caught in the West Bank are arrested for staying illegally in the West Bank and are returned to Gaza before being allowed to challenge the expulsion and without taking into account their personal circumstances. Israel does not allow a change of address in identity cards. It does, however, allow movement in the opposite direction, from the West Bank to the Gaza Strip.⁸⁶

⁸⁴ Even after the Interim Agreement, Israel continued to encourage Jewish settlement in the West Bank. From 1997 to 2004, for example, the settlement population in the West Bank increased by more than fifty percent, whereas the Jewish population in Israel increased by only eleven percent. See the Appendix.

⁸⁵ Akiva Eldar, "The Valley's Blacklist," *Ha'aretz*, 14 March 2006.

⁸⁶ Amira Hass, "What's his Crime? He Changed Apartments," *Ha'aretz*, 19 January 2006. A petition to the High Court of Justice challenging this principle,

Using demographics to justify the sweeping refusal of the right of residents to family life is illegal not only because it is extraneous to security considerations, but, as far as the West Bank is concerned, also discriminates between Palestinians and Jews (settlers) on grounds of nationality. This act of racial discrimination must be eradicated. Also, as the occupier, Israel is forbidden to make permanent changes in the occupied territory, including demographic changes. Given that it holds the territory in trust for the future sovereign, Israel is only allowed to consider the benefit of the local population and security needs, and is forbidden to consider its national interests, certainly when the interest is infected by racial discrimination.

Finally, the sweeping nature of the freeze policy raises the suspicion that it is intended to collectively punish the residents for their struggle against Israel in the intifada. Generally, Israel conditions renewal of the processing of family unification requests on the absence of Palestinian rebellion against it. State officials point out that, "...so long as the situation [referring to the second intifada] does not change radically, the Israeli side will not approve family unification in the area."⁸⁷ Collective punishment is forbidden under international humanitarian law.⁸⁸

filed by HaMoked, is pending (HCJ 3519/05, *Vered et al. v. Commander of Military Forces in the West Bank et al.*)

⁸⁷ *Nadal*, Response of the Respondents, Sections 2, 5, 7.

⁸⁸ Hague Regulations, Article 50; Fourth Geneva Convention, Article 33.

Conclusions

With the outbreak of the second intifada, in September 2000, Israel froze the processing of requests for family unification and visitor's permits in the Occupied Territories. The freeze created a new, harsh reality for tens of thousands of Palestinian families. Spouses are unable to live together under one roof, children grow up in single-parent families, people refrain from going abroad for medical treatment out of fear they will not be allowed to return to their families. Tens of thousands of foreign women live in the Occupied Territories under constant threat of deportation, like prisoners in their homes, unable to live a normal life.

Denial of the right to family life severely impairs the social, economic, and emotional well-being of every member of these families. The harm increases day by day as long as the freeze policy continues. A survey conducted in preparation for this report indicates that, as of October 2005, 72,000 families in the Occupied Territories submitted family unification requests for first-degree family members living abroad who are not allowed to enter the area, or who are in the area but are considered by Israel to be "persons staying illegally."

Israel contends that the policy results from the events of the second intifada and the security situation in the area. But Israel has never explained the connection between the freeze policy and the uprising in the Occupied Territories and how the policy serves security needs. In fact, Israel's contention is clearly refuted: Israel imposed the sweeping freeze only days after the intifada began, before it knew the scope of the events and their effect on Israeli security. In the years since then, Israel has refused to consider alternatives that would reduce the harm to the Palestinian families. For example, Israel rejected the possibility of examining family unification requests on an individual basis, based on the security threat ostensibly involved in each particular case.

Israel's policy on family unification is blatantly non-transparent, as demonstrated, in part, from its refusal to provide relevant information. For example, in September 2005, B'Tselem wrote to the Civil Administration

to obtain data on the number of family unification requests that had been submitted at various periods of time. Seven months later, in March 2006, the Civil Administration replied that it did not have the requested information.⁸⁹

Israel's policy severely violates its obligations under international law. As the occupier, the Israeli army must actively ensure that the local population has all the conditions necessary for normal life. With the passing of time and in modern society, normal life includes the movement of people into the area for visits for various purposes, and of people who settle there permanently. One of the principal considerations that Israel must take into account in setting an immigration policy in the Occupied Territories is respect for the family life of the local Palestinian population, subject to legitimate military needs, such as preventing the entry of persons who endanger security. The policy should also take into account civil matters, for example, the local economic resources and the condition of the labor force. In the Oslo Agreements, Israel delegated the handling of civil matters to the Palestinian Authority. It had the right to do this, but it continues to bear overall responsibility for ensuring the proper living conditions and for protecting the residents' human rights. Israel's policy on family unification and visitor's permits artificially freezes life, in breach of international humanitarian law and the express prohibition set by Israel's Supreme Court.

Of course, Israel may, under international law, take into account its security needs in establishing its policy in the Occupied Territories. But the claim of security needs does not entitle it to do whatever it wishes, or to trample on the human rights of the Palestinian population. This is precisely what it does in implementing its family unification policy. Because the policy is sweeping and arbitrary, it flagrantly breaches the right to family life that is enshrined in human rights law and in international humanitarian law.

⁸⁹ Letter to B'Tselem of 14 March 2006 from the legal advisor for the West Bank.

Israel's freeze policy is based on extraneous, forbidden considerations. The policy completely blocks immigration into the area, and even encourages residents to emigrate so they can live together with their spouse and children. At the same time, Israel enables the uncontrolled immigration of Israelis into the area. A policy intended to change the demographic composition of occupied territory is forbidden and illegal. Such a policy constitutes racial discrimination, which must be uprooted wherever it appears. Also, the policy is aimed at making permanent changes in an area that Israel is holding temporarily, in trust for the lawful sovereign. Permanent changes of this kind are illegal.

Furthermore, it appears that the freeze policy, which began with the outbreak of the second intifada, is being used to pressure and punish the local population and their families for the intifada. The right to family life cannot be held hostage for this purpose, nor can it be used as a bargaining chip for future negotiations. Collective punishment is absolutely prohibited under international law.

Israel seeks to avoid its responsibility for the severe breach of the right to family life of Palestinian residents married to foreigners, contending that "these families can live together outside the area..., where the foreign spouse resides."⁹⁰ However, as a rule, states are not permitted to violate the human rights of persons under their control and justify it on the grounds that they can exercise the right elsewhere. Also, this solution is not feasible for most of the torn families: generally, the female spouse is a resident of Jordan, and Jordan does not enable residents of the Occupied Territories to obtain a status in Jordan.

Against the backdrop of the severe violation of the human rights of tens of thousands of families resulting from Israel's policy, and in light of its illegality, HaMoked and B'Tselem demand that the government of Israel begin immediately to process requests for family unification and visitor's permits so as to enable the residents to exercise their right to live as a family in the Occupied Territories within a reasonable period of time.

⁹⁰ Letter to HaMoked of 2 March 2006 from the legal advisor for the West Bank.

In this context, Israel must ignore political and demographic considerations, and weigh only its security needs, while fully respecting the human rights involved.

Appendix

Increase in the number of Jewish residents in Israel in comparison with settlers in the West Bank, 1997-2004

	1997	2004	Population Growth (by percentage)
Jewish residents in Israel ⁹¹	4,701,600	5,237,600	11.4
Settlers in the West Bank as a percentage of the entire population of the West Bank (not including East Jerusalem) ⁹²	152,300 (8.5 percent)	232,7000 (10 percent)	52.8
Palestinian residents in the West Bank ⁹³ (including East Jerusalem)	1,787,500	2,300,300	28.6

As we see from the above, the settler population grew by more than fifty percent, almost five times greater than the increase of the Jewish population in Israel. The settler population now amounts to ten percent of the West Bank's population.

⁹¹ Israel's Central Bureau of Statistics, www.cbs.gov.il.

⁹² The settler figure is taken from Israel's Central Bureau of Statistics.

⁹³ The West Bank figure is taken from the Palestinian Central Bureau of Statistics, www.pcbs.org.

Response of the Ministry of Justice



מדינת ישראל
משרד המשפטים
State of Israel
Ministry of Justice

The Department for International Agreements
and International Litigation

היחידה להסכמים בינלאומיים
ותביעות בינלאומיות

Date: 27 Iyar, 5766

May 25, 2006

Re: 2325

Mrs. Antigona Ashkar, Researcher
B'tselem
8 HaTa'asiya St.,
Jerusalem 91531

Dear Madam,

Re: Reference to "B'tselem" and "Hamoked Lehaganat Haprat"

Draft Report – "Families on Hold"

The following are our comments to the abovementioned report:

1. The High Court of Justice, in *HCJ 4227/05 Muhammad Saadi Abed Adalla Jardat v. The Commander of the IDF forces in the West Bank, Tak-Al 2005(2) 144, (8.5.05)* (*hereinafter*: "the Jardat HCJ"), in rejecting the petitions, held:

"In the margins, we will shortly say that similar petitions to those put before us have already been addressed by the court and rejected. This was based on the fact that the interim agreements with the Palestinian Authority place the responsibility in dealing with requests to enter the area on the Authority itself. Yet, for some time, the Palestinian Authority has been abstaining from transferring such requests to Israel. Hence, the defendants (The Commander of the IDF forces in the West Bank and the Ministry of the Interior – B.O.) can not process them. From the above, it can be inferred, that the defendants are not those to whom the petitioners refer. The petitioners should address their complaints to the Palestinian Authority...."

רח' צלאח א-דין 29 ת.ד. 49029 י-ם מיקוד 91490 טל' 02-6466569 פקס 02-6261862

E-Mail: international@justice.gov.il

2. The Supreme Court made a similar statement in another case, *H CJ 11698/04 Jihad Ahmad Sliman Carnaz v. The Commander of the IDF forces in the West Bank, Tak-Ai 2005(3) 1529, (2.5.05)*, decided a few days before the Jardat HCJ decision, where the Court held:

"2. It is fitting that this petition shall be rejected. In a long line of decisions dealing with similar cases it was determined that as long as the Palestinian Authority has not transferred the requests for visitation licenses to Israel for their approval, and the latter can not be seen as its counterpart and the Petitioners must approach the Palestinian Authority with their claims... [T]he way that interim agreements are implemented is a matter of Government policy influenced by the political and security reality at the area. This court has held before that it has not found any reason to interfere with this policy."

3. In this matter, we wish to turn your attention to the Government of Israel's decision no. 4780, April 11, 2006. The Government of Israel (along side several other operative decisions regarding Israel's policy towards the Palestinian Authority) acknowledged that the Hamas government, established March 25th 2006, does not recognize the existence of the State of Israel, nor **any agreements signed with her, nor does it relent from terror**; with everything implied from the above said.
4. All other issues forwarded to us that were mentioned in the draft report are still under deliberation in the Supreme Court. Therefore, we do not think it proper to address them at this point.

Sincerely yours,

Boaz Oren, Esq.

Deputy Director