

Summary of Findings

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

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

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

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

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

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

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

Introduction

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

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

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

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

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

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

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

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

Two comments concerning terminology used in this report:

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

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

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

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

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

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

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

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

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

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

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

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

Palestinians whose residency rights had been revoked could appeal, through relatives who had remained in the Occupied Territories, to the Civil Administration's Latecomers [former residents] Committee. This committee was authorized to review cases in which residency status had been revoked.⁹ If the committee denied the application, relatives could then submit a request for family unification on their relative's behalf. The likelihood that the request would be approved was minimal.

With the transfer of civil and administrative powers to the PA in November 1995, Israel lost the power to revoke residency status of residents of the Occupied Territories.¹⁰ The Latecomers Committee

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

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

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

10. See below, p. 95.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

16. *Ibid.*, par. 7.

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

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

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

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

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

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

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

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

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

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

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

Criticism

1. Disregard for Welfare of the Palestinians

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Violation of the Temporary Nature of Occupation

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

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

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

3. Discrimination Between Palestinians and Israelis in the Occupied Territories

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

1. Israeli Policy over the Years

A. 1967 to 1973 – Family Unification for War Refugees

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

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

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

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

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

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

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

B. 1973 to 1993 – Increasingly Harsh Policy

(1) A More Severe Family Unification Policy

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

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

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

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

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

41. 'Awad, p. 284.

42. *Samareh*, p. 2.

to Meron Benvenisti, the authorities approved between nine hundred and twelve hundred requests per year from 1973 to 1983.⁴³

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

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

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

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

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

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

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

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

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

48. For details, see Appendix I.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Family Members' Visits to the Occupied Territories

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

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

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

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

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

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

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

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

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

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

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

65. From the Khaider affidavit in 'Awashreh.

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

67. *Ibid.* (PHRIC).

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

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

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

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

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

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

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

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

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

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

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

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

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

In May 1990, The Association for Civil Rights in Israel (ACRI) petitioned the High Court of Justice on behalf of fifteen Palestinians who had been deported or whose relatives had been deported in 1989.⁷² The petition demanded that the commander of IDF forces in the West Bank approve family unification of the petitioners and of others in similar circumstances, by granting residency to their spouses and children. The petition requested the Court to reexamine the legality of the policy on family unification in the Occupied Territories, insofar as in its previous rulings it had approved the policy.⁷³

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Between September 1991 and June 1992, sixty-four petitions were filed against removal of relatives. The petitions affected 271 adult relatives of Palestinian residents and 350 of their children, who had entered as visitors during the summer of 1991.⁸⁶ Nearly half of the family members who were the subject of the petitions were refugees from Kuwait. In each of the petitions, the Court issued, at petitioners' request, an interim order directing the IDF to refrain from deporting the relatives until a decision had been reached on the general petition.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Criticism

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

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

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

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

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

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

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

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

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

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

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

D. August 1993 – Setting Quotas for Family Unification

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

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

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

92. Art. 27 of the Fourth Geneva Convention.

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

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

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

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

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

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

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

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

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

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

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

The response also emphasized that,

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

The quota policy was offered in response to the petitions relating to residents' relatives who entered the Occupied Territories after the beginning of September 1992 and were not included within the High Court of Justice Population. However, this policy did not allow these relatives to remain lawfully in the Occupied Territories with their family until the request was approved. Following the demand of HaMoked, the authorities also agreed, in February 1994, to grant "long-term visitor" status to spouses and children who had visited the Occupied Territories between 1 September 1992 and 31 August 1993.⁹⁸

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Criticism

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

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

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

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

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

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

Family Unification for Immediate and Extended-Family Members

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

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

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

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

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

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

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

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

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

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

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

2. Bureaucratic Obstacles in the Family-Unification Process

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

A. Criteria for Approving Family-Unification Requests are Unknown

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Procedures for Family Unification

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

(1) Submitting a Request for Family Unification

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

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

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

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

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

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

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

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

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

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

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

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

In 1995, the average daily salary of a worker in the West Bank was NIS 46.90 and in the Gaza Strip NIS 40.30.¹²⁹ A West Bank Palestinian resident working six days a week earned an average of NIS 1,219 per month, and a Gaza Strip resident earned NIS 1,047. The fees charged clearly manifested a heavy financial burden on residents of the Occupied Territories.

(2) Considering the Request

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The Response Provided

Until the policy changed in August 1993, in most instances where the authorities denied the request for family unification, they did not inform the applicant. In the early 1980s, the number of unanswered requests that had been submitted since 1967 stood at approximately 150,000.¹³⁵ The High Court of Justice ruled that such a phenomenon is "an administrative perversion requiring correction."¹³⁶ It often occurred that residents received notice of rejection only following repeated requests to the Civil Administration. When the authorities informed the resident that the request was denied, the notice was generally given orally and almost invariably without explanation.

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

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

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

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

136. 'Awad, p. 287.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Refusal to Receive Requests for Family Unification

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

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

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

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

(4) Unlawful Collection of Fees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Graft and Corruption in the Family Unification Process

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

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

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

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

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

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

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

1. Family Unification According to the Oslo Accords

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

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

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

A. Family Unification

The Interim Agreement stipulates:

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

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

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

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

B. Family Visits

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

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

C. Population Registry

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

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

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

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

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

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

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

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

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

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

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

D. Procedure for Handling Civil Affairs

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

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

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

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

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

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

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

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

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

2. Implementation of the Agreements as Regards Family Unification

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

A. The Family-Unification Process

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

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

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

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

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

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

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

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

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

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

178. See p. 49 above.

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



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

Fadweh Hashem Muas, 39, resident of Bani Na'im village, gave her testimony to B'Tselem in late 1997.¹⁸⁰

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The High Court of Justice Populations Since the Transfer of Powers

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

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

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

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

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

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

Granting Residency in Connection with the Elections to the Palestinian Authority

The Protocol Concerning Elections, Annex II of the Interim Agreement, states that Palestinians staying in the Occupied Territories but not registered in the population registry will be entitled to be registered, the objective being to enable them to vote in the then-upcoming Palestinian elections. Registration was conditional on the application being submitted prior to the date of the elections. Granting of the status depended on proving that the individual had actually lived in the Occupied Territories continuously during the three or four years prior to the signing of the Interim Agreement in 1995.¹⁸⁷

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

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

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

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

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

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

C. Bureaucracy-Related Problems

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Occupied Territories. It last met in February 1996 in Cairo.²²⁸

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

Criticism

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

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

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

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

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

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

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

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

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

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