Chapter Six: The Legal Aspect

1. International Law on the Right to a Family Life

Under international law, the power to decide whether to allow foreigners to enter a country lies within the sole discretion of that country.[242] For this reason, most international human rights conventions do not include unequivocal rights in the matter of immigration, and states did not undertake to allow entry for the purpose of achieving family unification.[243] The Convention on the Rights of the Child is the only convention that explicitly encourages the signatories to enable family unification of their citizens and residents, through allowing entry of family members, as follows:

> In accordance with the obligation of States Parties under Article 9, paragraph 1 [to ensure the child's right to live with both parents], application by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.[244]

The Convention on the Nationality of Married Women requires signatory states to enable every foreign woman married to a citizen of the state to obtain the citizenship held by her husband, at her request, through special and preferred citizenship procedures.[245]

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242. *Havana Convention on the Status of Aliens*, 22 AJIL (1928), Supp. 136, 137; Lassa Oppenheim, *International Law: A Treatise*, vol. 1, H. Lauterpacht (ed.) (London: Longmans, 1950) 291.

243. Law professor Richard Plender noted that, to attain consensus on the obligations of a state to protect the family, drafters of the Covenant on Civil and Political Rights chose to neglect the effect of migration law on family unification. Richard Plender, *International Migration* Law, rev. 2nd ed. (Dordrecht, Holland: Nijhoff, 1988) 366. In other UN conferences, the states did not reach agreement on the right of migrants or refugees to family unification in their new country. See "New Article on Family Reunification," UN Doc. A/CONF.78/DC.4,31 January 1977; Atle Grahl-Madsen – Raporteur of the Geneva Working Group, *Territorial Asylum* (Stockholm: Almqvist and Wiksell, 1980) 65.

244. Art. 10(1). See Eliahu Abram, "The Child's Right to Family Unity in International Immigration Law," 17 *Law and Policy* 4 (1995) 397.

245. Convention on the Nationality of Married Women, art. 3(1). The Convention was opened for signing and ratification pursuant to UN General Assembly Resolution No. 1040(XI) on 29 January 1957 and took effect on 11

Furthermore, several fundamental principles of international law, incorporated in various conventions, relate to the obligation of states to protect the rights of the families of its citizens and residents:

- the right of every person, without any limitation due to race, nationality, or religion to marry and to found a family.[246]
- the family is defined as the natural basic unit of society, entitled to protection and assistance by the state.[247] This protection is required especially at the time of establishment of the family and as long as it is responsible for taking care of children.[248]
- prohibition on arbitrary or illegal invasion of privacy of a person, or the arbitrary or illegal intervention in his or her family or home.[249]

A declaration adopted by the United Nations expands the rights of the family that a state is obligated to respect to include families of foreigners living within its borders. In this context, the Universal Declaration requires the signatory states to respect the right of a foreigner to protection against the arbitrary or illegal invasion of privacy, or the arbitrary or illegal intervention in his or her family or home, and the right "to choose a spouse, to marry, to found a family."[250]

International humanitarian law also requires states to respect the rights of the family in occupied territory. Article 46 of the Hague Regulations of 1907, which deal with the law and customs of land wars, stipulates that, "family honor and rights... must be respected." These regulations,

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August 1958. Israel is party to the Convention. Residents of the Occupied Territories are not citizens, but the Convention applies to "all non-self-governing... territories for the international relations of which any Contracting Party is responsible" (art. 7). According to this definition, Israel is required to apply the Convention to residents of the Occupied Territories, even following establishment of the PA in 1994, though they are not citizens. See John Quigley, "Family Reunion and the Right to Return to Occupied Territories," 6 *Georgetown Immigration Law Journal* (1992) 223, 249-250.

246. Art. 16(1) of the Universal Declaration of Human Rights, of 1948.

247. Art. 16(3) of the Universal Declaration of Human Rights; art. 3(1) of the International Covenant on Civil and Political Rights; art. 10(1) of the International Covenant on Economic, Social and Cultural Rights, of 1966.

248. Art. 10(1) of the Covenant on Economic, Social and Cultural Rights.

249. Art. 17 of the International Covenant on Civil and Political Rights; see, also, art. 12 of the Universal Declaration of Human Rights.

250. Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live (General Assembly Resolution 40/144, 13 December 1985), art. 5. Residents of the Occupied Territories, even though they are not nationals, are not foreigners, so this declaration does not apply to them. It is mentioned here to show the criteria relied on by states in matters relating to rights of families of foreigners on their soil.

which apply to the military government in occupied territory, are considered part of customary international law, and are binding, therefore, on the IDF in the Occupied Territories in all its activities dealing with the civilian population there.

Article 27 of the Fourth Geneva Convention Relating to the Protection of Civilians in Time of War, of 1949, stipulates that residents of occupied territory "are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs."[251] This provision is one of the pivotal humanitarian clauses of the Convention, and Israel recognizes its duty to apply such humanitarian provisions in the Occupied Territories. The commentary of the International Committee of the Red Cross on the Convention states that, "Respect for family rights implies not only that family ties must be maintained, but further that they must be restored should they have been broken as a result of wartime events."[252]

Article 26 of the Geneva Convention provides that, "Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible." Article 74 of the First Additional Protocol to the Geneva Convention requires the State Parties to "facilitate in every possible way the reunion of families dispersed as a result of armed conflicts..." Although Israel is not a signatory to this protocol, it indicates the standards established in international law on this subject.[253]

Forcing families to live apart inevitably severely prejudices the right to maintain a proper family life. Since international law grants broad protection to family life, many jurists maintain that states must protect family rights, including the duty to protect family unity, by allowing immigration of family members into their territory.[254]

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251. This article, contrary to many articles of the Convention, which are applicable only during the first year after the termination of hostilities, continues to apply in occupied territory throughout the period of occupation (art. 6).

252. Pictet, *Commentary*, pp. 202-203.

253. The United States maintains that article 74, which deals with family unification, and articles 77 and 78, dealing with the rights of children, are positive rights that should be incorporated into law so that in time they will be considered part of customary international law, which obligates all states. See Theodor Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford: Clarendon Press, 1989) 62-66.

254. See Gerassimos Fourlanos, *Sovereignty and the Ingress of Aliens* (Stockholm: Almqvist and Wiksell, 1986) 94, 99, 110; Maryan Green, *International Law* (London: Pitman, 1973) 106; Plender, *International Migration Law*, p. 366.

International law is not static, and as it develops over the years, new rights emerge. Lillich maintains that international law is developing in a manner that changes the traditional principle of international law, according to which a person who is not a national of the state has no right to enter it.[255] The American Society of International Law stated that recognition of human rights supporting family unification is steadily increasing.[256] Fourlanos even argues that the principle of family unification is part of customary international law, and that states must, therefore, allow foreigners to enter for family unification.[257]

By not allowing Palestinian residents of the Occupied Territories to live together with their non-resident spouses, Israel leaves them two choices: family separation or leaving the Occupied Territories with the whole family. In doing this, Israel violates its obligation under international law to respect and protect the marriage relationship of Occupied Territories residents, safeguard the family rights of the residents, refrain from intervening in family life, and respect their right to live in their country.

Allowing emigration as the sole possibility for a person to live with his or her family violates the prohibition under article 49 of the Fourth Geneva Convention, which states, "Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory... are prohibited, regardless of their motive."

2. Rights of the Child under International Law

Several human rights conventions obligate the signatory states to provide, without discrimination, special protection and assistance to every child.[258] The major convention dealing with children's rights is the Convention on the Rights of the Child, of 1989, which emphasizes the

255. Richard Lillich, *Human Rights of Aliens in Contemporary International Law* (Manchester: Manchester University Press, 1984) 91.
256. Thomas Burgenthal and Louis Sohn (eds.), *The Movement of Persons across Borders* (Washington D.C.: The American Society of International Law, 1992) 70.
257. Fourlanos, *Sovereignty and the Ingress of Aliens*, pp. 108, 118.
258. Art. 24(1) of the International Covenant on Civil and Political Rights; art. 10(3) of the International Covenant on Economic, Social and Cultural Rights; art. 3(2) of the Convention on the Rights of the Child.

importance of the family framework and family integrity for children and prohibits arbitrary or unlawful interference in the child's family.[259]

The Convention stipulates in article 18(1) that,

> States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child

and in article 9(1) that,

> States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.

The latter provision leads to the requirement, set forth in article 10(1), that parties to the Convention handle requests for family unification of a child or the child's parents "in a positive, humane and expeditious manner."

In the event of separation between a child and one of his or her parents, the Convention, in article 9(3), requires the parties to respect the right of the child "to maintain personal relations and direct contact with both parents on a regular basis..."

Other rights of the child that are incorporated in this and other conventions are the right to be registered immediately after birth and to obtain citizenship, especially where the failure to do so leaves the child without a status,[260] the right to a suitable standard of living, social security, and health and education services.[261]

Article 38(1) of the Convention requires the signatory parties "to respect and to ensure respect for rules of international humanitarian law

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259. Art. 16(1) of the Convention. Art. 1 provides that, "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier." The UN adopted the Convention on 20 November 1989 in Resolution No. 44/25. Israel ratified it in 1991. Israel and the other signatories undertake in art. 2(1) to ensure the rights secured by the Convention "to each child within their jurisdiction without discrimination of any kind..." Despite this undertaking, Israel does not consider the Convention to constitute a "legal framework that obligates it in its exercise of powers in the Occupied Territories" (stated to B'Tselem in a letter of 29 April 1997 from attorney Yael Ronen, of the legal department of the Ministry of Foreign Affairs).

260. Art. 7 of the Convention; art. 24 (2) and (3) of the International Covenant on Civil and Political Rights.

261. Articles 24 and 26-28 of the Convention.

applicable to them in armed conflicts which are relevant to the child." Among these rules is article 77(1) of the First Additional Protocol of 1977 to the Geneva Convention, which stipulates that, "Children shall be the object of special respect and shall be protected against any form of indecent assault." Article 78(1) of the Protocol prohibits removal of children to a foreign country. According to the ICRC's commentary on this provision, "everything possible should be done to avoid separating children (especially young children) from their natural protectors." In this context, the Commentary states that, "In general an interruption of family and affective ties can have dire effects on the development of children"[262]

Israel's family unification policy in the Occupied Territories is inconsistent with its obligations under international law to act in the best interest of the child and not to separate children from their parents. Israel does not allow children with a non-resident parent to live in the Occupied Territories, and as a result children are compelled to live without one of their parents.[263] Furthermore, the restriction placed on family members visiting the Occupied Territories is inconsistent with the obligation to ensure the separated child's right to maintain a regular relationship with his or her parents.

Not only does Israel's policy violate the Convention on the Rights of the Child, it also violates the provisions of the First Additional Protocol of the Geneva Convention, which applies to it pursuant to article 38(1) of the Convention on the Rights of the Child.

The Oslo Accords defines a child entitled to be registered in the population registry as a minor under the age of sixteen, whereas the Convention on the Rights of the Child defines an adult as a person who has reached the age of eighteen. Israel places many obstacles before Palestinian children between sixteen and eighteen who want to be registered in the population registry, thereby violating its undertaking to register every child within its jurisdiction and to respect the child's right to be a citizen.

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262. Y. Sandoz, C. Swinarski, B. Zimmerman (eds.), *Commentary on the Additional Protocols to the Geneva Conventions* (Geneva: ICRC, 1987) 909, 912 (hereafter: *Commentary on Protocol*).

263. For the psychological consequences of this separation, see above, p. 108.

3. Right to Family Unification in Regional Law on Human Rights

Since Israel is not party to any regional human rights legal system, regional human rights instruments do not impose obligations on her. However, examination of family-unification-related provisions of those conventions is useful in indicating the relevant obligations undertaken by member states.

A. The European Convention for the Protection of Human Rights and Fundamental Freedoms

Article 8 of this convention secures the right of a person to respect for his private and family life and prohibits interference by a public authority in exercising this right. By examining the commentary on this article by European human rights bodies, it is possible to examine application of the International Covenant on Civil and Political Rights, which has a similar provision, as its relates to rights of the family.

The European Court of Human Rights ruled that, in becoming a party to the Convention, a state undertakes to limit its right to control the entry and exit of foreigners from its territory.[264] In several judgments, the Court ruled that the right to a family life includes the right of a foreigner to maintain a family life with his or her spouse who is resident in the state, and live there with their children and other relatives. The judgments further hold that deportation of the foreign spouse infringes the foreigner's and the native spouse's right to their private and family life. The European Court has consistently held that only a substantial public interest may be sufficient to allow the state to prejudice family life by deportation of the foreign family member. This principle of law applies even in extreme situations, where the foreign spouse clearly endangered public order and was convicted of penal offenses. Even then, the state is required to give significant consideration to the damage to family life inherent in deporting the foreign offender.[265]

B. The Helsinki Agreement[266]

The Helsinki Agreement was signed in 1975 at the end of a conference on security and cooperation in Europe. The signatories are the

264. See, for example, Application No. 2142/64, X. v. *Austria and Yugoslavia*, VII Yearbook 314 (1964).

265. For a survey of relevant judgments on the subject, see Appendix IV.

266. Final Act of the Conference on Security and Cooperation in Europe (Helsinki, 1975).

European countries, the United States, the Soviet Union, and Canada. The Agreement is a political declaration, though according to the International Law Association, it also has certain characteristics of a binding legal agreement.[267]

The Agreement expresses the participating states' willingness to handle "in a positive and humanitarian spirit" and as expeditiously as possible requests for family unification, giving special attention to urgent requests, such as those submitted by old or ill persons. The states also decided to lower where necessary the fees collected for family unification requests; that until family unification is achieved, the states will enable meetings and contacts between the family members; that submission of family unification requests would not modify the rights of the applicant or of his or her family; and that denied applications for family unification may be renewed at reasonably short intervals.

As for family visits, the Agreement urges the states to respond favorably to requests for visits in their territory. Approval of requests for permission to visit is to be granted within a reasonable time, special handling is to be provided in urgent cases, and an acceptable fee is to be charged for the permits.

The Agreement also provides that, "The participating states will examine favorably and on the basis of humanitarian considerations requests for exit or entry permits from persons who have decided to marry a citizen from another participating state."

The Agreement shortened family unification procedures in the participating states.[268] At the time, the Agreement was considered a major step forward in the battle of Jews in the former Soviet Union to join their families in Israel and other countries, and provided support for the arguments of persons working on their behalf.[269] The head of the permits department of the former Soviet Union's Ministry of the Interior reported that, following the Helsinki Agreement, among other things, the Soviet government instituted significant changes to facilitate family unification and contacts between relatives.[270]

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267. Report of the International Committee on Human Rights, International Law Association, Belgrade Conference, 1980, pp. 59-70.

268. See Fourlanos, *Sovereignty and the Ingress of Aliens*, p. 117; Plender, *International Migration Law*, p. 365.

269. See Plender, *International Migration Law*, p. 365; Nathan Sharansky, *Fear No Evil* (New York: Random House, 1988) 125, 169, 357, 421.

270. An interview with the head of the permits department, Rudolph Kuznetzov, appeared in the Soviet periodical *Novoyah Vermiyah* ("The New Time"), no. 28 (1987), and was translated into Hebrew in *Soviet Union Jewry*, vol. 11 (1988) 312.

4. State Laws Related to Family Unification

An examination of the laws that various states apply to their citizens in family unification matters follows. Although Palestinian residents of the Occupied Territories are not citizens, the connection between them and the Occupied Territories is that of citizens to their state: they were born in the Occupied Territories or lived there for some years after arriving as refugees; most are not citizens or residents of another country; and they are not immigrants, so they do not have another homeland to which they can return to live with their respective families.

For this reason, it is appropriate to examine family unification policy relating to Palestinian residents of the Occupied Territories in accordance with the criteria set by states for citizens seeking family unification.

A. State Laws

Immigration laws in most states allow citizens to live with their immediate families in the local citizen's country. This right also applies in states having rigid laws concerning persons wanting to immigrate to the state for reasons unrelated to family unification.[271]

For example, European states and the United States grant citizenship or permanent residency to a foreign spouse and minor children automatically or after a few procedural conditions are met. These laws enable members of a citizen's nuclear family to enter and stay temporarily in the state while their request for citizenship or residency is examined. In certain circumstances, the laws also enable more distant relatives to enter.[272] Most states, among them the European community, also expand these protections and rights for relatives of residents, and allow family unification in their territory for aliens who are within the resident's immediate family.[273] Many states also enable

271. Burgenthal and Sohn, *Movement of Persons*, pp. 69-70; Fourlanos, *Sovereignty and the Ingress of Aliens*, pp. 87, 106-107.

272. *Ibid.* (Burgenthal and Sohn); "Asylum Policy and Family Reunification Policy in Ten European Countries," report by the International Helsinki Federation for Human Rights, 1985.

273. *Ibid.* (Burgenthal and Sohn), p. 68; S. Thomsen, "The Legal Position of the Spouse and Family Members," in J. Frowein and T. Stein (eds.), *The Legal Position of Aliens in National and International Law* (Max Planck Institut, Berlin, 1987) vol. II, pp. 1949, 1947, 2084; Fourlanos, *Sovereignty and the Ingress of Aliens*, p. 102. See, also, Guy Goodwin-Gill, *International Law and the Movement of Persons between States* (Oxford: Clarendon Press, 1978) 197.

the spouse and minor children of a foreigner working within its borders to enter or join the spouse or parent after a fixed period of time.[274] The UN High Commissioner for Refugees stated that, "Family unification has continued to be a factor of major importance in obtaining the admission of refugees and displaced persons to the most traditional countries of immigration."[275]

Research conducted by the American Society of International Law, which collected and analyzed the accepted principles on movement of persons across borders, recognized that the concept of "family unity" has been adopted by major legal systems of the world, and that,

> There is thus a general tendency... to improve the rules relating to the simultaneous, or as prompt as circumstances permit, admission of members of the family of a person crossing the border or already living in the country. The principles that are emerging are likely to become generally accepted in the near future."[276]

B. Israeli Law

The Law of Return allows every Jew in the world to receive Israeli citizenship. The law also grants this right to non-Jews who are the spouse, child, or grandchild of a Jewish immigrant, and to the spouse of a child or grandchild of a Jewish immigrant.[277] Israeli Jews are entitled to be united with their families in Israel, and their Jewish foreign family members are entitled to enter the state and receive citizenship under the Law of Return.[278] This is also true for relatives of Israeli citizens who live in the Occupied Territories.

The law does not grant automatic citizenship to non-Jewish spouses of Israeli citizens. The law provides that the Minister of the Interior has absolute discretion whether to grant these spouses the status of permanent resident or of citizen.[279] The Ministry's policy in such cases is

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274. International Labor Organization, *General Survey of the Reports Concerning Migrant Workers*, Geneva, 1980, p. 120; International Committee on Migration, *Migration of Family Reunion* (M/SAI/II/19), November 1975, p. 5.

275. Report of the UNHCR, General Assembly: Thirty-fourth Session, Supplement No. 12, UN Doc. A/34/12, New York, 1979, p. 12.

276. Burgenthal and Sohn, *Movement of Persons*, pp. 65, 70.

277. The Law of Return, 5710 -1950, sec. 4A (a).

278. The Ministry of the Interior recently ruled that a non-Jewish spouse of an Israeli Jew who is not a new immigrant is not entitled to receive citizenship pursuant to the Law of Return. This policy was recently upheld by the High Court of Justice.

279. Sec. 7 of the Citizenship Law, 5712-1952; sec. 2(A)(4) of the Entry into Israel Law, 5712-1952.

to grant the spouse permanent residency, and this only "after a test period of five years and three months after the decision to approve the request for family unification."[280] The spouses' children are entitled in any event to automatic citizenship by law because one of their parents is a citizen.[281]

In sum, Israel's policy on family unification in the Occupied Territories does not meet the criteria set by most states, or even by Israel itself. These criteria recognize the right of citizens to live together with their families in the state, and allow relatives to stay with the citizen while the authorities examine the request for citizenship or residency.

Defining the Family under State Laws

Most states define "family" broadly to include relatives who are not part of the nuclear family, which comprises only the couple and their minor children.

The First Additional Protocol to the Fourth Geneva Convention requires the participating states to facilitate family-unification procedures. The ICRC's commentary to the Protocol states, at page 859, that:

> It would be wrong to opt for an excessively rigid or precise definition... Thus the word "family" here of course covers relatives in a direct line... spouses, brothers and sisters, uncles, aunts, nephews and nieces, but also less closely-related relatives, or even unrelated persons, belonging to it because of a shared life or emotional ties... In short, all those who consider themselves and are considered by each other to be

280. From a letter of 11 January 1998 from attorney Miriah Bakshi, of the office of the legal advisor of the Ministry of the Interior, to The Association for Civil Rights in Israel.

281. The Citizenship Law, sec. 4(A). Since the occupation of East Jerusalem and imposition of Israeli sovereignty over its residents in 1967, the Ministry of the Interior has also been responsible for family unification of East Jerusalem residents. Its policy there is rigid and forces prolonged family separation. For an extended discussion of this matter, see HaMoked: Center for the Defence of the Individual and B'Tselem, *The Quiet Deportation Continues* (Jerusalem, September 1998).

part of a family, and who wish to live together, are deemed to belong to that family.

The European Human Rights Court interpreted the concept "family life" to include "at least the ties between near relatives, for instance those between grandparents and grandchildren, since such relatives may play a considerable part in family life."[282] In defining family life, European human rights bodies also rely on factors like economic or psychological dependence.[283]

According to the American Society of International Law, states must include within the concept "family" every person who is totally dependent on the citizen or resident and is part of that person's household.[284] Many states do provide a broader definition of family than blood ties, and include within it situations of maintenance of a joint household, living together, and economic or emotional dependence.[285] Second-degree family relations (like aunts and uncles, nieces and nephews, and grandparents), in some cases only where the relatives are dependent on the citizen, are a basis for family unification in some states, such as the United Kingdom, France, Canada, Australia, Sweden, Denmark, and Holland.[286]

Even the law and practice in Israel reflect a broad perspective of the concept of family, though only for its Jewish population: section 4(A) of its Law of Return enables the child or grandchild of Jews, even those who are not minors, to immigrate to Israel.

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282. *Marckx v. Belgium*, 31 Eur Ct. HR (ser. A) (1979).

283. *Short Guide to the European Convention on Human Rights* (Strasbourg: Council of Europe Press, 1991) 65. See, also, Plender, *International Migration Law*, p. 231.

284. Burgenthal and Sohn, *Movement of Persons*, p. 65.

285. Fourlanos, *Sovereignty and the Ingress of Aliens*, p. 89.

286. Plender, *International Migration Law*, pp. 374-379; Thomsen, "The Legal Position of the Spouse and Family Members," pp. 57, 83, 202, 249, 266-268, 511, 1319. The European Community even enables relatives dependent on a foreign worker or his or her spouse to join the spouse in the country where the worker is employed. See Plender, pp. 368-369.

5. High Court of Justice Rulings on Family Unification in the Occupied Territories

Israel's Supreme Court, sitting as the High Court of Justice, has been called upon to exercise its judicial-review powers concerning the policy denying family unification in the Occupied Territories and the application of that policy in individual cases of Palestinian petitioners.

Prior to 1990, dozens of residents of the Occupied Territories whose application for family unification had been rejected petitioned the High Court of Justice. The number of petitions increased after Israeli policy became more restrictive in 1984. In 1985-1986 alone, some forty spouses filed petitions.[287] The petitioners requested the Court to overrule the discretion exercised by the military administration, and allow them to live in the Occupied Territories with their spouses and children as a normal family, which they contended was their right.[288]

Except for one case,[289] the High Court of Justice denied all the petitions, accepted all the State's claims, and ruled that the petitioners did not have a right to family unification. Not even one Justice questioned the legality of Israel's policy or the reasonableness of its application in specific cases.[290]

One of the principal ways in which the Supreme Court protects human rights is by requiring that a state authority, empowered to deny rights for a public purpose, must take into account the violation of the right and give it appropriate weight in making its decisions. The power to infringe a right does not turn that right into a benevolence, which the authority can ignore. Prof. Yitzhak Zamir summarized this manner of judicial protection of human rights, as follows:

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287. According to par. 15 of the Statement of the State Attorney's Office in *'Awashreh*.

288. Since 1990, the Court has not stated a position on family unification in the Occupied Territories. Following the more than eighty petitions that have been filed with the High Court of Justice since then, most through HaMoked, the State proposed an arrangement agreed upon by the petitioners, which led to the withdrawal of the petitions prior to the Court ruling on them. In one case, *'Awashreh*, the petition was not withdrawn. The Court ruled that, in light of the proposed arrangement, it was inappropriate for it to rule on the government's policy of family unification in the Occupied Territories.

289. *Samareh*, decided by the Court in 1980.

290. For a list of the High Court of Justice cases on family unification, see Appendix V.

> It is insufficient that the law empowered the authority to infringe a right, nor is it sufficient that the exercise of that power should serve a public purpose. Rather, the authority must also take into account the possibility of infringement of the right and the degree of the infringement, together with the other substantive considerations, and give it appropriate weight. The appropriate weight will require the authority to attain the proper balance under the circumstances of the case between the public need and the individual's right. If the authority does not take into account this consideration, or does not give it appropriate weight, such failure provides sufficient grounds to nullify its decision.[291]

The Supreme Court has not taken this path, adopted in many other judgments, when considering petitions dealing with the denial of family unification of residents of the Occupied Territories.

A. The Right Infringed

In its judgments on family unification in the Occupied Territories, the High Court of Justice starts with the assumption that the military government is empowered to prevent the entry of foreigners into the occupied territory. This power, the Court holds, is consistent with international law on belligerent occupation.

On the basis of the "authority" to prevent entry into the Occupied Territories, the Court ruled that residents of the Occupied Territories do not have a "right" to family unification. The Court refused to acknowledge infringement of any right of the resident in cases where the military administration exercised its power to prevent the foreign spouse from staying in the Occupied Territories: "We are not dealing with a vested right that was denied to the petitioner," the Court held, ruling that family unification is a "special act of benevolence of the authorities, grounded on humanitarian considerations."[292]

This approach of the Court, according to which the absence of "a vested right," incorporated in law, means there is no right whatsoever but only "an act of benevolence" granted by the authorities, contradicts the general jurisprudence of the Supreme Court on human rights. Most of the human rights recognized in the Israeli legal system were not "vested rights." Until the enactment of the Basic Laws in 1992, the Court recognized human rights that were not explicitly mentioned in statutes, and such recognition was granted precisely in those cases

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291. Y. Zamir, *The Administrative Power* (in Hebrew), vol. 1 (Jerusalem: Nevo, 1996) 104-105.
292. *'Awad*, p. 285.

where the law empowered the authorities to infringe or deny those rights.

In cases involving the issue of family unification, the Supreme Court had before it numerous Israeli and international-law sources on which it could rely to establish the right infringed by denial of residents' requests for family unification with their spouse and children.[293] This right is not a "vested" right secured by law and immune from violation, but a basic human right that must not be ignored, whose violation requires justification and the balancing of interests.

The right to establish and maintain family life was recognized by Israeli courts in other contexts as a fundamental and natural right of every person.[294] Israeli judgments are replete with the recognition of the family as the basic unit of human society, which must be protected.[295] The best interest of the child, including children's right to grow up with their parents and the right of the parents to raise their children are expressed in dozens of judgments as fundamental principles of Israeli law.[296]

The Court refused to acknowledge these rights with regard to Palestinian residents of the Occupied Territories, and ruled that international law is irrelevant to family unification in the Occupied Territories, because it does not posit any explicit duty to allow the entry of a foreigner into occupied territory for the purpose of family unification.[297] Other judgments emphasized that nothing precludes residents from living abroad with their families, so that no right to marry or establish a family is infringed.

The Supreme Court totally ignored the devastating effect that the State's policy denying spouses family unification had on their right to establish and maintain a family life. Even if the military government is not required to allow the foreign spouse to enter the occupied territory for the purpose of family unification, by refusing to allow entry, it prevents Palestinian residents from living with their spouse and children in their own country. Inevitably, the refusal infringes their right,

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293. Concerning these sources, see pp. 110-121 above.
294. See, for example, Civ. App. 232/85, *John Doe v. The Attorney General, Piskei Din* 40(1) 1,5; Civ. App. 488/77, *John Doe v. The Attorney General, Piskei Din* 32(3) 421, 435.
295. See, for example, Civ. App. 238/53, *Cohen et al. v. The Attorney General, Piskei Din* 8(4) 53; HCJ 693/91, *Efrat v. Director of the Population Registry, Piskei Din* 47(1) 749, 783.
296. See, for example, Civ. App. 2266/93, *John Doe, a Minor, et al. v. John Roe, Piskei Din* 49(1) 221, 235-236.
297. *Shahin.*

protected also in occupied territory, to a family life. This infringement requires explanation of the public or security interests that justify it.

B. The Public/Security Need

The Court did not meaningfully examine the public need justifying Israel's family-unification policy in the Occupied Territories. The Court simply accepted the military government's argument that there are "security" consequences to allowing foreign spouses into the region, but it never examined the relevant security considerations and their weight. The Court refrained from making this examination even though in cases presented before it, the IDF allowed the foreign spouse to visit the region on visitor's permits, and did not argue that the spouse's continued stay in the Occupied Territories as a visitor endangered security in any way.

In addition to the undefined security considerations for its family-unification policy, the State also mentioned political, diplomatic, and economic considerations related to immigration into the Occupied Territories. The Court never deliberated on the question of whether the IDF is allowed to rely on these considerations. In its decisions in other contexts, the High Court of Justice ruled that the military government was forbidden to consider the political interests of the occupying state, Israel, but may only consider the interests of the residents of the occupied territory.[298] Concerning family unification in the Occupied Territories, the High Court of Justice did not apply this test, but merely reiterated the State's reliance on such considerations. For example, the President of the Supreme Court, Meir Shamgar, stated: "It is the respondent's duty... to also weigh the general security, political, and economic significance of the phenomenon, and its ramifications."[299]

The Court did not examine the relevance of the claim that family unification had become a way to immigrate to the Occupied Territories. It neither asked nor explained what is unacceptable in such immigration or how the immigration of spouses affects the legitimate interests of the occupying power. In most states, family unification is the main reason for allowing immigration, and it is unclear where the difference lies in the immigration of spouses into occupied territory.

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298. HCJ 390/79, *Dweikat v. Government of Israel, Piskei Din* 34(1) 1, 17; *Teacher's Society*, p. 794; HCJ 1285/93, *Estate of Shechter v. Commander of the Judea and Samaria Region, Takdin Elyon* 96(4) 15.
299. *Shahin*, p. 214. See, also, *Aljera*, p. 2; *Khalil*, p. 58.

The Court made no attempt to critically analyze the State's argument on the problem of immigration into the Occupied Territories, and never asked for or received a factual basis for these contentions, such as statistics on the immigration-emigration balance in the Occupied Territories. Nor did the Court examine the policy's inequality, which allows free immigration of Jews into the Occupied Territories but totally blocks the entry of Palestinians, despite their marriage and parental ties to residents of the Occupied Territories.

The actual purpose of the military government's policy was to alter the long-term demographic balance between Palestinians and Jews in the Occupied Territories. The Court did not expose this purpose, nor did it even try to expose it.

C. Balancing the Public/Security Need and the Right Infringed

As mentioned, the Supreme Court did not find any infringement of human rights in cases where Israel denied family unification of spouses, and did not scrutinize the public interest justifying Israel's policy. According to its logic, there was, therefore, no reason to balance the infringement of the right to family life against a public purpose.

The Supreme Court adopted the State's position in its entirety. None of the Court's decisions examined whether the policy of denying family unification satisfies the elementary duty of an occupying power under international law to ensure the welfare of the local population and enable them to live normal lives. In this context, the Court did not examine the policy in light of long-term belligerent occupation, when the natural course of life requires persons to marry and establish families. The Court did not ask if the sweeping denial of family unification is appropriate where there is a close connection between residents of the Occupied Territories and Palestinians living abroad, and in light of the marriage patterns in extended family groups, even when borders separate them.

Contrary to its judgments in other contexts, the Court did not examine the reasonableness of governmental directives concerning family unification by taking into account whether administrative policy "is extremely rigid, ignores the reality in the relevant area, or creates gross inequity."[300]

300. I. Dotan, *Administrative Directives* (in Hebrew) (Jerusalem: Nevo, 1996) 180.

D. Reviewing Discretion in Specific Cases

The Supreme Court's approach supports substantive judicial review in individual cases, even where no vested right is infringed. For example, where a governmental authority refuses to grant a benefit, the Court examines in depth the reasonableness of the exercise of administrative discretion and determines whether all the relevant considerations, and those considerations alone, were properly weighed.

In only one case involving a petition for family unification in the Occupied Territories did the Court make such an examination. In that case – *Samareh* – Justice Barak made it clear that he does not think that residents of the Occupied Territories have a right to family unification, but ruled that the court must nevertheless examine the discretion leading to a decision in each and every case:

> The truth is, the petitioners have no right to receive a permit [for family unification], but they have the right that the refusal to grant them the permit be based on appropriate considerations.[301]

From 1984 onwards, the Court reviewed Israel's rigid policy not to allow family unification other than in exceptional cases. The Court approved the change in policy:

> The military authorities were allowed to restrict, as they did, the granting of permits only to exceptional humanitarian cases, and to cases where they are interested in responding favorably to a particular request on its merits for political, security, or social reasons.[302]

When the Court accepted the policy not to approve family unification for any spouse other than in undefined exceptional cases, it effectively relinquished its judicial function of examining whether the decision to deny the request for family unification in a specific case was based on appropriate considerations. The Court's refusal to review the discretion of the military administration in specific cases occurred *in al-Swafiri*, where the military administration argued that it does not have to indicate any of the considerations that led to the rejection of the petitioners' request for family unification:

> The petitioners argue that the request for family unification was denied without giving reasons. I contend that the root of the argument lies in the mistaken perception of family unification. The policy is to limit as much as possible the granting of family unification, and to grant it only in extremely exceptional

301. *Samareh*, p. 3.
302. *Khalil*, p. 85. See, also, *Sharab*, p. 673.

> circumstances (or to further a governmental interest). There is, therefore, a need to give a reason and explanation when approving family unification, while refusal is no more than the implementation of the absence of any reason to deviate from the policy. To the best of my understanding, the petitioners must indicate the appropriate reasons for family unification, and it is not for me to indicate a special reason for refusing to deviate from the policy

Following this argument, the Court ruled, without explanation, that "it is inappropriate for this court to intervene in the respondent's considerations."

The Court developed a special rubric for family unification, whereby it will not intervene even though the military administration provides no reason or substantive consideration in the specific case. In commenting on this approach, Prof. Dinstein observed that the Court showed

> too great a willingness to refrain from individual examination of the specific family-unification cases... Each and every petition to the High Court of Justice should be examined on its merits, in accordance with its unique background.[303]

The Court was also inflexible in cases where the petitioners argued that their cases were special humanitarian situations. Discussion of claims of special humanitarian circumstances was characterized by insensitivity, condescension, and a tone of censure. For example:

> The petitioner knew very well, already before the twins were born, that his wife was not granted a permanent-residency permit. The petitioner's children from his first marriage are adults, and the youngest among them is fifteen. In essence, we are confronted by the desire of the resident of the region whose wife died to bring a second wife into the region from outside the region. In this matter, the policy is not to enable family unification of this type. We are unable to say that this policy, with all the difficulties that it raises, is so unreasonable as to require our intervention. The petition is denied.[304]

Or the comments of the then-President of the Supreme Court, Meir Shamgar:

> The petitioner mentioned in his application that his left leg is paralyzed, for which reason he has a special need for the presence of his wife... He does indeed suffer emotionally from the separation from his wife...., but, unfortunately, this cannot be perceived as a

303. Dinstein, "Family Unification in the Occupied Territories," pp. 228-229.
304. HCJ 11/86, *Ahmad Khativ v. Minister of the Interior et al., Takdin* 86(1) 84, 86.

phenomenon that makes this case special in comparison to other cases.[305]

The Court did not find unacceptable the exception enabling family unification when the administration had a special interest that it be granted. The Court held that, as a rule for exercising administrative discretion, such an exception – granting a privilege to a particular person where the government has an interest in improving relations with the individual but not to any other – is proper. In other contexts, the Court rejected such an approach, considering it arbitrary and discriminatory. For example, Justice Moshe Landau stated, "Discrimination in favor of persons who are 'close to the throne' over ordinary people opposes the principles of democracy and the equality of all before the law."[306]

E. Function and Performance of the High Court of Justice on Matters of Family Unification in the Occupied Territories

The Supreme Court neither designed nor enforced the policy that compelled thousands of Palestinian families to live apart or emigrate to live as a family unit. Israeli governments, IDF commanders, and the heads and officials of the Civil Administration are the ones directly responsible for the suffering of these families.

However, the Supreme Court served as a rubberstamp to this policy, both with regard to the general validity of the policy and in individual cases. The High Court of Justice purported to judicially review the acts of the military government, but in practice failed to do so.

The Court generally denies petitions of residents of the Occupied Territories in human rights matters, and tends to accept fully the military's position. In most such petitions, the Court is faced with specific security considerations. The justices' fear that judicial intervention could create a significant security risk plays an important role in their decision-making. On this point, Prof. David Kretchmer observed that, "The judicial system does not hasten to use its power in situations where it could be accused of responsibility for harm to state or public security."[307]

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305. *Aljera*. See, also, *Sharav*, p. 672.

306. HCJ 209/73, *'Ali 'Odeh (Lafi) v. Minister of the Interior*, *Piskei Din* 28(1) 13, 17-18.

307. David Kretchmer, "High Court of Justice Review of Demolition and Sealing of Houses in the Occupied Territories" (in Hebrew), *Klinghoffer Handbook on Public Law*, Y. Zamir (ed.) (1993) 305, 310.

Although the Court denied many of these petitions, in most of the cases, the justices clearly perceived the right infringed, as where demolition of houses or deportation was involved. The justices placed certain substantive restraints on the authority's power, such as requiring proportionality in demolition of houses, and procedural restraints, such as the demand that a right to be heard be granted. Several justices even questioned the legality of the means and its justification, such as Justice Heshin in cases of demolition of houses, and Justices Cohen and Bach on deportation.

On the matter of family unification, the High Court of Justice refused to recognize any right that is infringed as a result of Israel's policy. This refusal has occurred precisely in cases where no defined security risk exists: another Jordanian woman, another child will not endanger the security of Israeli residents or the IDF soldiers stationed in the Occupied Territories. Despite this, none of the justices raised any opposition or suggested a substantive or procedural condition to limit the infringement of the right of residents of the Occupied Territories to live together with their families.

The High Court of Justice ratified and sanctioned an inhumane policy. The concluding comments of then-President of the Supreme Court Meir Shamgar in his principal opinion on the subject indicate that the government's policy is blemish-free, and no other choice exists but to maintain it:

> The respondent does not ignore the severe humanitarian problems and does not forego its willingness to examine each case according to its circumstances. It was entitled to conclude that where a certain phenomenon becomes massive, and encompasses many thousands each year, no possibility exists to continue to apply criteria that are purely personal. Rather, it is the respondent's duty, based on his considerations made in accordance with the law of war and on the nature of his function, to consider also the general security, political, and economic significance inherent in the phenomenon and its consequences... All of us hope that peace will also solve these problems, but their immediate solution in time of war, by allowing the movement of many – and not just a few – into the region held by IDF forces, cannot serve as a pretext for this court's intervention on the background of the petitions before us.[308]

However, as an institution, the Supreme Court stimulated a reevaluation of the military government's policy. Following the first petition filed by human rights organizations before the High Court of

308. *Shahin*, pp. 215-216.

Justice, the military government announced in 1990 a liberalization of its policy, and granted a group of spouses the status of long-term visitors. In its judgment in this case, *'Awashreh*, the Court left the door open to the possibility of future judicial intervention and a departure from its past rulings. Since then, the Court has served as a kind of potential threat or risk factor to the government, in case the Court should change direction and exercise substantial judicial review, recognizing the right to family life. As an institution with the power to intervene, the High Court of Justice has thus contributed to bring about some change in the State's policy.

Conclusions

Tens of thousands of Palestinian residents of the Occupied Territories are married to non-residents. Israel's rigid policy on family unification in the Occupied Territories separates spouses and tears children from their parents. The only way for these families to live together is by emigrating from the Occupied Territories.

Israel refuses to recognize the right of Palestinians to family unification in the Occupied Territories and considers approval of a request for family unification an act of benevolence. This report shows that Israel's position is dictated by political considerations, whose objective is to change the demographics of the Occupied Territories by blocking immigration of spouses of residents of the Occupied Territories into the area and by encouraging emigration of divided Palestinian families. This political consideration also dictates Israel's policy in other areas affecting Palestinian rights, among them establishment of Israeli settlements, revocation of residency in the Occupied Territories, including East Jerusalem, and the intentional creation of a housing shortage. Under international law, an occupying power is not allowed to take into account political considerations when determining policy involving occupied territory.

Israel's policy totally ignores the social reality existing in the Occupied Territories, in which marriage between residents and relatives from outside the area is extremely widespread. In employing this policy, Israel forces residents to make a cruel choice between family separation and leaving their homeland. The Israeli authorities, supported by the High Court of Justice, inflict ongoing suffering on hundreds of thousands of persons, restrict the development of children by violating their right to live with both their parents, create family instability, and rend the family unit. Israel commits these violations of human dignity, which are totally irreconcilable with the welfare of the population, even though they serve no security needs.

The Oslo Accords did not lead to improvement in Israel's family-unification policy in the Occupied Territories, although the Interim Agreement expresses the parties' undertaking "to promote and upgrade family reunification" in order to "reflect the spirit of the peace process." Israel continues to have decisive authority in determining which families will, or will not, be allowed to live together in the Occupied Territories. Israel unilaterally established that family unification in the Occupied Territories would continue to be subject to the annual quota

set prior to the Interim Agreement, despite the woeful inadequacy of the quota to meet the needs of the population.

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 2006 to meet these requests. Requests filed today will be approved almost a decade from now.

Family members, whose only desire is to benefit from the warmth and security of normal family life, continue to suffer from Israel's rigid family-unification policy. This policy contravenes international law, is inconsistent with Israel's policy within its own borders, and fails to meet the relevant criteria set by most of the world's nations.

Although the residents of the Occupied Territories do not have the status of citizens of the Occupied Territories, the relationship between them and the Occupied Territories is like that between citizens and their country. They were born there or lived there for many years after arriving as refugees. Most are not citizens or residents of another country 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 their basic right, which Israel may not deny.

Recommendations

HaMoked and B'Tselem view family unification as a purely civil matter, whose handling should be transferred totally to the Palestinian Authority. Under such an arrangement, Israel would cease to be involved in family unification matters except for exercising its right to prohibit entry of persons endangering Israel's security.

The PA should be responsible for setting family unification policy in the Occupied Territories. In establishing and implementing its policy, the PA is obligated to act "with due regard to internationally-accepted norms and principles of human rights and the rule of law."[309]

HaMoked and B'Tselem are of the opinion that family unification in the Occupied Territories should also cover members of both the nuclear and extended family of a resident of the Occupied Territories. Determination of whether a person belongs to one of these categories must be made according to relevant, uniform, and clear criteria reflecting the social reality of family structure in the Occupied Territories.

The Nuclear Family

The nuclear family includes a resident's spouse and children under the age of eighteen. In instances where children have duly appointed guardians, the relationship between child and guardian is like that of parent and child. A resident's nuclear family should be allowed to enter the Occupied Territories after presenting documents proving the family relationship. Furthermore, nuclear-family members should be allowed to stay in the Occupied Territories until decision is reached on their request for family unification, as is currently the custom for persons within the High Court of Justice Population.

Quotas restricting the right of nuclear-family members to family unification should not be set. Requests should be granted expeditiously and based solely on legitimate requirements, such as documented proof

309. Art. 19 of the Interim Agreement (previously art. XIV of the Cairo Agreement). Israel also maintains that, "As far as the powers and responsibilities transferred to the Palestinians are concerned, they are responsible for their implementation in accordance with international norms and principles." Letter of 29 April 1997 from attorney Yael Ronen, of the department of the legal advisor, Ministry of Foreign Affairs, to B'Tselem.

of family relation, that are customarily required by immigration statutes in democratic countries, and on pure security considerations relating directly to the non-resident relative.

The Extended Family

This category includes family members who do not belong to the nuclear family of the resident and are elderly, alone, or dependent on the resident and his nuclear family. Examples are aged parents of a resident or a resident's elderly sister who has no nuclear family of her own.

These relatives should be allowed to enter the Occupied Territories upon presentation of documents proving their dependence on the resident. The decision regarding family unification in these instances should be based on the merits of the particular case.

As Regards the Two Groups

- The right to family unification includes the more restricted right of family visits across borders. For this reason, relatives of residents of the Occupied Territories should be allowed to visit them in an organized, regular manner.
- The procedures for allowing family unification and family visits should be conducted according to the rules of proper administration, whereby the authorities publish the procedures, provide prompt responses to requests, make decisions based on clear, published criteria, provide the specific reasons for rejection of a request, and offer an appeals procedure in the event of rejection.

APPENDIXES

Appendix 1

Requests for Family Unification between 1985 and 1990

Year	Requests Submitted[310]	Requests Approved[311]	Source of Information
1985	3,000*	300**	*The Palestinian Non-Violence Research Center, in Sanabel Press Services, *Transfer Policy in Action* (Jerusalem, December 1989), p. 3. ** M. Benvenisti, *Lexicon*, pp. 21-22.
1987 to 1989	3,266	695	Response of the Minister of Defense, Yitzhak Rabin, to a parliamentary query of MK Yossi Sarid, 29 January 1990.
1988	–	300	U.S. State Department, *Country Reports on Human Rights Practices for 1988*, p. 1384.
1989	1,358	442	Response of the office of the Coordinator of Government Operations in the Occupied Territories to an inquiry of B'Tselem, November 1990.
1990	2,610	670	Response of the Minister of Defense, Yitzhak Rabin, to a parliamentary query of MK Yossi Sarid, 29 January 1990, and the response of the Minister of Defense, Moshe Arens, to a parliamentary query of MK Avraham Poraz, 13 May 1991.

310. When Israel instituted a harsher family unification policy, making approval extremely unlikely, many Palestinians refrained from submitting requests. Therefore, the figures do not represent the Palestinian population's actual need for family unification.

311. A request for family unification with the spouse often also included the applicant's minor children. The number of persons granted family unification is higher than the number of requests approved.

Appendix 2

Violation of the High Court of Justice Agreements (Based on Complaints to HaMoked)

In the summer of 1991, HaMoked started to deal with the issue of separated families in the Occupied Territories. HaMoked advises the families of their rights and submits requests on their behalf to the various authorities and the courts. Its activities encompass all the matters relevant to separated families: obtaining a visitor's permit for non-resident relatives, obtaining extensions of the visitor's permit, obtaining family unification, registration of children, reimbursement of fees, and more.

Until the end of 1996, HaMoked assisted 1,573 separated Palestinian families, most of them from the West Bank. Seven hundred and ninety of these families belong to High Court of Justice Population I, comprising thirty percent of that group, a large and representative sample of that population.[312]

As of the end of 1995, HaMoked had received 375 complaints from these families regarding various violations of the High Court of Justice Agreement. Another 143 families complained that the authorities had threatened them with the objective of making their family members who are protected under the agreement leave the Occupied Territories.

Another four hundred separated families assisted by HaMoked belong to High Court of Justice Population II. These families comprise 686 persons (400 spouses and 286 children).

Since February 1994, when the decision to recognize the rights of this class was made, seventy-six families sought assistance from HaMoked relating to various violations of the State's undertakings. Another sixty-three families complained that the authorities had threatened them to make family members protected under the agreement leave the Occupied Territories.

It may be assumed that separated families assisted by HaMoked suffered violations and threats in addition to those they reported to HaMoked.

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312. These families include 1,783 persons (790 parents and 993 unregistered children), almost thirty percent of High Court of Justice Population I. According to the 22 August 1993 Statement of the State Attorney's Office in *Hadreh*, High Court of Justice Population I contains 6,000 persons.

Type of Violation	**Number of Complaints: High Court of Justice Population I**	**Number of Complaints: High Court of Justice Population II**
Refusal to issue a visitor's permit	19 (5 percent)	6 (8 percent)
Refusal to extend a visitor's permit	98 (26 percent)	32 (42 percent)
Brief extension of a visitor's permit	64 (17 percent)	11 (15 percent)
Refusal to accept a request for family unification	20 (5 percent)	17 (22 percent)
Delay in handling a request for family unification (Population I)	140 (37 percent)	–
Other	34 (10 percent)	10 (13 percent)
Total	**375 (100 percent)**	**76 (100 percent)**
Cases accompanied by threat of expulsion	143	63

Most of the violations and threats occurred during the years immediately following the making of the agreements, but they also continued in later years.

	Violations		Threats	
	Population I	Population II	Population I	Population II
1990	–	–	1	–
1991	4	–	32	–
1992*	17	–	67	–
1993	138	–	23	–
1994**	57	55	3	50
Continuing violation/date unknown	147	2	10	4
Total	**375**	**76**	**143**	**63**

* In November 1992, High Court of Justice Population I was expanded. Since then, it includes women and men, from the West Bank and the Gaza Strip, who entered the Occupied Territories between 1 June 1990 and 31 August 1992 to visit their spouse.

** In February 1994, High Court of Justice Population II was recognized.

HaMoked received complaints about violations from families belonging to the High Court of Justice populations from all the Civil Administration districts in the Occupied Territories.[313]

District	Number of Violations*	Number of Threats*
Nablus	53 (19.8 percent)	45 (16.8 percent)
Tulkarem	81 (22.6 percent)	64 (17.8 percent)
Ramallah	29 (21.3 percent)	25 (17.7 percent)
Bethlehem	69 (62.1 percent)	39 (35.1 percent)
Hebron	33 (22.3 percent)	17 (11.4 percent)
Jenin	26 (27.7 percent)	10 (10.6 percent)
Jericho	1 (5.6 percent)	4 (22.2 percent)
Gaza	19 (38 percent)	2 (4 percent)
Total	**311**	**206**

* The number in parentheses indicates the percentage, from among the families in the particular district who were assisted by HaMoked, of families whose rights under the agreement were breached or who were threatened.

This table indicates two principal findings:

A. The Israeli authorities' violation of the High Court of Justice Agreements in all the Civil Administration districts indicates that the entire system of informing and instructing the Civil Administration branch office personnel about the agreements was handled negligently. Under the circumstances, there are grounds to believe that this negligence was intentional, the purpose being to reduce the number of families obtaining family unification in the Occupied Territories.

B. The significant numerical differences between the various districts relating to the percentage of violations indicates that some districts were extremely negligent in implementing the agreements, or intentionally created difficulties for the residents. The situation was

313. This table includes the violation of delay in responding to a request for family unification of a member of the High Court of Justice Population.

particularly grave in Bethlehem, where Civil Administration district officials violated the agreements in more than sixty percent of the cases of separated families handled by HaMoked, and made threats and demands that the non-resident relatives leave the region in more than one-third of the cases.

Appendix 3

B'Tselem's Project in Bani Na'im

Since the beginning in the summer of 1994, B'Tselem has been conducting a research and assistance project involving separated families in the village of Bani Na'im, near Hebron. B'Tselem monitors the family unification process, informs the families of their rights, and corresponds with the authorities. In addition to assisting the families, the objective of the project is to determine the principal problems related to family unification in the Occupied Territories. The following summary relates to one hundred separated families from Bani Na'im that B'Tselem assisted for more than three years.

Description of the Separated Families

Out of eighty cases in which the spouses are separated,

- In fifty cases, the resident husband seeks family unification with his wife.
- In thirty cases, the resident wife seeks family unification with her husband.
- Forty-seven couples are members of High Court of Justice Population I.
- Three couples are members of High Court of Justice Population II.
- Twenty-five couples are not members of the High Court of Justice Populations.

Sixty-six of the couples have children, the average number of children being 4.25. *Of the total of 281 children,*

- One hundred and fifty-seven children are registered in the population registry.
- One hundred and twenty-four were not registered when the family contacted B'Tselem for assistance.

Out of twenty cases of other family relationships,

- In thirteen cases, the parent seeks family unification for an adult child (ten cases for a son and three for a daughter).
- In one case, the resident seeks family unification for his mother.

- In five cases, residents seek family unification for a sibling.
- In one case, a resident seeks family unification for her sister-in-law.

The Families' Situation before B'Tselem's Involvement

Fifty-five of the couples did not submit requests for family unification after Israel instituted the quota policy (August 1993), even though the policy recognized for the first time the right to family unification for spouses. Twenty-five other couples were waiting for a response to requests they had submitted after August 1993.

Of the twenty other families, fifteen did not submit a request for family unification after the quota policy went into effect, and five were waiting for a response to requests they had submitted.

Of the forty-seven families belonging to High Court of Justice Population I, thirty-five had not submitted after August 1993 a request for family unification, even though Israel had undertaken then to grant them family unification. Of these thirty-five families, in thirty-two cases a previous request had been rejected or received no response, and in three cases, the families had never previously submitted a request.

Six families submitted a request to the Latecomers' Committee before B'Tselem became involved, and were waiting for a response, some for several years.

Following B'Tselem's Involvement

- Twenty-nine families submitted to the Civil Administration a request for family unification prior to November 1995, when the transfer of powers to the Palestinian Authority took place (twenty-four of these families are members of High Court of Justice Population I).
- Four families submitted a request to the Latecomers Committee, at the Civil Administration, prior to November 1995.
- Seven families submitted a request for family unification through the Palestinian Authority after the transfer of powers.
- One couple requested an identity card in connection with the Palestinian elections in January 1996.

Twenty-six families decided not to request family unification. The most common reasons for this were: moving to Jordan; inability to pay the application fee; lack of hope that the request would be approved; not wanting to remain separated during the period before an answer is received; departure abroad for several years.

Monitoring the Requests

Separated families submitted seventy-five requests before and after B'Tselem became involved:

- Sixty-six of the requests were for family unification.
- Eight were made to the Latecomers Committee.
- One request was for an identity card in connection with the Palestinian elections.

Of the sixty-six requests for family unification

- Forty were approved, all for the spouse.
- The average wait for a response: approximately ten months.
- The average wait for persons in High Court of Justice Population I: approximately eight months.
- The average wait for the other couples: approximately seventeen months.

Only ten families received a response within approximately three months, the period within which Israel undertook to provide the response. Of them, nine belong to High Court of Justice Population I and the other belongs to neither of the High Court of Justice populations.

Two requests were rejected: one for family unification on behalf of a male resident's mother, and one for family unification on behalf of a female resident's son. The average time to receive notice of refusal was approximately fourteen months.

- Seventeen of the requests submitted to the Civil Administration have not yet received a response. These families have waited an average of more than four years.
- The seven requests submitted to the Palestinian Authority have not yet received a response. These families have waited an average of approximately two years.

Of the eight requests to the Latecomers Committee

- Four were rejected.
- Four had not received a response as of the date that the committee was disbanded, in November 1995.

The request for an identity card in connection with the Palestinian elections did not receive a response.

Principal Findings

1. Residents' Lack of Information about the Procedures Necessary to Exercise their Rights

Before B'Tselem became involved, most nuclear families not included in High Court of Justice Population I had not filed a request for family unification after August 1993, even though on that date the Israeli authorities initiated a policy allowing family unification for spouses. Most of the families belonging to High Court of Justice Population I, to whom the State undertook in August 1993 to grant family unification, were unaware of the new policy and did not request family unification after that date.

The authorities failed to publish the new policy and procedures. As a result, the residents did not know about their rights, as demonstrated by the above figures.

2. Prolonged Waiting Period

Even prior to the Oslo Accords, the waiting period for obtaining a response to a request for family unification was long, much longer than the three months promised by the State: only some one-fourth of the applicants received a timely response. Families not included in High Court of Justice Population I had to wait close to an average of eighteen months for a response. The long delay resulted from the limited quotas, which carried the processing over to the following year. As a consequence of the long waiting period, the families lived in uncertainty and apart, as visits were not allowed during the waiting period.

The unanswered requests have been pending before the authorities for years because of the two-year freeze on the processing requests during the dispute between Israel and the Palestinian Authority, and because of the limited quota that was reinstated upon the renewal of the processing of requests for family unification.

Appendix 4*

The European Convention on Human Rights[314]

Article 8 of the Convention stipulates:

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Decisions of the European Court of Human Rights

In the following cases, the European Court ruled that the deportation of an alien convicted of a criminal offense was a disproportionate violation of the individual's right to family life, even though the prevention of crime is a legitimate aim:

Moustaquim v. Belgium, 18 February 1991, Series A No. 193

Beldjoudi v. France, 26 March 1992, Series A No. 234-A, pars. 74-79

Nasri v. France, 113 July 1995, Series A No. 320-B, pars. 41-46

Mehemi v. France, 26 September 1997, Reports of Judgments and Decisions 1997 – VI, pars. 34-37

In the following cases, the European Court held that only a pressing social need could justify the interference in family life entailed by deporting an alien from the country in which his or her immediate family lives:

Boughanemi v. France, 24 April 1996, Reports of Judgments and Decisions 1996 – II, par. 41

C. v. Belgium, 7 August 1996, Reports of Judgments and Decisions 1996 – III, par. 31

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* This appendix was prepared by attorney Eliahu Abram, Director, Legal Department, HaMoked.

314. European Convention for Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950).

Berrehab v. The Netherlands, 21 June 1988, Series A No. 138, pars. 28-29

In the following case, the Court ruled that the United Kingdom's immigration regulations both infringed the right to family life and the right to equality between the sexes (the regulations discriminated against women because they did not allow their foreign husbands or fiancés to enter the country):

Abdulaziz, Cabales and Balkandi v. United Kingdom, 28 May 1985, Series A. No. 94

Appendix 5

High Court of Justice Judgments on Family Unification in the Occupied Territories

HCJ 500/72	*Al-Tin v. Minister of Defense et al., Piskei Din* 27(1) 481
HCJ 489/76	*Tayeh et al. v. Minister of Defense et al.* (unpublished)
HCJ 802/79	*Samareh et al. v. Commander of the Judea and Samaria Region, Piskei Din* 34(4) 1
HCJ 692/82	*Mustafa et al. v. Military Commander of Judea and Samaria Region, Piskei Din* 37(1) 158
HCJ 263,397/85	*'Awad et al. v. Commander of the Civil Administration, Ramallah District, et al., Piskei Din* 40(2) 281
HCJ 354/85	*Abu Natzira v. Head of the Civil Administration, Gaza Strip, Takdin* 85(3) 60
HCJ 618,724,728/85	*Nasreh Khalil et al. v. Commander of Judea and Samaria Region, Takdin* 86(2) 84
HCJ 683/85	*Mashtaheh v. Military Commander of the Gaza Strip, Piskei Din* 50(1) 309
HCJ 739/85	*Da'amus et al. v. Military Commander for Bethlehem District et al., Takdin* 86(1) 57
HCJ 11/86	*Ahmad Khatib v. Minister of the Interior et al., Takdin* 86(1) 84
HCJ 13,58/86	*Shahin et al. v. Commander of IDF Forces in Judea and Samaria et al., Piskei Din* 41(1) 197
HCJ 106/86	*Majid Nammer al-Swafiri et al. v. Head of the Civil Administration in Gaza, Takdin* 87(1) 48
HCJ 137/86	*Aljera et al. v. Head of the Civil Administration in the Gaza Strip, Takdin* 87(2) 1
HCJ 209/86	*Alatrash et al. v. Head of the Civil Administration* (unpublished)

HCJ 263/86	*Rashamawi et al. v. Minister of the Interior et al., Takdin* 86(2) 127
HCJ 673/86	*Al-Saudi et al. v. Head of the Civil Administration in the Gaza Strip, Piskei Din* 41(3) 138
HCJ 711/86	*Jabareh v. Commander of IDF Forces in Judea and Samaria, Takdin* 87(2) 18
HCJ 31/87	*Sharab v. Head of Civil Administration in Gaza et al., Piskei Din* 41(4) 670.
HCJ 386/87	*Jabareh v. Commander of IDF Forces in Judea and Samaria, Takdin* 87(2) 104
HCJ 42/88	*Saba'aneh v. Commander of IDF Forces in Judea and Samaria et al., Takdin* 88(1) 105
HCJ 360/89	*Tabib v. Commander of Judea and Samaria Region – Beit El, Takdin* 89(4) 14
HCJ 1979/90	*'Awashreh et al. v. Commander of IDF Forces in Judea and Samaria, Takdin* 90(2) 358
HCJ 2151/97	*Shaqir et al. v. Commander of IDF Forces in the West Bank Region et al.* (unpublished)

Appendix 6

Response of the Coordinator of Government Operations in the Occupied Territories*

STATE OF ISRAEL
MINISTRY OF DEFENSE

Office of the Coordinator of Government Operations in Judea, Samaria, and the Gaza Strip
Mil. Post 01104 IDF
Telephone: 03-6975351/02
Fax: 03-6976306
January 1999

B'Tselem
HaMoked: Center for the Defence of the Individual

Dear Sir/Madam:

Re: **Report of B'Tselem and HaMoked on Family Unification in the Territories**

1. The above-referenced draft report that was sent to us for a response presents a broad historical survey of family unification in the Territories from 1967 to the present time. Already at the beginning of our comments, we note that, because of the short time allowed us to formulate a response to the report, we shall focus our comments on those parts of the report dealing with family unification in the Territories today. We responded to some of the report's contentions, and to the degree that we did not relate to certain contentions does not, of course, indicate that we agree with their substance.

* Translated by B'Tselem

General Comments

2. Unfortunately, the report does not present the reader with objective research of the issues, but often expresses extreme positions held by marginal elements among the Palestinians, and certainly does not reflect those of the Palestinians with whom we are negotiating. The report frequently presents unsubstantiated statements and even political views, ignoring the reality, the achievements reached in this area, and the distance that we have come since signing the political agreements with the Palestinians, notwithstanding the objective difficulties.

3. The error of the authors of the report is their reliance on the statements of marginal Palestinian representatives, who did not take part in the negotiations leading up to the Interim Agreement between Israel and the Palestinian side and are not involved in the ongoing implementation of it. For example: Khalid Salim was not involved in the discussions that preceded formulation of the Interim Agreement. Three years ago he was indeed the head of the Population Registry Subcommittee (hereafter: the Registry Subcommittee), but the Palestinian Authority (hereafter: the PA) removed him from his position a short time later. Two other persons mentioned in the report as having authority are Hassan Abu-Hashish and Salim Tamari. The first was not involved in negotiations, and his tasks were limited to dealing with registration matters only in the Ramallah area. The second was not a member of the Registry Subcommittee at all and never participated in its meetings.

4. The authors of the report surprisingly criticize the Interim Agreement. The Interim Agreement was signed following extensive, difficult, and thorough negotiations between Israel and the Palestinians. The agreement is rooted in negotiations between equals and did not result from compulsion. According to our attitude, there is no place for the patronizing attitude taken by the authors of the report, according to which the Interim Agreement was forced on the Palestinian side. We believe that the entity that can represent the Palestinians, fight for their rights, and act to improve their quality of life, is the Palestinian Authority. It is improper to say that the powers of the PA are "largely

meaningless," and that the PA "is left to deal only with the formal aspects..."

The Population and Documentation Registry Subcommittee

5. One of the most active and productive committees that is composed of representatives of Israel and the Palestinian side is the Registry Subcommittee (which even discussed, *inter alia*, the issue of family unification in the Territories). The committee has close working relations that take place in a good, business-like atmosphere. The Palestinian side has favorably noted this fact orally and in writing.

6. The Registry Subcommittee acts for the welfare of the Palestinians, while protecting Israeli interests, the laws, and regulations, and by ensuring compliance with the provisions of the Interim Agreement. Among the achievements of the Committee are transfer to the Palestinians of the power to issue identity cards; to issue passports; independent administration of the compilation of the population registry; and many other subjects.

7. For example, at the Subcommittee's last meeting, which took place on 10 January 1999 in Ramallah, in which senior-level officials participated, Israel announced, on its own initiative, an increase of one thousand requests to the family unification quota for 1999. Also, the Israeli side announced that it intended to handle family unification requests quicker within the next three months, in order to increase the number of requests being processed.

8. In addition, the Israeli side renewed its request to establish a committee to define the criteria for the activity of the "Latecomers Committee," a request that had been raised already a year earlier, which will examine the entitlement of Palestinians who lost their residence in the region as a result of an extended stay abroad. The Palestinian side welcomed the proposal and the committee's members have already been determined.

9. Another recent achievement is the exemption from the tax levied where persons who entered the Territories on Israeli visitor's permits (visas) continued to stay in the Territories illegally after the permits had expired. The exemption will apply from now on until June 1999 to such persons included by the PA in the family-unification framework.

10. These examples are only some of the joint achievements accomplished by the parties within the context of the Committee's deliberations. All of the decisions were adopted with the good will of the two sides.

Family Unification in the Territories

11. From Israel's perspective, the family-unification process is intended to meet a humanitarian need. It was represented as such in the negotiations over the Interim Agreement, and the process has been operated on this basis ever since the agreement was signed. The PA is involved in this process, with Israel having the right to prevent entry into the Territories to anyone constituting a danger to the region, or to anyone who does not meet the family-unification criteria.

12. From the perspective of the authors of the report and of the persons on whom they rely, the objective of the family-unification arrangements is, in practice, to enable massive immigration into the Territories. It is superfluous to add that this [objective] is inconsistent with the provisions of the declaration of Principles and the Interim Agreement.

13. In the past, Israel set a quota of 2,000 family-unification requests to be handled each year, with an internal division of 1,200 for Judea and Samaria and 800 for Gaza. It is important to note that this relates to the number of requests and not the number of persons (children under age sixteen are included in their parent's request for family unification), so that the number of persons entering the region every year is very respectable. As noted, this quota was raised for 1999 by fifty percent. A request for family unification generally includes several family members.

14. The quota allocated for family unification constitutes only the tip of the iceberg of the process of receiving permanent residency in the Territories. Arrangements for family unification also exist for families of Palestinian police, employees of the PA, and investors from abroad. According to the criteria, spouses of these persons and their children may enter. It should be noted that single daughters enter without age limitation, as is the case for sons under age 22. Also, a special quota was also established for persons who

do not meet these criteria, and attempts are also made to assist persons who do not meet the age requirements.

15. In addition, the said quota does not include the hundreds of Palestinians who moved from Egypt to the Canada [refugee] camp in the south of the Gaza Strip, as part of the family-unification campaign that is now taking place. Because of the great efforts we have given to this project, this campaign is moving ahead more rapidly than had been planned. This year alone some four hundred persons have entered in this framework.

16. Furthermore, as is known, spouses who are included within the High Court of Justice Population I receive permanent residency in the region, without restriction in number and without being included in the quotas. The process did, in fact, stop during 1996, but this was a result of the PA not providing the names of the applicants. Six months later, upon Israel's initiative, the process was renewed. It is important to note that the authority to grant permanent residency was transferred, in accordance with the Interim Agreement, to the Palestinian side. Although granting residence is subject, as noted, to the prior approval of Israel, the quotas are Palestinian. The above is also true for the High Court of Justice population. Requests for granting permanent residency to these populations are transferred to Israel through the PA, and granting of the residency is not made solely according to Israel's decision. Thus, when the Palestinian side does not forward to Israel a request for permanent residency for a member of the High Court of Justice population, Israel's hands are tied, and it is not allowed to grant residency unilaterally to that person.

17. The above indicates that, contrary to the spirit that the report tries to convey, the family-unification process encompasses tens of thousands of Palestinians who settled in the region over the past three years. The various criteria led to many persons in excess of the annual quota obtaining permanent residency in the Territories.

18. In 1996-1997, family unification in Judea and Samaria ceased. The authors of the report do not note that this cessation resulted from the Palestinian side, and opposed Israel's wishes. As noted, following the Interim Agreement,

the powers related to the population registry were transferred to the Palestinian side. Hence, all the handling of family unification began in the PA. The names of the applicants reach us based on decisions made by the PA. Since the signing of the Interim Agreement and the transfer of powers, the family-unification process in Gaza has been administered without hindrance. However, for internal reasons, in Judea and Samaria, the PA decided to stop the process. We found no logical explanation for this. We subsequently learned that the cessation occurred as a result of the internal relations between the PA and the districts.

19. The PA's stopping the family-unification process meant that the PA did not forward to Israel the names of the applicants. Without the names, we are, of course, unable to perform the checking and approval procedures.

20. The problem was resolved at the beginning of 1998 when senior officials responsible for coordination of activities in the Territories and the PA intervened. The Palestinian side announced that it would renew forwarding the names of the applicants, which in practice led to renewal of the process.

21. During the course of 1996-1997, Israel explicitly informed the Palestinian side that quotas that were not met would be cancelled. However, it is important to note that, in a goodwill gesture, the Israeli side stated that the unmet quotas during this two-year period would not be cancelled, and would be available for the following two years. That is, for 1998-1999, 2,400 requests (two annual quotas of Judea and Samaria) would be added, so that we reach a total of 4,800 requests, without counting the addition provided at the beginning of the month [January] for 1999.

22. As is known, since the transfer of powers over the registry, Israel does not collect fees from the Palestinian residents, as it used to do, for services provided to them by the Civil Administration. The power over collecting the fees currently lies with the Palestinian side, and to the best of our knowledge, it makes broad use of this power.

23. Furthermore, Israel decided to reduce dramatically the fees collected from the PA for the processing of requests for

family unification, and the fees now stand at only NIS 50, even though the processing expenses are substantially greater.

24. The story of A.A. mentioned in the report, according to which he submitted three requests for family unification and paid substantial fees, must be read in the context of the above comments. Israel is unable to process a request that the PA decided not to transfer to it. The PA has its order of priorities for the requests that it wants to forward to the Israeli side for handling, and Israel has nothing to say about the matter. Similarly, money collected by the PA from the Palestinian residents is not transferred directly to Israel. As we noted, Israel only receives processing fees from the PA. These are much lower than the fees that the PA collects from the Palestinian residents.

25. The argument that the procedures and criteria of the family-unification process were not made clear is specious. Mr. Salim Tamari, upon whom the report relies, was not involved in the negotiations. Every issue that bothers the Palestinian side can be raised in the Registry Subcommittee. No subject remains unresolved.

26. As for the contention that Israel may refuse to approve requests for permanent residency in the Territories only for security reasons – the Interim Agreement states no limitation on Israel's discretion on this subject. Article 28(11) of the Civil Affairs appendix to the Interim Agreement states the power of the Palestinian to grant permanent residency in the Territories, by establishing categories (family unification being among the categories). This power is subject to the prior approval of Israel. No mention whatsoever is made of limitations on exercising discretion on this subject. The truth is that Israel is less stringent when dealing with humanitarian cases.

27. Regarding the assertion that the PA was the one that decided that half of the requests filed within the quota framework would be old requests and that priority would be given to the High Court of Justice population – this assertion is imprecise. Review of the Subcommittee's minutes indicates that it was actually the Israeli side that made this request. Another imprecision in the report is the

assertion that there was no agreement as to various details of the family-unification process. There was agreement on the time schedules for processing requests. For example, it was agreed that the quota carried over in January would be met by the end of June.

28. The report contains a series of contentions regarding the High Court of Justice populations. Unfortunately, they are inaccurate. Israel continues to regularly extend the visitor's permits of the High Court of Justice population. Unfortunately, there are delays in transferring the requests via the PA. For example, until August 1996, the PA refrained from transferring to the Israeli side requests relating to this population.

29. Israel undertook in the High Court of Justice arrangements to extend, by six months each time, the visitor's permits of members of the High Court of Justice population. It should be noted that these persons are now issued visitor's permits that are valid, in practice, for seven months. When requests for visitor's permits for this population are forwarded to Israel, Israel approves a maximum period of three months, which is the maximum period stipulated in the Interim Agreement. The PA is authorized to extend the validity of the permits for an additional four months, which it usually does. As a result, the arrangements of the Interim Agreement benefited this population more than the arrangements made in the framework of the petitions to the High Court of Justice.

30. The authors of the report complain that families wanting to be included in the High Court of Justice population are compelled to deal with the Israeli side via the PA, which creates a complex and lengthy process. In our opinion, and as the Interim Agreement provides, the PA represents the Palestinian residents. It seems that acting in another manner would reduce the authority of the PA. We suggest, at this stage, not to eliminate the PA and replace it with another organization.

31. As for granting residency in connection with the PA elections, the report's authors do not mention the fact that what prevented many Palestinians from submitting a request to obtain the status of permanent resident in the Territories was the high price that the PA demanded be paid to submit

the request. Incidentally, Israel did not collect any sum for processing the requests.

32. Until November 1995, the procedure to registering Palestinian children whose mother was not a resident of the Territories was through family unification. The contention that the likelihood of obtaining family unification was minimal is startling. Most of the requests titled "family unification of minors" were automatically approved. Now every child under sixteen can be registered in the population registry, regardless of his or her place of birth, provided that one parent is a resident [of the Territories].

Visitor's Permits in the Territories

33. On the matter of issuance of visitor's permits the report also presents opinions rather than facts. Visitors are not limited to visiting only during the summer. Now, during the winter, many visitors pass via the Allenby Bridge.

34. As is known, the Interim Agreement transferred to the Palestinian side the authority to issue visitor's permits. The Palestinian side issues the permits subject to Israel's approval. The Agreement enables every family relative or acquaintance of an applicant who is a resident to submit the request through the Palestinian side. Therefore, both under the Agreement and in accordance with practice, no limitations exist regarding the entry of visitors who are not first-degree relatives.

35. Regarding the validity of the visitor's permits – the Agreement states on this matter that Israel may approve visitor's permits for a maximum period of three months (contrary to arrangements prior to the Interim Agreement, according to which the visitor's permits were valid for thirty days). The maximum period that the PA may extend the visitor's permit (without the necessity of Israel's approval, but subject to the PA so informing Israel) is a maximum of four months. Thus, a visitor can stay in the region for seven months.

36. Contrary to contentions made in the report, Israel did not place a quota on the entry of visitors. In 1996, for example, 5,453 visitors entered. These facts are not, of course, consistent with the report's contention that we only

received one hundred requests a week in 1996. The report later states that Israel "almost never allows relatives to visit in the Territories." Sixty-five thousand visitors a year proves that the assertion made in the report is unfounded.

37. Persons requesting a visitor's permit are not required to prove permanent residency of the invitees in the state in which they reside. It is required that the invitee have valid documentation for the period of the visit, as is customary elsewhere. Nevertheless, we enable visitors to enter even if the passport or *laissez passer* does not cover the entire period of the visit. In these cases, we enable to person to visit for a month. After that, the permit may be extended for an additional four months. In the event that the visitor extended the validity of the documentation, we approve two additional months, thus enabling the visitor to take advantage of the full seven-month period allowed. Incidentally, this matter was also agreed upon in the Registry Subcommittee, with the Palestinian side approving it.

38. The contention that Israel systematically rejects extending visitor's permits "in excess of the seven months that the PA is authorized to approve" is incorrect. First, the PA has the power to extend visitor's permits for a maximum period of only four months. Second, every request is examined on the merits, and a large percentage of the requests for extensions are approved. In conclusion, we observe that visitor's permits are intended, obviously, for visits, and not to enable the visitor to settle in the Territories.

39. Regarding family members residing in states in conflict with Israel, there is no restriction on their entering the Territories on the basis of a visitor's permit. We reject requests for security reasons related directly to the applicant, and not the state in which he lives. We also reject requests of persons who do not meet the criteria, and the fact that the invitee is a national of a state in conflict with Israel is not a criterion.

40. The report presents facts on requests for visitor's permits that were approved/not approved. The figures were provided by sources in the Palestinian "Ministry of the Interior." Unfortunately, B'Tselem was misled, apparently,

by these sources. As already stated above, in 1996, 24,698 visitor's entered Gaza and 40,755 entered Judea and Samaria, that is, more than three times the number provided by those "sources." We did not check how many of the requests were not approved, but whether granted or not, in the event that the Palestinian contention that seventy-three percent of the requests were approved is correct, the figure is impressive, taking into account the requests that were cancelled on the grounds of security or forged documents.

41. Regarding the contention that Israel demands residents of the Territories to prove that visitors they invited left the Territories – first, Israel does not maintain direct contact with the residents of the Territories, rather the contacts are made through the PA. Second, we demand, as the Interim Agreement requires, that the PA remove visitors who do not leave upon expiration of their permits. To date, the PA has not removed even one such person. Israel infrequently removes visitors who do not leave on time, in the event that they reach area under our control or area within Israel's borders. These visitors are deported to the state from which they came, unless there is a special humanitarian reason justifying their remaining in the region.

42. No operations are conducted to deport visitors. The number of deportees reaches a few a year, a negligible number in comparison with the more than forty thousand visitors who remain in areas of the PA after their permits have expired. Israel can put significant pressure on the PA to remove visitors who remain, by instituting a sweeping refusal to allow entry until the PA complies with the agreement. We reject this idea outright because of the humanitarian implications involved in such a measure.

Conclusion

43. The sides in the Registry Subcommittee give great seriousness to their deliberations relating to family unification. They have established procedures and methods of operation in which the two parties work in good will and with the objective of providing assistance in this matter of humanitarian importance.

44. Since the family-unification process encompasses great numbers of persons, it is understandable that some persons will be discontented with the handling of their cases. At times, their claims are justified. However, from an overall perspective, numerous achievements have been attained in the area of family unification in the Territories.

Sincerely,

s/

Shlomo Dror Spokes