



Freedom of Movement

“Everyone has the right to freedom of movement and residence within the borders of each State.

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

Universal Declaration of Human Rights, Article 13

Leaving the Territories

Throughout the occupation, Israel has made the departure of residents of the Territories abroad contingent upon the approval of the military commanders in the Gaza Strip and the West Bank. Over the years, Israel has manipulated this control as a form of penalty or as leverage to pressure persons seeking a permit to leave the country, to collaborate. In some cases, the military makes the departure of residents contingent on a pledge that they would not harm Israel's security during their stay overseas or that they would not return for an extended period of time. Sometimes both conditions are stipulated.

Many Palestinians realize only when they

get to passport control that they are not allowed to leave the area. In many cases, these are people seeking to leave the country under urgent circumstances, such as medical treatment, studies abroad, the hajj or since they have obtained entry and work visas for other countries, valid only for limited periods of time.

In 2004, HaMoked handled 369 new cases of residents of the Territories whom the military did not allow to leave the country. In 84% of the cases that were closed by the year's end, the authorities lifted the prohibition and allowed the applicant to leave. In 42% of these cases, the High Court of Justice (HCJ) had to be petitioned to

help this happen. In most of the cases in which petitions were filed, the military withdrew the ban even before a hearing was held. These statistics clearly show that the military's policy on exit permits is arbitrary and that it does not conduct any case-to-case examination although it is obligated to do so.

Another problem that HaMoked encountered in this context was the military's response time. In 1993, following a HCJ petition HaMoked had filed, the military undertook to respond to applications for exit permits within two months, and even sooner in urgent cases.¹ An examination held by HaMoked analyzed at the end of 2003, revealed that the military had failed to comply with this undertaking in about half of the cases. To compel the military to make good on its word, HaMoked decided to petition the HCJ whenever the military took longer than the promised two months. In 2004, HaMoked filed 110 petitions on behalf of applicants who did not receive a response within the required timeframe, or who needed to leave the country urgently.² HaMoked continues to monitor the military's response time to make sure that the situation improves.



To leave the Gaza Strip and go abroad, residents must go through Rafah crossing. This involves numerous hurdles. Applicants are forced to wait in line hours and sometimes even days and weeks, until they receive a permit to pass from the Palestinian side to the Israeli side and from there to Egypt.

In October 2004, HaMoked started receiving dozens of applications from residents whose exit was restricted by the military. Many were aged 16 to 35,

and some told HaMoked they had never tried to leave before, knowing that the military did not allow people of this age range to exit. The military announced the age based restriction was abolished back in August 2004. However, Palestinian officials in charge of exiting the Gaza Strip said that in reality Israel continued to restrict the exit of men aged 16 to 35. People of this age group underwent extensive questioning at the border crossing. This delayed the entire line and sometimes even thwarted the exit of others who were waiting behind.³

Officials in the Palestinian Authority (PA) told HaMoked that in October Israel introduced a new "coordination" procedure, ostensibly designed to bring order to the border crossing. Notwithstanding its denials of any age restriction, Israel announced that residents of the Gaza Strip aged 16 to 35 who wish to go abroad must apply to the Palestinian Civil Committee. The Committee transferred the names to the Israeli District Coordination Office (DCO) at Erez Crossing. The Israeli DCO indicated on the list who would be allowed to leave and who would not and returned the marked list to the Palestinian side. A copy of the list was sent to the authorities at Rafah. The Committee announced the names of those who were allowed to leave on the

¹ HCJ Petition 3927/93, **Turki Salah v. IDF Commander in the West Bank**.

² In addition to these petitions, 37 others were filed in connection with the military's refusal to grant permits to leave the country.

³ Amira Hass, "Palestinians Stop Men Aged 16 to 35 from Going to Rafah Terminal because of 'Shin Bet Harassments'", **Haaretz**, October 4, 2004.

radio, and they could then go on to the crossing station.

On the face of it, this procedure was designed to notify applicants ahead of time, sparing them futile trips to Rafah. The reality was quite different. When they arrived at the crossing, they had to submit their names again at the Palestinian side. The lists were again transferred to the Israeli side of Erez Crossing, and returned marked. Some of those who had earlier been approved by the DCO at Erez, now found themselves on the blacklist. Obviously, then, the procedure did not provide any certainty, nor did it guarantee that people were thoroughly checked before being turned down. In many of these cases, HaMoked's petitions to the HCJ got the military to retract.

However, as of mid-December 2004, even permits granted after HCJ petitions were of no use. On December 12, Palestinians blew up a military post at Rafah. Israel closed the crossing and offered an alternative solution only for residents wishing to go on the hajj or requiring urgent medical care. Thousands of students, people whose permanent residence was abroad, people who had work visas in other countries and the general population of the Gaza Strip were all locked in.

Around the time of the explosion at the Rafah crossing, HaMoked filed several petitions on behalf of Palestinians whose applications had been denied. In these petitions, HaMoked added a demand that the military generate a viable solution for residents to depart to Egypt in the interim period while the crossing station was being rebuilt.⁴

In its response, the State argued that it had offered to let Palestinians leave via

the Nitzana Terminal in the Negev, but was turned down by the PA.⁵ According to various reports, the PA rejected this proposal because only very few people would be able to go through Nitzana, and because should this alternative be implemented, crossing via Rafah would never be permitted again.⁶

The Court held that the State had a duty to exercise all the means at its disposal to resolve the problem, and gave the State one week to submit a response.⁷ At the end of the week, the State asked for a two-week extension. Faced with the urgency of finding a solution, HaMoked's representative asked to hold a hearing without delay, but the Court denied this request. After two more weeks, and more than a month after Rafah had been closed, the State announced that a solution had been found for patients in need of urgent medical care that cannot be obtained in the Gaza Strip.⁸

At the end of January 2005, Israel reopened the crossing at Rafah to Palestinians seeking to return from Egypt to the Gaza Strip, and later on also permitted the departure of residents in need of medical care and others whose case was addressed by the HCJ. Later on, it officially relaxed the criteria for leaving via Rafah, but in effect continued to ban the exit of residents aged 16 to 35. The PA, which refused to resume the list mechanism which was in place before the bombing, forwarded lists of applicants from this age group only in urgent cases. Israel, for its part, only handled applications of sick people in need of urgent treatment, foreign residents and students.

The crossing became fully operable

again only in mid-February 2005, around two months after it had been closed down. Currently, residents of the Gaza Strip aged 16 to 35 no longer need to

coordinate their passage ahead of time, and military sources have confirmed that the sweeping prohibition on this age range has been lifted.

Entry to the Gaza Strip

Since the implementation of the Oslo Accords in 1994, Israel has prohibited Israeli citizens and residents to enter those parts of the Territories that had been handed over to the Palestinian Authority (PA), except subject to individual permits. This severed families and destroyed social and economic relationships that had formed between Israelis and the inhabitants of the Gaza Strip during the occupation.

During the intifada, Israel intensified the divide between Israelis and the residents of the Gaza Strip by imposing increasing restrictions on entry to this region. The practice of allowing entry to the Gaza Strip during the Muslim holidays of Id al Adha and Id al Fitr was discontinued almost completely. Israel also stopped implementing the “divided families” procedure, by which Israeli residents who are married to residents of the Gaza Strip were given long-term permits to stay in the Gaza Strip, and significantly narrowed the criteria for visits of other kinds.

According to HaMoked’s experience, entry permits are now given only to persons seeking to enter the Gaza Strip to visit their immediate relatives, and only for the purpose of attending weddings or funerals or visiting relatives on their deathbed. Applicants are required to provide various documents establishing the reason for their

visit. Obtaining these documents sometimes involves much effort and cost, and the permits received are valid for a very limited time, usually only a few days.

Divided Families⁹

The “divided families” procedure, which was established in 1995 thanks to HaMoked, enables women who are citizens or residents of Israel and are married to residents of the Gaza Strip to stay there under permits that must be renewed at regular intervals.¹⁰ Women who are in Israel

⁴ HCJ Petition 11714/04, **Abu Yusuf v. IDF Commander in the Gaza Strip**; HCJ Petition 11751/04, **Bashiti v. IDF Commander in the Gaza Strip**; HCJ Petition 11762/04, **Abu Aisha v. IDF Commander in the Gaza Strip**.

⁵ State’s response in HCJ Petition 11714/04, **Abu Yusuf v. IDF Commander in the Gaza Strip**, December 29, 2004.

⁶ For example: OCHA, **Situation Report Rafah Terminal**, January 19, 2005.

⁷ Decision in HCJ Petition 11714/04, **Abu Yusuf v. IDF Commander in the Gaza Strip**, December 30, 2004.

⁸ State’s response in HCJ Petition 416/05, **Physicians for Human Rights et al. v. IDF Commander in the Gaza Strip et al.**, January 16, 2005 (the hearing of this petition was consolidated with HaMoked’s petitions).

⁹ For further details about divided families see: HaMoked and BTselem, **One Big Prison**, 2005, pp. 37-53.

¹⁰ The procedure also applies to men who are citizens or residents of Israel and are married to women in the Gaza Strip, but this is a minority of the cases.

must apply to the "Office for Israelis" at the District Coordination Office (DCO) at Erez Crossing, attaching various documents that prove they are married to a resident of the Gaza Strip. If the military approves their request, they must go to Erez Crossing to get the permit and enter the Gaza Strip. The procedure also allows women who stay in the Gaza Strip to extend their permits without leaving the Strip. They are to go to Erez Crossing and deliver their permit to representatives on the Palestinian side, who hand them over to the Israelis, who extend the permit and return it to the Palestinian DCO, which returns it to the applicant. This procedure can take several hours, and the women have to wait at the crossing throughout it. Except in special cases, the military does not enable permits to be extended by mail or fax.

Children of a divided family who are registered in their mother's identity card – that is, Israeli residents or citizens – may join their mother on her visits to the Gaza Strip until they turn 18. If the children are registered as residents of the Gaza Strip, namely, in their father's ID, the military allows the mother to take them outside the Gaza Strip only until they turn five. Women who have children older than five must leave them behind when visiting Israel.

Since the current intifada began, the procedure has not been properly implemented. Sometimes, the military revises the procedure for receiving and extending the permits without publicizing the new requirements. As of 2001, permits expire after one month instead of three. Also, the military often freezes or cancels the procedure, in most cases as part of a general tightening of the closure imposed on the Gaza Strip. This happens in various

circumstances, such as when the military imposes collective punishment after Palestinian attacks on Israeli civilians or soldiers, after executions without trial by the Israeli forces, during military operations in the Gaza Strip and on Jewish holidays. When the military freezes the procedure, for whatever reason, women and children who had left the Gaza Strip earlier are unable to return. In some cases, the permits of women who are in the Gaza Strip are not renewed either. The choice they have then is to leave the Gaza Strip, risking being unable to return until the military relaxes the closure, or stay with their families and risk being penalized by the military, which considers them to be outlaws who have violated a military order.

Applications HaMoked has received indicate that in 2004 the military froze the procedure at least six times for varying durations.¹¹ In May 2004, one of the times when the military resumed the procedure, it started demanding that applicants seeking to enter the Gaza Strip or extend their permits sign a form pledging they would not enter Israel for three months. The military did not publicize this new requirement, and HaMoked only learned about it in a telephone conversation with the "Office for Israelis." Military sources told the media that the procedure was designed to reduce the traffic at Erez Crossing and limit the number of security checks that have to take place there, because of security alerts.¹² HaMoked contacted the State Attorney's Office and the Military Legal Advisor for the Gaza Strip, alerting them that this demand is unlawful because it effectively deprives Israeli residents and citizens of their right to enter their own country, a right protected both by Israeli and international law.¹³



After these appeals received no response, HaMoked and Adalah filed a joint petition with the High Court of Justice (HCJ) on behalf of four families injured by the new procedure, demanding its cancellation.¹⁴ In this petition, HaMoked and Adalah argued that the procedure forced Israeli citizens and residents who were married to residents of the Gaza Strip to make the brutal choice between their family and country. It was further argued that this procedure was arbitrary and discriminatory and seriously violated the rights to family life, dignity and equality, as well as the right of citizens and residents to enter their country.

In its response, the military repeated the argument that frequent traveling between the PA and Israel was a security threat and added that terror organizations have tried to use “persons who were permitted to move between the Gaza Strip and Israel” in order to carry out terror attacks. However, the military added that from that time on, applications to enter the Gaza Strip under the “divided families” procedure would be examined individually, and that the procedure itself would be revisited.¹⁵ Applications HaMoked received later indicated that the military had in effect abrogated the procedure altogether. Women seeking to enter the Gaza Strip or stay there were not asked to pledge they would not leave for three months and women who had signed this pledge before the petition, were allowed back into Israel before the three months had passed.



While the petition was being heard, HaMoked learned that women who arrived at Erez Crossing after failing to renew their permits for a while, were questioned by the police under suspicion

of violating the military order prohibiting Israelis to enter the Gaza Strip. In an inquiry with the DCO at Erez Crossing, HaMoked was told by the DCO that this was merely a formality and that the women had no reason to be concerned. A short while later, HaMoked received several applications from women whose requests for entry permits had been denied. It turned out that as opposed to the information provided by the DCO, the military refused to approve the applications because these women had failed to renew their permits in time and stayed in the Gaza Strip without a valid permit, in violation of the order. HaMoked filed petitions with the HCJ on behalf of three such women who, because of the military’s refusal to grant them a permit, had been separated from their families for a long time.¹⁶

In these petitions, HaMoked explained the arduous process of renewing the permits, which was the reason why the women could not avoid violating the

¹¹ A freeze is inferred when applications show that in reality, divided families’ applications are not being handled by the DCO at Erez. Sometimes the military officially confirms that the procedure has been halted and sometimes it denies that applications are being ignored because of an official policy.

¹² Amira Hass, “The Condition for Visiting Relatives in the Gaza Strip: Stay there at least 3 Months,” *Haaretz*, May 5, 2004.

¹³ **International Covenant on Civil and Political Rights (1966)**, Article 12(4); Basic Law: Human Dignity and Liberty, Article 6(b); Law of Entry into Israel, 1952.

¹⁴ HCJ Petition 5076/04, **Husseini v. GOC Southern Command**.

¹⁵ The response of the State in HCJ Petition 5076/04, **Husseini v. GOC Southern Command**.

¹⁶ HCJ Petition 8947/04, **Sharab v. Military Commander in the Gaza Strip**; HCJ Petition 9107/04, **Abreika v. Military Commander in the Gaza Strip**; HCJ Petition 9204/04, **Ashur v. IDF Commander in the Gaza Strip**.

order. HaMoked argued that by refusing to grant them permits, the military was ignoring these difficulties, which by and large emanated from the military's own actions and policies, for example, making the extension contingent on physical presence at Erez Crossing. Arriving at the Erez Crossing cannot be taken for granted. Due to the volatile security situation in the Gaza Strip and the frequency of military operations, just leaving the house can sometimes be dangerous. Roads are often blocked and the military splits the Gaza Strip into two or three parts, barring any passage between Erez Crossing, which is in the northern part, and the southern areas. Under these circumstances, many women often simply cannot get to the Crossing to renew their permits.

But even making it safely to Erez Crossing is no guarantee that the permit will be extended. If the procedure is revised and the women have not fulfilled the new demands, their permits are not renewed. Obviously, this is also the case if they get to the Crossing only to find that the procedure has been frozen.

Under military regulations, anyone who does not have a valid permit must leave the Gaza Strip. Women who leave when the procedure is frozen might find themselves in the same position as women who left beforehand and are unable to return because of the freeze. Since the military does not bother to announce the freezes or procedural revisions, women have no way of telling whether their permits would actually be renewed once they get to the Crossing. The dangers involved in getting there and the concern that if they are unable to renew the permit they will be forced to separate from their families for

a very long time deter many women from even trying to renew their permits.

M.A., a resident of Jerusalem, is married to a resident of the Gaza Strip and lives with him and their four children in Rafah. In order to get to Erez Crossing, she has to go through three roadblocks. Since the intifada began, M.A. has been unable to renew her permits regularly. She made it through to Erez a few times, but it took her very long to get back home. On several of these occasions she had to spend the night with acquaintances, on others in hotels. Once, the Crossing was closed when she got there, and she had to spend the night in a taxi, so as not to miss the opportunity to extend the permit if the roadblock opened the next day. On other instances, she was unable to make it to Erez because of medical reasons, and since the military does not extend permits by mail or fax, her permit was not renewed.

When her permit expired in March 2004, M.A. left her home in Rafah to go to Erez Crossing and have it renewed. She was delayed at the Kfar Darom roadblock for several hours. When the soldiers finally let her through, she made it to Netzarim, where the soldiers refused to let her cross. The next morning she set off again. This time, she made it through both roadblocks, but when she finally reached Erez Crossing, she was told that because of the closure, permits were not being renewed. M.A. was instructed to return 15 days later. When she did, she discovered the procedure had been changed and that she had to first apply to the PA. The "Office for Israelis" at the DCO refused to accept her application.

Although M.A. had renewed her permits whenever she could, when she tried to renew her permit again after a visit in Jerusalem in August 2004, the military turned her down claiming that she had violated the military order prohibiting Israelis from entering the Strip. M.A. and her four children, who were with her, had been separated from their father and husband for three months. They were reunited only after HaMoked petitioned the HCJ on her behalf. (Case 15617)

In its petitions, HaMoked further argued that the military's refusal to grant these women entry permits to the Gaza Strip seriously violates their right and that of their husbands and children to family life. This right is protected by both Israeli and international law.¹⁷ The refusal cruelly separates family members from one another; disrupts their lives and threatens the very existence of the family unit.

Another petition was filed on behalf of A.S., also a resident of Jerusalem, who is married to a resident of the Gaza Strip. A.S. lives with her husband and their four children in Gaza City. Since the beginning of the intifada, A.S. did not visit Israel because of the difficulties in reaching Erez Crossing and the fear that she might be forced to leave the Gaza Strip, leaving her children behind for an unknown period of time. Only in June, when she heard that another woman with similar circumstances had managed to leave and return, did she decide to go to Jerusalem to visit her mother whom she had not seen in four years.

After two weeks in Jerusalem she applied to the DCO for an entry permit to the

Gaza Strip. Having received no response, she contacted HaMoked. The "Israeli Office" told HaMoked on the telephone that her application was denied because she had violated the military order forbidding Israelis to enter Gaza. Additional applications by HaMoked to allow A.S. to return to her family received no response either.

A.S. had planned to return to the Gaza Strip during the summer, but under the circumstances, her school-age children had to start the school year without their mother at home. Her daughter, a seventh grader, had no choice but to run the household in her stead. A.S.'s 12-year-old son has epilepsy and does not go to school. He has daily seizures and requires medication and permanent supervision because he is liable to harm himself or his younger brothers. Each of the daily telephone conversations she had with her children, ended in tears.

In the affidavit she submitted to the Court, A.S. said: "This terrible separation was one of the reasons I was so afraid to go to Erez Crossing to renew my permit... It pains me that there are people who think I cannot return to Gaza because I am not trying hard enough, and that I am neglecting my duties as a mother... I don't understand

¹⁷ *Universal Declaration of Human Rights (1948)*, Articles 12 and 16(3); *International Covenant on Civil and Political Rights (1966)*, Article 17 and 23(1); *International Covenant on Economic, Social and Cultural Rights (1966)*, Article 10(1); *Hague Convention (IV) Respecting the Laws and Customs of War on Land* and its annex: *Regulations concerning the Laws and Customs of War on Land (1907)*, Article 46; *Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949)*, Article 27.

how anyone can prevent a mother from caring for her children.”

Only in October, following HaMoked's petition and after nearly four months of separation from her family, did the military allow A.S. to return to her home in Gaza. **(Case 33961)**

Following Hamoked's petitions to the HCJ, the military allowed these three women to go back to the Gaza Strip. However the general problem still remained without any solution.

In conversations with HaMoked staff and in a letter sent to HaMoked shortly after announcing that it was permitting the three women to go back in, the military stated that it intended to continue to employ “administrative measures” against women who fail to renew their permits.

As HaMoked stated in the petitions, the military is not authorized to implement such measures. The military may only exercise administrative measures in order to uphold security interests under very specific circumstances and only for the purpose of preventing a future threat. But the military never alleged that the women's entry to the Gaza Strip posed any threat. In fact, it stressed that the only reason it would not renew the permits was that the women had – in the past – violated a military order. Thus the military uses administrative measure as an instrument of punishment without trial. This is a particularly cruel penal measure, because it separates families with children for long periods of time.

HaMoked agreed to withdraw its petitions because the individual cases had been resolved, but notified the HCJ it would petition again if the military continued penalizing women for failing to renew their permits.

Holiday Visits

Since 1994, when Israel first prohibited its citizens to enter the Gaza Strip, and until the end of 2000, when the current intifada began, Israel allowed its Palestinian citizens and residents to enter the Strip during the Islamic holidays of Id al Fitr and Id al Adha to visit their relatives.¹⁸ The holidays were a rare opportunity for families to meet, since Israel's policy made it impossible for them to see each other during the rest of the year.

During the intifada, the military discontinued holiday visits almost altogether. From the onset of the intifada and until the end of 2003, there were only two occasions when the military permitted family visits during the holidays: a small number of visitors were allowed into the Gaza Strip in Id al Fitr in 2000; a larger number was allowed in Id al Fitr of 2003. In both cases, the permits were granted following HaMoked's intervention.

Toward Id al Adha in February 2004, HaMoked contacted the military – as it has done ahead of all Islamic holidays since the start of the intifada – asking to allow holiday visits. HaMoked demanded that the military publicize the criteria and procedures for entering the Gaza Strip ahead of time. The soldiers of the DCO told HaMoked that this time visits would be allowed, and that the Defense Minister himself had approved them. This was the first time in this intifada that the military was to approve visits in Gaza during Id al Adha. The DCO soldiers also told HaMoked that entry would apparently be limited to the immediate relatives of Gaza residents and to their children up to the age of 16. HaMoked turned to the Military Legal Advisor for the Gaza Strip on behalf of a group of people

who did not meet these narrow criteria and could therefore not join their families on their visit to Gaza.



On January 29, 2004, two days before the holiday, as HaMoked was waiting for a response, there was a suicide bombing in Jerusalem. On the first day of the holiday, hundreds of people were standing at Erez Crossing, hoping to enter the Gaza Strip and spend the holiday with their relatives. But the DCO said that the military had prohibited all visits. According to the media, the suicide bomber was a Palestinian from the region of Bethlehem. The defense establishment never said he had any link with the Gaza Strip or the Israelis seeking to enter it for the holiday. Even if such a link existed, collective punishment of an entire public whose only crime was wanting to spend the holiday among family, could not be justified. As HaMoked said in its letter to the State Attorney, this case went even further than collective punishment, because the prohibition seemed to be driven by pure vindictiveness. All of HaMoked's attempts to lift the prohibition failed, and on the second day of the holiday, HaMoked filed a petition with the HCJ, asking to allow Israelis to visit with their relatives in the Gaza Strip all year round, or at least during the holidays.¹⁹

On the third day of the holiday, the State Attorney's Office notified HaMoked that entry would be permitted during the holiday. The notice, which was delivered to the HCJ, stated that visitation had been banned because of concerns that the "security situation might escalate and deteriorate" after the suicide bombing,²⁰ but did not explain how the holiday visits were connected to such possible escalation. The military indeed announced that the prohibition had been lifted, but in reality

visitors were still not allowed across Erez and into the Gaza Strip. After countless phone calls by HaMoked, a small number of visitors were finally allowed into the Gaza Strip in the few hours remaining until the Crossing closed down for the day. After many efforts, on the fourth day of the holiday HaMoked finally managed to see to it that people were allowed into the Gaza Strip, even though it was already the last day of the fest. In addition to the fact that the military only let people into the Strip for a limited number of hours, it also failed to comply with its promise to give three-day permits, and many applicants only received one-day permits, spending most of that one day waiting at Erez Crossing. The military did not allow visitors to bring in their spouses or children over 16. On top of all this, conditions at the Crossing were intolerable.

An excerpt from the affidavit of Z.D., a resident of Jerusalem, who came to the Crossing with his family, on Wednesday, February 4, 2004, at around 7 AM:

"My sister and I only managed to enter Gaza at around 1:30 PM. My four other brothers made it to our sister's home in Gaza only after midnight, having been delayed at the Crossing for hours on end. We did most of the waiting at a place with no running water or toilets. People had to relieve themselves outdoors. The

¹⁸ HaMoked has no information whether a similar practice existed for Christian holidays as well.

¹⁹ HCJ Petition 1034/04, **Kutina v. IDF Commander in the Gaza Strip**.

²⁰ Preliminary response of the State Attorney's Office to the petition for an interim injunction, HCJ Petition 1034/04, **Kutina v. IDF Commander in the Gaza Strip**, 3 February, 2004

snacks we brought with us ran out very fast. We were hungry. It was terribly cold. I asked a soldier to get me some water for the children but he said he had none. There were no benches to sit on either. There were many people there. But what do the soldiers at the Crossing care? I didn't feel anything was being done to make the entry process go faster or more humanely..." **(An affidavit filed as part of HCJ Petition 1034/04, Kutina v. IDF Commander in the Gaza Strip).**

An excerpt from the affidavit of N.A., a resident of Jerusalem, who came to the Crossing to visit her parents, brothers and sisters in the Gaza Strip:

On Wednesday, my husband drove us to Erez Crossing (but was not allowed to enter with us). We arrived at the Crossing at around 8 AM, but I only got to Gaza at around 1:30 PM. Conditions at the Crossing were appalling. People were crowding at the gates. They would open the gates and let in a small group, and then close them again for several hours. Whenever the gates opened, everyone pushed to get in. It was so crowded, I fell and got trampled over. The fall caused me serious back pain, and in Gaza (later on), a doctor examined me and told me to stay in bed for two days.

But meanwhile, I kept on trying to enter Gaza. I had to make it to the window, to give them my papers. There was nothing there to help keep an organized line. People pushed and were being pushed. I was alone with my three children (two, eight and nine years old). I was doing my best to hold onto them so they wouldn't get lost in the crowd.

My daughter had to go to the toilet,

but the toilet (which is outside the compound) was filthy, and quite honestly just not fit for use. Also, going to the toilet meant leaving the compound and losing your place in the line. There was nowhere to sit (except on the ground) and we had to spend the entire time standing: me with my baby girl in my arms, carrying our bags and trying to hold onto the older children to make sure they didn't disappear..." **(An affidavit filed as part of HCJ Petition 1034/04, Kutina v. IDF Commander in the Gaza Strip).**

All in all, on the last two days of Id al Adha, around 2,500 visitors made it into the Gaza Strip - around half the number that entered in the previous festival of Id al Fitr:

Later on in 2004, in response to two petitions by HaMoked concerning entry permits to Gaza, the military repeated its usual stance that Israelis were prohibited from entering the Strip because of security reasons, namely, concerns that they might be hurt or that terrorists would take advantage of their visits. The military nevertheless stated that it allowed Israeli citizens to visit their immediate relatives in the Gaza Strip under humanitarian circumstances (funerals, weddings, serious illness, etc.) "even during the armed conflict." The military also proclaimed it allowed Israelis to visit their immediate relatives as part of the divided families procedure and during the holidays - except if there were circumstances barring a specific individual because of security reasons. Visitors could take their children under 18 with them, the military said. Israeli citizens and residents may visit their immediate relatives on one holiday every year (Muslims can choose between Id al Adha and Id al Fitr and

Christians only have Christmas), provided they did not visit the Gaza Strip on another occasion during that same year.²¹ Under this mechanism, anyone who visited the Gaza Strip under humanitarian circumstances could not enter again on the holidays in the same year:

HaMoked did not make do with these restrictive criteria, and in August 2004 demanded the State Attorney's Office provide some clarifications and expand the criteria. Among other things, HaMoked demanded that holiday visits and humanitarian visits not be mutually exclusive; that absence from the Gaza Strip for an entire year not be a condition for holiday visits; that visits be allowed on other holidays, such as Easter or the New Year; and on other occasions such as the summer holiday; that more distant relatives be allowed into Gaza along with their spouses; and, finally, that the Israeli authorities make adequate preparations and publicize the criteria and procedures for going through Erez Crossing ahead of time, to prevent the scenes at the Crossing in Id al Adha 2004 from recurring.

Even before HaMoked received any response, it became clear that the military's statements about allowing holiday visits were merely hollow words, as, the Gaza Strip remained sealed during Id al Fitr of November 2004, again, under the pretence of security. This time, it was the death of the Chairman of the PA, Yasser Arafat, that threatened the security of the region.

HaMoked applied to the HCJ to instruct the military to keep its promise to allow holiday visits, but to no avail. In its response to this application, the military

explained that even when it stated that it would allow holiday visits, the permit was contingent on the security-related orders, which are revised from time to time.²² This explanation renders meaningless the military's statement that while visits were prohibited throughout the year, they would be allowed on the holidays. Considering the military's condition that only one holiday visit would be allowed every year, provided that no other visits to Gaza took place in the 12 months before, the cancellation of the Id al Fitr visit meant that relatives of Gaza residents who did not visit there on another holiday that year, or whose family did not have any occasion that met the army's standards for "humanitarian visits", would not see their relatives, including parents, brothers and sisters, even once in 2004.

The military's response to HaMoked's request for explanations and revisions to the criteria arrived a few days after the holiday: Easter was added for Christian visitors; visits would be allowed on two holidays rather than one; the condition of no other visits during the year was abrogated; and spouses would also be allowed in. In light of this announcement, and although the rest of HaMoked's requirements were not granted, HaMoked agreed to withdraw its petitions on this subject put the new procedure to the test.

²¹ Second additional response of the State Attorney's Office in HCJ Petition 10043/03, **Abajian v. IDF Commander in the Gaza Strip**, 26 August 2004.

²² The response of the State Attorney's Office to the Petitioners' application for urgent remedies, HCJ Petition 10043/03, **Abajian v. IDF Commander in the Gaza Strip**, 15 November 2004.

Movement between the West Bank and the Gaza Strip²³

Under the Oslo Accords, the Gaza Strip and the West Bank constitute an integral territorial unit. Israel has never retracted its recognition of these two areas as a single territorial unit, and later on even officially bolstered it: In 2002, the State forcibly relocated Kifah Ajouri and his sister Intisar from their home in the West Bank to the Gaza Strip and prohibited them from leaving the Strip for two years (see below). When required to defend this decision, the State cited the Oslo Accords to establish that this was not a deportation but an “assigned residence” within the territory of a single political entity. This argument received the juridical stamp of approval when endorsed by the High Court of Justice (HCJ).

The status of the Gaza Strip and the West Bank as a single territorial unit grants residents the right to free movement between the two areas, including the right to choose where to live in either region.²⁴ Nonetheless, a geographical obstacle stands in the way of exercising these rights. Residents of the Territories who wish to travel between the two regions have two options. They can leave Israel through the Allenby Bridge in the West Bank or Rafah Crossing in the Gaza Strip and travel to their destination via Jordan and Egypt. This option is expensive, takes a long time and is subject to the various restrictions that Israel imposes on leaving the Territories.²⁵ The other option is to pass through Israeli territory, but for the last 14 years, Israel has forbidden Palestinians from entering its territory except by special permit.

In 1995, Israel and the Palestinian Authority (PA) devised a solution for the divide between the West Bank and the Gaza Strip. The “Safe Passage” was to enable free movement across Israel between these two territories, without requiring an entry permit into Israel. But the passage only opened in 1999 and offered a limited solution that did not relieve Palestinians of the need to receive permits from Israel. A year later, when the current intifada began, Israel closed it down altogether.

Since then, residents of the Territories are once again completely dependant on Israeli permits to travel between the West Bank and the Gaza Strip. As a rule, the military does not allow a person registered as a resident of one area to travel to the other. The military’s answers to applications of this sort indicate that, for all intents and purposes, it considers them to be applications to enter Israel. Therefore, if the army finds applicants ineligible to enter Israel for security reasons, or their reasons for moving between the areas insufficient grounds for allowing entry into Israel, the applications are denied. The military never specified what constitutes sufficient grounds. Sometimes, when HaMoked’s application to allow passage between the Gaza Strip and the West Bank is granted, the permit that is given is in fact a permit to stay, for a limited period of time, in the area that the applicant seeks to enter. These two practices conflict with the rights that arise from the status of the West Bank and the Gaza Strip as a single territorial unit. Residents need not have a

reason for moving between them nor be forced to obtain a permit to stay in either.



In 2004, HaMoked handled several applications from residents of the Gaza Strip who were engaged to residents of the West Bank and wanted to move there to hold their wedding ceremonies and build their homes.

One of these was M.A., who in the summer of 2003 signed a marriage contract with a resident of the West Bank. After signing the contract, she applied to the nearest DCO for a passage permit to the West Bank. The military refused, stating that she was barred from entering Israel because of security reasons. After HaMoked petitioned the HCJ in June 2004, the military withdrew its objection and allowed M.A. and her mother to go to the West Bank for the wedding. The bride and her mother were given a permit to stay in the West Bank for 14 days. The mother returned after the wedding. M.A. stayed in the West Bank with her husband.

In January 2005, M.A.'s father died and she asked HaMoked to help her travel to the Gaza Strip and spend the days of mourning with her family.

In response to HaMoked's request, the military said that M.A.'s stay in the West Bank was "unlawful" because her registered address was in the Gaza Strip and her permit to stay in the West Bank had expired. The military demanded she return to the Gaza Strip and noted that upon returning, she would not be allowed to return to the West Bank.

(Case 29870)

In addition to the restrictions imposed on passage between the two areas and

on staying in them, the military does not allow Palestinians to change their place of residence from one region to the other in contravention of international law, Israeli law and the Oslo Accords.

Under the Israeli military law in force in the Territories, residents do not need the authorities to approve a change of address in the Population Registry. The law provides that after relocating, a person must notify the authorities of his new address which must update the Population Registry accordingly.²⁶ But residents of the Territories cannot follow this procedure as far as moving from the West Bank to the Gaza Strip or the opposite is concerned, because from the outset Israel does not allow them to travel between the two areas, except with special permits. Israel has in fact rendered its own laws moot by making a change of residence contingent upon special permits. This policy, which is unreasonable in and of itself, creates a catch 22 situation for residents of the Territories; HaMoked's experience has shown that the military does not consider the intention to relocate as sufficient grounds to permit passage between the West Bank and the Gaza Strip.

Furthermore, even residents who manage to move from one area to the other are

²³ For further information regarding movement between the Gaza Strip and the West Bank see: HaMoked and B'Tselem, **One Big Prison**, 2005, pp. 8-24.

²⁴ **International Covenant on Civil and Political Rights (1966)**, Article 12. For the applicability of this Covenant in the Occupied Territories see: ICJ Advisory Opinion in the case concerning the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, pp. 40-43, paragraphs 102-111.

²⁵ See Chapter on Leaving the Territories, p. 12.

²⁶ Order regarding Identity Cards and Population Registry (Judea and Samaria) (No. 297) (1969), Article 13.

unable to update their registered address. After the PA was created in 1994, Israel handed over various responsibilities relating to the Population Registry. The PA is now responsible for updating the registry, and informs Israel of all updates. Address changes, as opposed to registration of residency, do not require Israel's prior approval. The military, however, refuses to recognize address changes between the West Bank and the Gaza Strip made by the PA, and maintains that any such change requires its prior approval. When the current intifada began, the military stopped approving such address changes.²⁷ The PA has therefore stopped updating address changes as well.

Israel considers anyone staying in the West Bank or the Gaza Strip without a permit and who appears in its records as a resident of the other region, to be staying there illegally. Applications handled by HaMoked indicate this has far-reaching implications for these individuals: the military administration in their region flatly refuses to handle their various applications because they are registered as residents of the other region. In 2004, HaMoked petitioned the HCJ on behalf of three women whose applications were ignored by the military because of this reason. Two of them were applying for permits to visit their sons, who were imprisoned in Israel, and one was applying for a permit to travel abroad.²⁸ Other applications indicated that when the military encounters individuals who live in the West Bank but are still registered as residents of Gaza, they are arrested and released in the Gaza Strip, away from their jobs and families. The military then refuses to let them return. In addition, when Palestinians registered in the Gaza Strip but living in the West Bank

go to the Gaza Strip on their own volition, the military does not let them return to the West Bank.



When this report was compiled, HaMoked was still waiting for the State's response in a petition regarding the S. family. Z.S. has been "stuck" in Gaza for the last four years and her husband, A.S., for the last two. A.S. and Z.S. were born, raised and married in Gaza. In the late 1990s, A.S. found a job in the Ramallah region and the couple moved to that area. They notified the PA of their address change, and the information in their IDs was updated accordingly. In 2000, Z.S., who was pregnant with their fourth child, traveled with the couple's three older children to have the baby close to her family in the Gaza Strip. Unfortunately for Z.S., her daughter was born just as the second intifada began. The military closed the Safe Passage, and when she wanted to go back to her husband and home in the West Bank, she had to apply to the DCO, but the military did not give her any response. After two years during which she was unable to return to the West Bank, Z.S. contacted HaMoked. Over the telephone, the soldiers at Erez DCO said that in the Population Registry, Z.S. was entered as a resident of the Gaza Strip. Although HaMoked sent numerous letters, this was the only response it ever received. In the beginning of 2003, after a two-year separation from his wife and children and after he had never seen his youngest daughter, A.S. joined his family in the Gaza Strip. Since then the military has not allowed him to return either. HaMoked has repeatedly applied to the

military to allow the family to go back to the West Bank. In December 2004, after more than two years of silence, HaMoked petitioned the HCJ. **(Case 22834)**



In 2004, HaMoked managed to arrange for K.H. to return to the West Bank after two years in which he was stranded in the Gaza Strip. K.H. was born in the Gaza Strip. In 1991, he moved to Ramallah to study in university, and after graduating, he made his home there. He married a resident of the city, found a job as a computer engineer and rented an apartment. In 1998, he notified the PA of his address change, and his new address in Ramallah was entered in his ID.

In March 2003, K.H. went to cross Allenby Bridge en route to Amman on business. The Israelis arrested him at the Bridge and took him to Ashkelon Prison. After one day of questioning, in which he was asked about his affairs in the West Bank, his captors banished him to the Gaza Strip. At the Prison he was told that according to the Population Registry that Israel had, he was registered as a resident of the Gaza Strip. After trying in vain to fix the records through the Palestinian Ministry of Interior in Ramallah and Gaza, K.H. contacted HaMoked. A military representative told HaMoked orally that unless K.H. was registered as a resident of the West Bank, there were no grounds justifying his entry into Israel. This was the only response HaMoked ever received on the matter. After six months passed, HaMoked petitioned the HCJ on his behalf. By then, K.H. had been stuck in the Gaza Strip for over a year.

Following the petition, the military announced it would let K.H. travel to

and stay in the West Bank, but stressed that this permit was ex gratia and that it would not allow K.H. to officially change his address to the West Bank.

Without an address change, K.H. still faces the danger of banishment to Gaza and the military might refuse to handle his applications or enable him to leave the country via Allenby Bridge. HaMoked demanded that the military find a solution for his predicament. An arrangement was reached in negotiations with the State Attorney's Office, according to which K.H. would be allowed to file his applications with his regional DCO in the West Bank and go abroad via Allenby Bridge.

Shortly after K.H. returned to the West Bank, HaMoked received applications from A.S. and S.Z.. Like K.H., they too live in the West Bank but are registered as residents of the Gaza Strip, and like K.H., they too had been arrested and banished to the Gaza Strip. In this case, HaMoked was able to arrange for their return to the West Bank without petitioning the HCJ. As this report was being compiled, HaMoked was making efforts to obtain the same arrangement for them as that which had been secured for K.H.

(Cases 23309, 32182, 34115)

While in some cases HaMoked's intercession solves individual problems of passage between the West Bank and the Gaza Strip, Israel's general policy has remained unchanged. The State continues

²⁷ Preliminary response of the Respondents in HCJ Petition 5504/03 **Kahlut v. IDF Commander in the West Bank**, February 25, 2004.

²⁸ See chapter on Family Visitation p. 34; HCJ Petition 11355/04, **Haja v. Military Commander in the Gaza Strip**.

to ignore the rights of residents of the Territories and prohibits their passage between the two regions, whether for temporary visits or relocation. This

sweeping policy has created an almost absolute divide between the populations of the two regions, and in effect submits all of them to “assigned residence.”

Roadblocks

The year 2004 has not seen any significant change in the freedom of movement of Palestinian residents of the Occupied Territories. As in the previous three years, hundreds of roadblocks were still deployed throughout the West Bank, and villages in this territory were still encircled by dirt mounds. The soldiers manning these roadblocks have almost unlimited power, and the ongoing friction with civilians has created a reality in which continued delays, insensitivity toward the sick, penalties, property seizures, humiliation and abuse are the residents' daily bread.

In 2004, HaMoked handled 1,687 real-time complaints about incidents at roadblocks. In most cases, HaMoked's intercession helped, but only after long hours. In some cases, HaMoked followed up on the case after the incident was over, in order to make sure it would be investigated and the wrongdoers be brought to justice.

On February 17, 2004, at around 3 PM, W.S. arrived at Huwwara Roadblock en route to Nablus. He noticed that the soldiers there only allowed people through if they signed a blank piece of paper. The soldiers demanded W.S. sign too, and when he refused, they refused to let him cross. After about four hours of delay, W.S. contacted HaMoked's hotline.

A little later, an officer arrived, apparently from the Civil Administration, but instead of letting him through, he tried to convince him to sign the blank paper. W.S. was adamant in his refusal, although the officer threatened that if he did not sign, the soldiers would beat him up.

After holding W.S. at the checkpoint for around six hours, the soldiers let him pass without signing the blank paper. When HaMoked demanded an investigation of this practice, an officer at the Civil Administration said that it had been discontinued and that the signed papers had been destroyed. The officer said that the demand to sign a blank piece of paper was initiated by a company commander posted in the region who decided to use “psychological warfare” against the Palestinians, “so they think they are being monitored.” **(Case E3910)**

On the morning of February 17, 2004, HaMoked's hotline received a complaint that soldiers at Salem Roadblock were instructing women to remove their jalabiya, women's religious attire. The hotline contacted the Civil Administration's “humanitarian desk” demanding to put a stop to this practice, which violated the religious belief and privacy of the women. The soldiers at the desk said these

were routine security checks and the instructions to remove the jalabiya were reasonable. HaMoked explained that if the checkup was really indispensable, it should be performed by female soldiers and at a distance from all the other people at the roadblock. The Civil Administration insisted that the requirement was reasonable, but within less than an hour the soldiers started letting women through without asking them to remove their jalabiya.

(Case E3903)

On the afternoon of December 24, 2004, HaMoked's hotline received a complaint that four Palestinian men were being detained at Sanur Roadblock. About an hour after HaMoked started processing the complaint, the military reported that the men had been released. HaMoked's representative called one of the men, S., who confirmed their release. A few minutes later, eyewitnesses called the hotline and reported that the four men were still being detained. When HaMoked's representative managed to reach S. again, he told her that in their previous conversation, a soldier was pointing his gun at him, threatening him not to say he was still being detained. HaMoked sent a letter to the Military Legal Advisor for the West Bank, demanding that this case be investigated and that an effort be made to ensure it did not recur. No response was received by the time this report was compiled.

(Case E5978)

On the afternoon of August 7, 2004, several people called HaMoked's hotline and reported that some 25 men and

boys were being held at Huwwara Roadblock for several hours. One of the boys was S.K., who was returning with his mother from Ramallah, where he had received medical treatment. When the soldiers instructed S.K. to join the group of detainees, his mother asked to stay with him. The soldiers' reaction was to hit her. When her son tried to protect her, the soldiers beat him up too. They forced S.K.'s mother to move on and leave him behind. Only after more than two hours of relentless efforts by HaMoked did the soldiers let the detained group cross.

(Case E5243)

On July 25, 2004, at 3:40 PM, HaMoked's hotline received a call reporting that a young Palestinian man had been shot at Beit Iba Roadblock. Eyewitnesses told HaMoked that when the Palestinian, M.K., arrived at the roadblock, a dispute developed between him and one of the soldiers, in which M.K. called the soldier a liar. The soldier then grabbed M.K. by the head, bashed it into the concrete blocks and beat him up. When M.K. tried to run, the soldier shot him in the arm. The Civil Administration's humanitarian desk told HaMoked that M.K. was shot because he had tried to break through the roadblock and escape the soldiers. The incident received extensive media coverage, and a military police inquest was announced.²⁹

(Case E5169)

²⁹ Amos Harel, "Soldier Shoots Palestinian Student who Argues with him at a Roadblock in the West Bank; Military Police to Launch an Investigation," *Haaretz*, July 26, 2004.

As noted, HaMoked does not always close the case once the incident is over. This year, one of the complaints HaMoked received about military brutality and confiscation of IDs at Qalandiya Roadblock led to a civil action.



On July 23, 2002, at around 2 PM, M.H. arrived at Qalandiya Roadblock after having an operation on his left arm. M.H., who was feeling poorly, cut in line, and a soldier instructed him to go back. M.H. handed his medical documents to the soldier, but the latter assaulted him, beat him up all over and threatened to break his other arm. When the roadblock commander came to see what was going on, the soldier said M.H. had attacked him. M.H. showed the commander his medical documents, explaining that because of his condition he was unable to stand in the sun. The commander said that the hospital's discharge letter did not state he was not allowed to stand in the sun. He took M.H.'s ID and threatened to keep him at the roadblock until 7 PM. M.H. asked for his ID back, but the commander refused to give it to him. M.H. therefore decided to cross the roadblock without his ID. Shortly after, he returned with his father, who asked a soldier at the roadblock to return his son's ID, but the soldier refused and pushed him. When M.H. protested, the soldier hit him in the chest with the butt of his gun. M.H. and his father left the roadblock and went to the hospital to get medical care.

A week later, HaMoked managed to get M.H.'s ID back. Following HaMoked's inquiry, military police launched an investigation, but they closed the case

six months later. The military has been unable to corroborate M.H.'s allegation about the soldiers' brutality, they said. On November 22, 2004, HaMoked filed a civil suit on the matter:

(Case 17939, Civil Action 13054/04)

The restrictions imposed on movement of Palestinian residents of the Territories have significantly increased during the second intifada, but closure, curfew and roadblocks had been routine from much earlier on. This year, a civil action pertaining to an incident that occurred in 1998 was finally concluded. In that incident, soldiers at a roadblock near Hebron prevented a woman in labor from reaching the hospital.

On the evening of August 25, 1998, P.A., who was then nine months pregnant, felt she was going into labor. Together with her husband, mother-in-law and brother-in-law, she left her home in Beit Ula to go to the hospital in Hebron.

At the Beit Kahil roadblock, three soldiers stepped up to their car and informed them they could not continue because the city was under closure. The family explained that this was an emergency because P.A. was in labor. The soldiers pointed their flashlight at her, claimed that she was not really in labor, and prohibited them from crossing. The family therefore had to take a different, much longer route.

P.A. gave birth in the car, on the way to the hospital. Her mother-in-law had to tear off pieces of her and P.A.'s clothes and use them to stop the bleeding. The condition of the baby girl, who was born with several birth defects, deteriorated. The family made it to the hospital, but the baby died shortly after.

The family filed a complaint with the police. The military police investigation that ensued was closed since: "The soldiers exercised discretion and their decision was within their purview... since it was their impression that the complainants' claims were not genuine."³⁰

At the end of 2003, HaMoked filed a civil action on P.A.'s behalf, arguing that the soldiers had violated the right of P.A. and her baby girl to receive medical treatment. In 2004, the State paid P.A. NIS 40,000 in compensation.

(Case 13201, Civil Action 12262/03)

The Separation Wall

The construction of the separation wall continues and with it the serious violation of the basic rights of Palestinians who have involuntarily found themselves affected by it. The wall violates basic rights such as the right to property, freedom of movement, work, education and health. Although Israel has declared that the wall is designed to prevent the entry of attackers from the Territories,³¹ the wall does not follow the Green Line: most of it is in the West Bank. For its construction, Israel has confiscated thousands of acres of Palestinian land. The route, which extends deep into the Territories, results in de facto annexation of many settlements, along with Palestinian land and villages. The wall separates farmers from their land and villages from the cities that provide them with vital services, and in some cases even between residents of the same village.

Israel has declared the territory between the wall and the Green Line, dubbed "the seam zone", to be a closed military zone, off limits to Palestinians, except through special permits. In this reality, Palestinians who live east of the wall but work in villages in the "seam zone" or have farmland there, need permits to get to work. Those whose homes

are west of the wall cannot go on living there without permits from the military. Palestinians on both sides of the wall have to wait at the gates until Israeli soldiers arrive and let them through to schools, universities, hospitals, markets, work places, friends and relatives on the other side. Many of the gates open only twice or three times a day, and even then for a very short time. Sometimes, the military does not open the gates at all.

The regime Israel practices in the seam zone is, for all intents and purposes, apartheid, discriminating between individuals based on their ethnic affiliation. While the entrance of Palestinians to the "seam zone" is prohibited and subject to the restrictive permits-and-gates policy, Israelis in the same area continue to enjoy full freedom of movement. Under the orders regulating the area, they do not require any permit in order to stay there. The orders define Israelis living in the "seam zone" as Israeli residents and citizens, who

³⁰ Letter to HaMoked from Lt. Col. Moshe Yinon, Central Command Advocate, February 8, 1999.

³¹ "Seam Zone" website, Israel's Ministry of Defense: <http://www.securityfence.mod.gov.il/Pages/ENG/default.htm>, last accessed February 1, 2005.

are entitled to immigrate to Israel under the Law of Return. In other words, Jews as such are allowed to stay and travel around the "seam zone" without any restriction, while the native residents who have been living and working there for years, need special permits.

The route of the wall and the regime associated with it indicate that security is not the only factor in its construction. Rather, the wall is designed to create a new political reality, effectively erasing the Green Line and establishing a new border. The wall's permit regime has already made it impossible for Palestinian residents to maintain normal daily life, and is liable to cause them to relocate. In order to live freely (to the extent this is possible under occupation), they will have to leave the area, paving the way for annexation.

While Israel insists that this route is the only viable solution for the protection of Israeli citizens, a High Court of Justice (HCJ) decision from June 2004 casts doubts on this argument. Following a petition filed by Palestinian villagers from northeast of Jerusalem, the HCJ held that a 30-kilometer leg of the route planned for that area was unlawful. The planned route would have subjected these villagers to the difficulties experienced by Palestinians in other areas where the wall is already in place. The HCJ held that such serious violation of the rights of Palestinian inhabitants cannot be justified, since there was another available route which would cause less harm.³² The HCJ thus rejected the State's argument that the original route, deep inside the Territories, is the only solution for Israel's security needs. After this decision, Israel indeed reconsidered the route and in some places pushed it closer to the Green Line.

But in most areas the wall still extends into occupied territory, in some areas very deeply.

The question of the legality of constructing a wall inside the Territories is still pending before the HCJ in a petition filed by HaMoked in 2003.³³ The International Court of Justice (ICJ), however, has already spoken on this matter. In July 2004, the ICJ rendered an Advisory Opinion establishing that construction of the wall in the Occupied Territories constitutes a violation of international law. The ICJ held that Israel must dismantle the parts of the wall already built as well as compensate all Palestinians harmed by it.³⁴ The Opinion reinforces many of the arguments that HaMoked raised in its petition.



In its responses to several petitions challenging the separation wall, the State reiterated that it was doing its utmost to minimize the injury to Palestinian residents. The State repeatedly asserts it is doing its best not to build the wall on farmland or separate between farmers and their land. According to the State, where this is inevitable it installs gates to allow farmers across.³⁵

These efforts evidently overlooked the villages of 'Azzun and An Nabi Elyas, in the Qalqiliya region. Israel built the settlement of Zufin just north of these two villages. The wall in the area envelopes Zufin, creating an enclave that also includes 300 acres of farmland belonging to residents of 'Azzun and An Nabi Elyas and blocking their access to it. The farmland is used mainly for growing olive trees. The wall around the enclave has two gates, one west of the villages, near the Qalqiliya District Coordination

Office, and the other north of them, next to the village of Jayyus. Both gates are too far from 'Azzun and An Nabi Elyas and access from them to the farmland is impractical. The way from the gates to the farmland goes through hilly terrain. Cars cannot go through, and walking is difficult, especially when the farmers have to carry their produce back with them.

Ahead of the olive-picking season in 2004, HaMoked contacted the Prime Minister, the Attorney General and the Civil Administration, demanding an immediate solution for these villagers. In order to prevent the loss of the olive crop, HaMoked demanded a gate be installed in the wall near the villages, where they used to access their land before the wall was built. In this area, there is a dirt road on which cars can drive.

Two months went by, the picking season was over, but no response arrived. Once the year's produce was lost, HaMoked contacted the same authorities again, this time demanding a permanent solution – dismantling the wall and compensating the villagers for their damages.

The Zufin enclave clearly shows that extraneous considerations guided the State in choosing where to build the wall. The fact that the wall is topographically

illogical and that its route almost fully corresponds to the municipal area of Zufin, clearly indicates that the route was planned with annexation rather than security in mind. Indeed, in December 2004, the newspapers reported plans to build new neighborhoods in Zufin, in the same enclave that had been annexed to Israel de facto and which contains the farmlands of 'Azzun, An Nabi Elyas and other Palestinian villages.³⁶

Around one month after HaMoked's letter demanding that the wall near 'Azzun and An Nabi Elyas be dismantled, the State agreed to discuss an agricultural gate for the villagers. No gate has been built.

(Case 34920)

³² HCJ Petition 2645/04, **Beit Sourik Village Council et al. v. Government of Israel et al.**

³³ HCJ Petition 9961/03, **HaMoked v. Government of Israel et al.** See also: HaMoked, **Annual Report 2003**, p. 13.

³⁴ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, International Court of Justice.

³⁵ See, for example, the State's response in HCJ Petition 9961/03, **HaMoked v. Government of Israel et al.** and the decision in HCJ Petition 2645/04, **Beit Sourik Village Council et al. v. Government of Israel et al.**

³⁶ Niv Hakhili, "Between Two Settlements", **Kol Ha-Ir**, December 24, 2004.