



# West Bank Residency

**“Everyone has the right to a nationality.**

**No one shall be arbitrarily deprived of his nationality...”**

Universal Declaration of Human Rights, Article 15

People with no legal status generally try to avoid encounters with the law as such encounters might lead to their deportation. This is all the more so in the Occupied Territories in general and in the West Bank in particular; where encounters with security forces are all but inevitable, given the permanent checkpoints, flying checkpoints, village searches, etc. On all these occasions, Palestinians are required to present proof that they are residents of the West Bank or that they have some other legal permit to stay there. Those who do not have such legal status<sup>117</sup> might be arrested and deported, even if the West Bank has always been their only home.

Israel's policy regarding residency in the Occupied Territories has always been stringent. In the past, residency was only granted to persons who were polled in the census that the military held after the

occupation of the West Bank and Gaza Strip in 1967. Israel revoked the residency of those who left the area during the 1967 war; and deported many others. Between 1967 until the handing over of limited responsibilities regarding the Population Registry to the Palestinian Authority (PA) as part of the Oslo Accords, Israel would revoke the residency of any resident of the Territories who spent a long time abroad. Israel hardly ever enabled aliens to become residents, and only rarely reinstated a person's residency if taken away. Relatives and spouses of residents could, under very specific circumstances, become residents through a family unification procedure.<sup>118</sup>

The Oslo Accords left most of the final authority regarding residency in Israel's hands. The PA was authorized to independently register children under 16 in the Population Registry. All other

actions associated with residency, such as repatriating deportees and other residents whose residency has been revoked, issuing visas and handling the family unification procedure, were subject to prior approval by Israel. When the current intifada began, Israel froze the processing of all residency-related issues, leaving many people with unresolved problems and sometimes without any legal status, exposed to the dangers associated with this situation.



A.T. was born in Colombia in 1982, to Palestinian parents. His father died a few months later, and his mother decided to take him and his older sister back to the village near Ramallah where she was born. When they returned, A.T. was eight months old. Under Israel's policy at the time, because of A.T.'s mother's long stay abroad, she lost her residency. She therefore returned to the West Bank under a visitor's permit obtained for her by a relative. In 1994, A.T.'s mother applied for a Palestinian ID card. By 1999, when her application was approved, A.T. was already 17. Since

Israel does not allow children over 16 to be registered, A.T. did not receive an ID card.

After graduating high school, A.T. started studying at Al Quds University in Abu Dis. In March 2004, on his way to university, he was stopped by soldiers on the road from Ramallah to Abu Dis. Since he had no ID card, they arrested him. A.T. was imprisoned and an order for his deportation was issued. The Interior Ministry wanted to send him back to Colombia, where he was born. A.T. moved to the West Bank when he was less than one year old; this was the only home he ever had, and he did not speak any Spanish at all.

HaMoked's attorney petitioned the District Court in Tel Aviv on A.T.'s behalf, demanding that the deportation order be rescinded. In September, the Court granted HaMoked's request. A.T. was released and allowed to return to his home in the West Bank. However, since he has not been entered in the Population Registry, he still faces the danger of arrest and deportation. **(Case 31808)**

## Family Unification

In the past, the family unification procedure allowed some foreign nationals who married residents of the West Bank and Gaza Strip to become residents and live there legally with their spouses. Israel imposed strict limitations on the procedure and only a small number of applicants were approved and granted status. Now, with the freeze on family unification, even this narrow

opening has been completely closed.

<sup>117</sup> In most cases these are people who have legal status in some other state. HaMoked's clients also include persons who do not have legal status anywhere in the world.

<sup>118</sup> For further details regarding residency in the Territories see: HaMoked and BTselem, **Families Torn Apart: Separation of Palestinian Families in the Occupied Territories**, 1999.

Foreign nationals are not only barred from becoming residents, they cannot even visit the Territories, since Israel has also halted the processing of visitors' permits.<sup>119</sup>

Despite the absolute freeze on visitors' permits and family unification, Israel has announced it would continue to determine whether foreign nationals who have married residents of the Territories belong to a group dubbed the "High Court of Justice (HCJ) population". Being acknowledged as belonging to the "HCJ population" is of great significance, as this group enjoys a special status which allows its members, even today, to legally reside in the Territories. The "HCJ population" includes foreign nationals who married residents of the West Bank and Gaza Strip and entered these territories between the beginning of 1990 and August 31, 1993. Following HCJ petitions filed in the early 1990's, the State announced an arrangement whereby those who fall under the criteria detailed above would be entitled to enter the Territories and remain there with visitors' permits that are renewed every six months, provided they pass security clearance.<sup>120</sup>

But the special status of the "HCJ population" does not protect it against the freeze. Israel has refused to continue processing family unification applications by members of this population which were not decided before the freeze. Furthermore, as long as members of the HCJ population live in the Territories by force of temporary visitors' permits rather than permanent status, their continued stay there is not guaranteed. This is so, even if they have been living in the territories for many years and have built their homes and families there.

Israel renews visitors' permits for members of the "HCJ population" as long as they

remain in the Occupied Territories. However, once they leave it treats them as it would any other foreigner and does not issue new permits. Despite the freeze, HaMoked has taken steps to enable members of the "HCJ population" to return to the Territories. In 2004, HaMoked's efforts have made it possible for three women who were stuck in Jordan because of this policy for two to four-and-a-half years to return. The military announced it would allow them to return only after HaMoked had petitioned the HCJ on their behalf.<sup>121</sup> In all these cases, the military stressed that the visitors' permits were granted *ex gratia*.

Even when the intervention of the HCJ was not required in order to get the military to process the applications of members of the "HCJ population" to return to the West Bank, the military imposed hurdles on their return.

B.H., a Jordanian national, married a resident of Nablus in 1993 and moved to the West Bank to live with him there and was recognized by Israel as belonging to the HCJ population. Since her move to the West Bank in 1993, she has been living there lawfully, with her visitors' permit renewed every six months.

In June 2004, despite concerns that she might not be permitted to return, B.H. went to Jordan to nurse her ailing mother. Her three daughters went with her. When they wanted to return in August 2004, B.H. turned to HaMoked for assistance.

HaMoked approached the Legal Advisor for the West Bank, demanding that B.H. be issued a new visitor's permit. Five months later, the military responded: issuance of visitors' permits to the "HCJ population" is contingent upon security clearance, and

B.H.'s husband must therefore report to the military and undergo a security check.<sup>122</sup>

The petitioner and HaMoked refused to submit to this demand. "In the exceptional case that security reasons might justify barring the entry of a woman who has been living in the area for 11 years and who has her home and family there, these reasons must pertain to **the danger represented by the woman's entry**, and have nothing to do with the husband," HaMoked affirmed in a letter to the military.<sup>123</sup>

In April 2005, after B.H. and her daughters had been separated from their husband and father for nearly a year, the military announced it would allow B.H. to enter the Territories, directing her husband to apply for a visitor's permit for her. The military did not repeat its demand for a security screening. **(Case 34100)**

A large portion of HaMoked's activity on the matter of residency is dedicated to establishing that applicants belong to the "HCJ population." The military is normally slow to respond to HaMoked's applications relating to residency. It is even slower to respond to applications to recognize affiliation with the "HCJ population," with some responses taking as long as two years. In 2004, HaMoked continued to make efforts to get the military to resume treatment of these applications. The few responses HaMoked received, their substance and the military's foot-dragging in answering all other applications, raises concern that the State is attempting to reduce the scope of the HCJ arrangement. In 2004 and the beginning of 2005, the military responded to six applications

demanding confirmation, that the applicant belonged to the "HCJ population", as the first step toward further treatment. In four of these cases, the military refused to confirm such association, arguing that in the period relevant to the HCJ arrangement, the applicants did not actually live in the Territories.

A requirement of this kind was not stipulated in the HCJ arrangement. In fact, it is diametrically opposed to the substance of this arrangement. Belonging to the "HCJ population" was a prerequisite for legally staying in the Territories and setting root there. Persons who were not associated with this population could not live in the Territories to begin with. Now the military is turning things around, and claiming, paradoxically that living in the Territories is

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<sup>119</sup> Visitors' permits are the equivalent of a tourist visa for the Territories. Generally, anyone who has a visa to enter Israel, can also enter the Occupied Territories, but in most cases foreign nationals who have relatives in the Territories do not get such visas.

<sup>120</sup> HCJ Petition 4494/91, **Abu Sarhan et al. v. IDF Commander in Judea and Samaria**; HCJ Petition 4495/92, **Hadra et al. v. IDF Commander in Judea and Samaria**. The renewal of visitors' permits is just one of the provisions of the arrangement defined by the HCJ. For further details see: HaMoked and B'Tselem, **Families Torn Apart: Separation of Palestinian Families in the Territories**, 1999.

<sup>121</sup> HCJ Petition 9736/03, **Masimi v. IDF Commander in the West Bank**; HCJ Petition 10004/03, **Darwish v. IDF Commander in the West Bank**; HCJ Petition 11191/03, **Mafarga v. IDF Commander in the West Bank**.

<sup>122</sup> Letter to HaMoked from Captain Amit Zuchman, Advisory Officer for the Internal Department, on behalf of the Military Legal Advisor for the West Bank, February 17, 2005.

<sup>123</sup> Letter from HaMoked to Academic Officer Opinkaro, Office of the Military Legal Advisor for the West Bank, March 29, 2005.

the prerequisite for belonging to the “HCJ population.”

In 1982, R.A. left the village in the West Bank where he was born and traveled to Saudi Arabia for work. A year later he married H.A., a resident of Kuwait. In 1994, the couple moved to the West Bank. Two years earlier, in 1992, H.A. visited the West Bank under a visitor’s permit obtained for her by a relative. This was sufficient to make her part of the “HCJ population.” Indeed, when, upon their return to the West Bank, R.A. applied for family unification with his wife, the Palestinian Authority informed him that his wife belonged to the “HCJ population” and was therefore entitled to renew her visitor’s permit every six months. This arrangement worked until 1999. But that year, when the couple applied for a new permit, they were told that her name was not listed in the computer files.

In 2004, a physician treating H.A., who suffers from chronic diseases, recommended that she go abroad for surgery. The couple was concerned that if she left the West Bank, she would not be allowed to return. They therefore contacted HaMoked.

HaMoked approached the Legal Advisor for the West Bank, demanding that he confirm that H.A. belonged to the “HCJ population” and guarantee that if she leaves, she would be allowed to return. HaMoked attached various documents

establishing that H.A. belonged to the “HCJ population”, but the military refused. “There is no indication that [H.A.] entered the area in 1992,” the response said.<sup>124</sup>

The military did, however, find records showing that H.A.’s husband entered the West Bank and stayed there for a month and a half in 1992. In its letter, HaMoked explained that on that visit, R.A. entered the West Bank with her husband, but the military only used this record as further “proof” supporting its refusal to recognize H.A. as belonging to the HCJ population. The fact that the husband visited the Territories, the military argued, proved that the couple did not reside in the West Bank “during the relevant period of time.”<sup>125</sup>

In the case of H.A. and her husband, this argument is particularly infuriating, because at the time of that visit, the HCJ arrangement was not yet in force and Israel did not allow couples where one of the spouses was an alien to live together in the West Bank.

Furthermore, the military held that H.A. never belonged to the HCJ population. It offered no explanation as to why she was given biannual visitor’s permits for five years.<sup>126</sup>

HaMoked rejected the military’s arguments and demanded that it reconsider, process the family unification application and grant H.A. visitor’s permits as before. The military has not yet responded. **(Case 30754)**

# Registration of Children

HaMoked helps Palestinians entitled to residency in the Occupied Territories but not listed in the Palestinian Population Registry get registered. This group includes deportees,<sup>127</sup> people who lost their residency (in most cases, after long periods abroad), residents who for various reasons were deleted from the Population Registry and others who were never in it. The most notable group belonging to this last category is that of children who were born abroad to Palestinian parents.

The Oslo Accords authorized the Palestinian Authority (PA) to register children under the age of 16 who have one Palestinian parent, without prior approval by Israel. This authority applies also to such children who were born abroad. Israel makes the registration of children born abroad contingent on their physical presence in the Occupied Territories. Although officially Israel continues to recognize the PA's authority to register children, in reality it does not enable registration of Palestinian children who were born abroad and are older than five.

Children under five may accompany their parents when they enter the Territories. Children over five must have permits of their own. As stated, since the beginning of the second intifada, Israel no longer issues visitors' permits. This puts these children in a bind. On the one hand, Israel does not permit their registration unless they are physically in the Territories, while on the other it does not let them in.

A.R. and I.R., both residents of Beit Jala, married in 1985 and moved to Saudi Arabia, where A.R. found work. Their

seven children were born there. Over the years, the family visited the West Bank several times, and on these visits, the parents registered their children in the Palestinian Population Registry. After the birth of their sixth daughter R.R. in 1995, the family was unable to visit the West Bank because of financial problems. In 2000, the couple had its seventh child, and three years later the family left Saudi Arabia to visit the West Bank.

When the parents and their seven children arrived at the Allenby Bridge, they were told that R.R., who was eight by then, could not enter with them. Her younger brother, who was around three years old, was allowed to accompany his parents.

The family returned to Amman and tried to get a visa for R.R., who has a Jordanian passport, but was turned down. Having no choice but to leave R.R. behind, they entered the West Bank, registered the youngest boy and returned to Saudi Arabia.

In 2004, the family decided to move back to the West Bank, but could not do so as long as R.R. was not registered. The parents turned to HaMoked for help.

In November 2004, in response to HaMoked's query, the representative of the Legal Advisor for the West Bank

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<sup>124</sup> Letter to HaMoked from Captain Amit Zuchman, Assistant Legal Advisor, on behalf of the Legal Advisor for the West Bank, March 25, 2004.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> For further details, see chapter on Repatriation of Deportees, p. 89.

stated that work was underway to find a comprehensive solution for all children in R.R.'s position. Until such time, the military declared it would resolve the cases of R.R. and six other children represented by HaMoked on an individual basis. However, the representative cautioned that the processing of their applications might take quite a long time.

In February 2005, HaMoked was told in an oral communication that a permit for R.R. had been approved. Despite oral and written reminders, the permit arrived only in April 2005, when the military issued an official document confirming that R.R. would receive a visitor's permit.

**(Case 35371)**

T.S. and A.S. managed to register their children in time. But in their case this led to the brutal separation of two babies from their mother.

In June 2004, T.S. and A.S. and their two children, two and a half and one year old, visited their family in Halhul in the West Bank. The family resides in Germany and all have German passports. T.S., who is not a resident of the West Bank, entered the area as a tourist on her German passport.

A.S. never lost his residency, and during the family visit to Halhul, he registered the couple's children in the Palestinian Population Registry. He returned to Germany, where he works in August. His wife and the two children continued their vacation in the West Bank.

On September 3 the mother and children started their journey back to Germany. They went to the tourist section at the Allenby Bridge, where the mother had

first entered. Her passport was checked and stamped, but when the German passports of the two children were checked and it was discovered that they were registered in the West Bank, she was not allowed to take them with her.

The mother begged to let her return to the West Bank with her babies, but to no avail. The officials at the border explained that since her passport had already been stamped, she could not return to the West Bank.

Having no other choice, T.S. called the children's grandfather in Halhul from the border crossing. She handed the children over to him and entered Jordan on her own. Two days later the family called HaMoked.

The authorities first demanded that Palestinian passports be issued for the children. Their grandfather applied, but it turned out that this would take at least two weeks. On September 6, after further inquiries, the military agreed to let the children out with special exit permits, accompanied by their uncle. This required the permission of father, who was in Germany. The next morning, A.S. faxed a letter giving his brother power of attorney. A.S.' father and brother went to Hebron to file the documents with the representatives of the Palestinian DCO, but the military had blocked the road between Halhul and the city. They had to take a detour, and by the time they arrived they were told that the application could only be transferred to the Israeli DCO the following day. On September 8 the documents were forwarded to the Israeli side, and permits were issued that evening.

On September 9, six days after being

separated from their mother, the toddlers were taken by their uncle to Allenby Bridge. The three crossed the bridge

in the late afternoon, and the children were at last reunited with their mother. **(Case 34492)**