At the Jerusalem District Court **Adm. Pet. 8481/08**
Sitting as a Court for Administrative Affairs

In the matter of:

1. **_____ Abu Ramadan, Identity No._____**
2. **HaMoked: Center for the Defence of the Individual founded by Dr. Lute Salzberger - registered non profit organization**

Represented by attorneys Yotam Ben Hillel (lic. No. 35418) and/or Yossi Wolfson (Lic. No. 26174) and/or Hava Matras-Iron (lic. no 35174) and/or Sigi Ben-Ari (lic. no. 37566) and/or Abir Joubran (lic. No. 44346) and/or Ido Blum (lic. no. 44538) and/or Yadin Elam (lic. no, 39475)

of HaMoked: Center for the Defence of the Individual founded by Dr. Lute Salzberger
4 Abu Ovadiah St., Jerusalem 97200
Tel: 02-6283555; Fax: 02-6276317

The Petitioners

- Versus -

1. **Minister of the Interior**
2. **The Director of the Population Administration**
3. **The Director of the Population Administration Office, eastern Jerusalem**

Represented by the State Attorney's Office for the District of Jerusalem, 7 Mahal Street, Jerusalem
Tel: 02-5419555; Fax: 02-6223140

The Respondents

Petition for *Order Nisi*

A petition for an order nisi is hereby filed and is directed at the respondents ordering them to appear and show cause:

A Why they will not reverse their decision to revoke the residency of petitioner 1, and why they will not return her permanent residence permit to her;

B Why they will not make a general determination that the special status of Palestinian permanent residents in eastern Jerusalem does not expire, even when they leave the country and settle in another country, including the occupied territories;

C Pursuant to the above: why they will not determine that the provisions of Regulations 11(c) and 11A of the Entry into Israel Regulations, 5734-1974, do not apply to the Palestinian permanent residents in eastern Jerusalem.

Introduction

1. The petition is concerned with a permanent resident of the State of Israel whose status was revoked, despite having never sought political status in any other country. Her status was revoked, even though throughout the years she scrupulously upheld the conditions that the respondents placed before those who were interested in maintaining their status. Her status was revoked, despite the fact that she never severed her connection with Israel and with the place of her residence – eastern Jerusalem.

2. The only sin committed by this woman was to marry a Gaza City resident in 1990, and to go and live with him in his town. In those days movement between Israeli territories, the West Bank territories, including eastern Jerusalem, and between the Gaza Strip was easily facilitated, and the political borders were not felt at all.

3. Even after the conditions of entry into the Gaza Strip were toughened – this woman's exit from the Gaza Strip and her return to Israel was facilitated in a relatively orderly fashion. It would be performed through a special procedure established by Israel, whose goal it was to regulate the stay of those Israelis who had families in the Gaza Strip. This woman, throughout the years was scrupulous in observing the regulations of the procedure, and in renewing the residency permits pursuant to it. This woman also continued to leave the Gaza Strip frequently and to return to Israel, at a time when the State of Israel continued to view her as a resident of the state, for all intents and purposes.

4. Nothing therefore could prepare her for the fact that quite suddenly, after all those years the respondents would decide to withdraw this woman's residency. She now remains stranded in Gaza, without the possibility of returning to her home in Jerusalem, where her close family lives.

5. This petition is also concerned with the very nature of residency status; which the petitioner received, and which was received by all Palestinian residents of eastern Jerusalem since 1967.

6. Two decades ago the Supreme Court laid out the first layer with respect to the status of residents of eastern Jerusalem. This was established in HCJ 282/88 **Awad v. The Prime Minister and Minister of the Interior**, *Piskei Din* 42(2) 424 (hereinafter: **the Awad case**). The judgement in the **Awad** case was given against the singular and unique factual background – both in the context of the facts that pertained to the nature of the petitioner's emigration from Israel in that case, as well as in the context of his activities within the framework of the first intifada. In the judgment a number of rules were established with respect to the legal nature of residency status in eastern Jerusalem and the criteria according to which residency shall be revoked.

7. Two decades later the abstract analysis in the **Awad** judgment should be re-examined, against the backdrop of the practical world and reality of life. One should also examine the ruling in the **Awad** case against the backdrop of other norms in the legal world, and especially the norms that apply to eastern Jerusalem.

   After two decades, the time has come to tailor the rule to the reality of life and to avoid the harsh consequences that flow from the respondents' interpretation of it, and likewise to tailor it to the norms that apply to eastern Jerusalem.

8. From the perspective of the realities of life it has transpired that the respondents ascribed the broadest interpretation to the **Awad** rule, and they turned it into a tool for revoking the status of thousands of eastern Jerusalem residents. Their policy is integral to their general policy of cruelty towards these residents.

9. From the perspective of the law that relates to our case and which is found in the provisions of international law – international human rights law and international humanitarian law – eastern Jerusalem residents, as stated, are not merely "Israeli residents" in accordance with domestic Israeli law, but they are also "protected" and therefore entitled to carry on living in the area in which they reside. This is also a norm of international human rights law, in terms of which every person is entitled to return to his country. These provisions must be interpreted in conjunction with the amendments made to domestic Israeli law with respect to eastern Jerusalem, which were inserted as a result of political agreements to which Israel committed itself. All of these cast light on the special status of eastern Jerusalem residents. Even if the status of eastern Jerusalem residents is derived from the **Entry into Israel Law**, as was determined by the **Awad** case their status is not the same as any other resident, and without a shadow of a doubt their status is not that of immigrants who have come to Israel. The special circumstances of those whose mothers and fathers lived in east Jerusalem before its annexation by Israel has a profound impact on the law that applies to them.

The factual foundation

10. Petitioner 1 (hereinafter: the "**petitioner**"), born in 1967, is a holder of an Israeli permanent residence permit that was given to her after the annexation of eastern Jerusalem and as a result thereof. The petitioner is married to a resident of Gaza City. The couple do not have any children. In November, 2006 the respondents decided to revoke her residency.

11. Petitioner 2 is a registered non-profit organization, whose aim it is to assist those who have fallen victim to the cruelty and discrimination of the State Authorities, and their work includes defending their rights in court, whether in its own name as a public petitioner or whether as a representative of persons, whose rights have been infringed.

12. Respondent 1 is the minister authorised by the Entry into Israel Law, 5712-1952 to handle all matters that flow from this law. Respondent 1 is the one who instituted the Entry into Israel Regulations.

13. Respondent 2 is the director of the Israel Population Administration. Respondent 2 participates in the policy making decisions with respect to applications for receiving Israeli status under the Entry into Israel Law and under the regulations that were published by virtue thereof.

14. Respondent 3 (hereinafter: the "**respondent")** is the director of the eastern Jerusalem district office of the Population Administration. Respondent 3 is the person who revoked the petitioner's residency status.

The facts

15. The petitioner was born in Jerusalem in 1967 and received a permanent residence permit and an Israeli identity document. The petitioner spent her entire childhood with her family in Jerusalem, at first in the Old City and later on in the area nearby Atarot airport.

16. In 1990 the petitioner married Mr. _____ Abu Ramadan, ID No. _____, and a resident of Gaza City. The couple does not have any children.

The petitioner's entry into the Gaza Strip

17. At the time of the petitioner's marriage there was free movement between Israel and the Gaza Strip, and no permit was required whatsoever. Later on, when permits were required for entering the Gaza Strip, the petitioner entered the Gaza Strip and lived there by virtue of permits that had been issued to her in accordance with the "split families" procedure (hereinafter: the "**split families procedure"** or "**procedure**"). The "split families" procedure is a procedure that aims to resolve the living arrangements of those Israelis who have family in the Gaza Strip and who currently reside there. We shall expand further on the background to this issue.

18. At the end of the 1967 War, and until the signing of the Oslo Accords in 1994, there was no restriction on the entry of Israeli citizens and residents into the Gaza Strip. Israel thereby practically enabled the renewing of family, friendly, and commercial ties that had been severed in 1948. After the signing of the Oslo Accords in May 1994 general entry permits to the Gaza Strip were suspended and the entry of Israeli citizens and residents into the Gaza Strip was conditioned on the receipt of personal permits from the army commander.

The suspension provisions from 1994 are attached and marked as **p/1.**

19. Families in which one of the spouses was an Israeli and the other a Gazan (hereinafter: "**split families")** thus became dependent upon an army permit in order to reside in their home in Gaza. According to the procedure that was established, the Israeli spouses received residential permits in Gaza, which were valid for a number of months, and which validity could be extended by the Erez Civil Liaison Administration (CLA). This procedure expresses, on the one hand the state's responsibility to preserve the rights of those split families to maintain a family life, and on the other hand – the state's responsibility to enable its citizens and residents to enter it, a responsibility that is enshrined in the **Basic Law: Human Dignity and Liberty** and the **Entry Into Israel Law.** Over the course of the years the state imposed many restrictions upon the implementation of this procedure, and there were even periods in which it was completely frozen. Nonetheless the State, on a number of occasions, reiterated these commitments.

For this purpose we have attached a letter sent to HaMoked on behalf of the Legal Advisor for the Gaza Strip dated 9 November, 2004 and marked **p/2.** In this regard see also the State's reply in HCJ 10043/03 **Abajian et al. v. Commander of IDF Forces in the Gaza Strip**. The reply (in Hebrew) may be viewed in full at the website of HaMoked, the Center for the Defence of the Individual, using this link: http://www.hamoked.org.il/items/5772.pdf

20. The petitioner has been scrupulous in acting in accordance with the procedure and renewing her permits to reside in Gaza that were given to her. This, of course, could only be done when her actions were not foiled by the IDF, for some or other reason (for example, the army's dividing up of the Gaza Strip for significant periods, an action that prevented Palestinian access to the Erez Crossing in order to extend their permit). Over the course of all those years the petitioner would regularly enter Israel and visit her home in eastern Jerusalem. There were periods in which the petitioner would enter Israel a number of times over the course of one year, and would stay in Jerusalem for a number of weeks at a time. Sometimes the petitioner would only enter Israel once a year, and then she would stay there for the entire month.

Revoking the petitioner's status

21. In February 2007 the petitioner was informed that although over the course of all those years she had maintained close ties with her home and family in Jerusalem, and was even scrupulous in complying with the provisions of the procedure – the respondent had revoked her status. The petitioner was

informed, when she presented herself at the office of the respondent, that her residency had been revoked on 19 November, 2006.

An extract from the entry in the Populations Registry is attached and marked **p/3.**

Nonetheless it should be noted that even though according to the respondent her status was revoked on 19 November, 2006, the petitioner continued to receive entry permits into Gaza, pursuant to the procedure, even after this date. On these very permits the petitioner's Israeli identity number is clearly displayed, and nowhere is it indicated that the petitioner ceased to be a resident.

Permits that were issued on 21 November, 2006 and on 24 December, 2006 are marked **p/4** and **p/5** respectively.

22. Since for her part she had been scrupulous in complying with the procedure, it never entered the petitioner's mind that there exited a possibility that her status would be revoked. Also from the procedure itself there was no indication that it contained the option of revoking Israeli status. Moreover, the petitioner continued to enter Israel at least once a year, and in many cases even more than that. No one disputes the fact that the petitioner continued, all those years to maintain close ties with her home in Jerusalem.

23. It should also be noted that when the petitioner requested entry into the Gaza Strip in March 2007, she was given a residence permit that was valid for a month, and later on an additional permit that was valid from 5 April, 2007 until 5 July, 2007. The petitioner was of the opinion that the very fact that she was given these permits meant that the state would continue to allow her to exit and enter Israel in accordance with the procedure, and past practice.

The permit dated 5 April, 2007 is attached and marked **p/6.**

24. After the aforesaid permit expired, the petitioner arrived at the Erez checkpoint, with the aim of extending its validity. To her surprise she was informed at the checkpoint that it would not be possible to extend the validity of her permit, since she had ceased to be a resident of Israel.

25. On 5 March, 2008 the petitioner submitted an application to the respondent for the restoration of her residency status. In her letter the petitioner expanded upon her claims that throughout the years she had been scrupulous in complying with the procedure, and thus could not have anticipated that her status would be revoked. The petitioner also claimed that all those years she continued to maintain a connection with Israel and she was currently interested in returning to, and entering Jerusalem and having her status restored.

A copy of the petitioner's letter dated 3 March, 2008 is attached and marked **p/7.**

26. On 8 April, 2008 a letter from the respondent was received at the office of petitioner 2, which stated the following:

> **I hereby confirm receipt of your letter, which is attached and I am honored to inform you that our decision with respect to the expiry of the residency of the aforesaid was made in accordance with the law.**
>
> **If you possess unequivocal substantiation and evidence that proves otherwise, you may file an application for a permanent resident permit.**

The respondent's letter is attached and marked **p/8.**

27. The respondent has refused to provide details of the reasons underlying the decision to revoke the petitioner's residency. Nonetheless, being fairly familiar with the respondent's policy we are convinced that the reason for the revocation of residency is the petitioner's residence over the last few years in the Gaza Strip. The petitioner does not claim that she did not reside in the Gaza Strip from the time she was married, but avers that this fact does not evince a desire to completely sever her ties with her family and city – Jerusalem. This is also not sufficient to show that in practice the petitioner did not maintain contacts with her home town and with her relatives who live there.

28. The petitioner is interested in returning to, and entering Jerusalem. She is interested in having her status restored. However the respondent does not allow this, claiming that it was lawfully revoked. This as stated was done without offering any justified reason, and apparently by exclusive reliance on the fact that the petitioner's place of residence is in the Gaza Strip. In light of the respondent's inflexible position, any claim by the petitioner, which does not contradict the fact that she resides in the Gaza Strip is invariably rejected by the respondent. The petitioner therefore has no reason to file an application for a permanent residence permit. According to the respondents' criteria, an application of this kind filed by someone who also does not currently reside within the borders of the State of Israel will be summarily dismissed.

29. The petition therefore focuses on the respondent's decision to revoke the petitioner's residency. The petitioner will claim below that it comprises a decision that was unlawfully made and which was in contravention of the procedure to which the respondent committed itself a number of years before then, as a result of a petition that was filed with the HCJ. This petition will also deal with the legality of the decision in its broader sense. The petitioners' claims in this context are based on a reexamination of the laws related to the citizenship status of residents of eastern Jerusalem, the respondents' interpretation of these laws and the court's rulings thereon.

The legal argumentation

30. Below the petitioners will argue the following:

A. The petitioner's position is covered by the provisions of the "Sharansky Declaration" – a document that outlines the commitments that the respondents took upon themselves in the wake of HCJ 2227/98 **HaMoked: The Center for the Defence of the Individual et al. v. Ministry of the Interior et al**. Throughout the years the petitioner maintained a connection with Israel. The petitioner was accustomed to visiting her home in Jerusalem at least once a year and in many instances – more than that. The petitioner resided in the Gaza Strip on the basis of permits, which were issued by Israel, permits which she scrupulously renewed. In light of this, the respondent should have applied the provisions of the "Sharansky Declaration" to the petitioner, and should not have revoked her residency.

B. Permits to reside in Gaza, which the petitioner received throughout the years and her frequent visits to Israel, created an impression with the petitioner that her residency would not be revoked. Even the provisions of the "split families" procedure contains no indication that latent within it is the possibility that even one who was scrupulous to comply with it may be at risk of having his status revoked. The respondent's decision – that contravenes the petitioner's reliance upon the fact that the respondent continued to view her throughout the years as a permanent resident in Israel – is therefore tainted with illegality, also in this context.

C. The petitioner's relocating to the Gaza Strip does not fall within the category of "settling in a country outside of Israel" as stated in the **Entry into Israel Regulations, 5734-1974** (hereinafter: "**Entry into Israel Regulations"**) and therefore this relocation is not sufficient to cause the revocation of her status in Israel. It merely involved a move from one area, which according to domestic law, is under Israel's sovereignty, to another area which is held by Israel (certainly during the period in question) under belligerent occupation. These two regions (eastern Jerusalem and the Gaza Strip) are not only connected from the perspective of sovereignty over the area. Rather it involves two regions which from many perspectives (political, social, and cultural) constitute one framework.

In eastern Jerusalem a dichotomous situation prevails in which on the one hand it is a territory which is under Israeli sovereignty, according to domestic law, but on the other hand it is an inseparable part of the territories that were conquered in 1967. Moving from eastern Jerusalem to Gaza should thus not be considered a relocation of one's place of residence to another state, in precisely the same way as changing one's residential address from eastern Jerusalem to a town within the Green Line cannot be conceived likewise.

D. Alternatively, the petitioners will argue that even if the respondents' position is that the petitioner "settled in another country", the respondents' decision to revoke the petitioner's status is nonetheless unlawful. This argument of the petitioner is based upon a reexamination of the laws relating to the citizenship status of residents of eastern Jerusalem, of the respondents' interpretation of these laws and of the court's ruling. This petition shall thus expand upon this matter in greater detail.

Below we shall relate to the matters in their proper order.

Revoking the petitioner's status – in contravention of the "Sharansky Declaration"

31. As will be detailed below, as from the beginning of the second half of the 1990s the respondents introduced a new policy within the framework of which many permanent residents of eastern Jerusalem were stripped of their status. Opposing this policy, which came to be labeled "the silent deportation", petitioner 2, along with other human rights organizations as well as eastern Jerusalem residents who were harmed by this policy, filed a petition to the HCJ in 1998 (HCJ 2227/98). In the wake of this petition the then Minister of the Interior, Mr. Nathan Sharansky made a declaration to the HCJ. This declaration came to rectify, if only slightly, the injustice that was caused to those residents who were harmed from the sweeping policy of revoking residency.

32. Section 2(a) of the Declaration determines:

> A detailed examination shall be undertaken with respect to anyone who applied to the Ministry of the Interior, and for whom the question of revocation of permanent residence has arisen for one reason or another.

Section 2(b) determines:

> If it shall transpire from an examination that the aforesaid applicant, who is registered in the Populations Registry as a permanent resident, **continued to maintain a proper connection with Israel even in a period in which he lived outside of Israel, the Ministry of the Interior shall not** – subject to the absence of a criminal and/or security impediment – **adopt any steps to remove him from the registry**. (Emphasis added)

33. Further on the declaration determines executive provisions. In section 3(b) it is determined:

> **With respect to a person who has relocated the center of his life outside of Israel for a period exceeding 7 years, and therefore according to the**

> **law, his Israeli permanent residence permit has expired, but for whatever reason he was not informed by the Ministry of the Interior and/or thus far he has not been removed from the Population Registry file, the Minister of the Interior shall consider him as the bearer of a valid Israeli permanent residence permit, provided that he visits Israel during the validity period that is stamped in the exit permit in his possession.** (Emphasis added)

Section 3(e) determines:

> This procedure shall apply, mutatis mutandis, with respect to those who have relocated the center of their life as aforesaid, to the territories of the Judea, Samaria and Gaza regions.

The full text of the Sharansky Declaration may be viewed at the Center for the Defence of the Individual's website, at the following link:

http://www.hamoked.org.il/items/3055.pdf (Hebrew)

34. In March, 2000, when the "Sharansky Declaration" was made the petitioner had already lived in the Gaza Strip for a period exceeding 7 years. Since this is so, according to the respondents' interpretation of the law, her residency had apparently expired. Nonetheless, the respondent did not remove, as of that day, the name of the petitioner from the Populations Registry, and did not inform her that her status had been revoked. In addition, the petitioner continued to visit Israel, both before and after the declaration was made, and complied with the conditions of her residency permits determined by the "split family" procedure, (this corresponds to visiting Israel during the validity period of the exit card, "mutatis mutandis", as determined in the Declaration).

35. **Therefore, the petitioner complied with the conditions of section 3(b) of the Declaration, and thus the respondent must consider her as one who holds a valid permanent residence permit. The revocation of her status was therefore in contravention of the provisions of the "Sharansky Declaration".**

The Revoking of the Status – Contrary to the Petitioner's Reliance Interest

36. As stated, the petitioner has lived in the Gaza Strip since the beginning of the 1990s. Ever since, and for the next 16 years, the respondent allowed the petitioner to leave the Gaza Strip and return to her home in Jerusalem, without her Israeli status being harmed in any way. The respondent avoided revoking the petitioner's status even during the harshest years of the "silent deportation" (see below for more data on this matter). In addition, as has been detailed above, the petitioner complies with section 3(b) of the "Sharansky Declaration", and therefore it was incumbent upon the respondent, also in terms of this commitment made before the court, to avoid revoking the status of the petitioner.

37. And indeed that was the situation for at least the first six years after the filing of the "Sharansky Declaration" at the HCJ. The petitioner continued, for her part, to be scrupulous in meeting the terms of the "split families" procedure, and continued to maintain strong links with her home in Jerusalem. The respondent, for her part, continued to view her as an Israeli resident for all intents and purposes. The petitioner entered the Gaza Strip on permits issued by the State of Israel, **permits that were given only to those who were citizens of the State of Israel or its residents.** The petitioner returned at least once a year to Jerusalem, exiting the Gaza Strip in her capacity as an **Israeli resident.** This being the case, it never entered the petitioner's mind that there was any possibility of her status being revoked. Moreover, also from the "split families" procedure itself (see appendix **p/3** above) there is no indication that latent within it is the possibility of revoking Israeli status.

38. As shall be detailed below, the revocation of the petitioner's residency does not comply with the provisions of the Entry into Israel Regulations. However even if we were to examine the respondent's decision through the narrow prism of deviating from its commitments and its policies, as these are expressed in the "Sharansky Declaration" – it still involves an unlawful wrong against the petitioner. Indeed the administrative authority has the right to change its policies and guidelines in order to exercise the discretion that it has determined for itself, however this is only where there are reasons for such a change, and which pass the test of reasonableness, reasons that are devoid of any alien considerations.

> A public authority that has assigned for itself operational guidelines or rules with respect to the way in which it exercises its authority cannot deviate from these guidelines and rules that it has consolidated and established for itself, unless there are logical reasons for this that pass the test of objective review, since this matter is also one of the expressions of equality before the law (HCJ 47/91 **Neiman v. The State Attorney**, Piskei Din 45(2), 872, 876)

Commenting on the same matter, Prof. Y. Zamir determined that:

> The underlying assumption is that the Authority will operate in accordance with the guidelines, and this assumption creates the justified expectation that this is how the Authority will continue to operate. If, in contrast to this expectation, the Authority deviates from these guidelines, there is room to suspect that the deviation was the result of alien considerations or some other defect. This suspicion may be enough to undermine a presumption of legality (Y. Zamir, *Administrative Authority*, volume 2, p.787).

39. It should be noted that annulling an existing permit and altering a previous decision, upon which a person has relied, is one of the types of actions which increase the obligation upon the Administration to exercise its discretion fairly

and reasonably, while maintaining an appropriate balance between the interest of the individual and the needs of the public. The Authority must be convinced, on the basis of evidence that does not leave any room for reasonable doubt, that a "new event has occurred which affects the basic presumption that underlay the granting of the permit and which has thus created a substantial risk, which in turn creates a special public interest to annul the permit" (HCJ 799/80 **Shlalam v. Licensing Clerk. Pursuant to the Shooting Law**, *Piskei Din* 36(1), 317, 328).

When changing an administrative act, upon which an individual has relied, the Authority must be convinced that leaving the "matter intact, against the backdrop of the new circumstances, is no longer justified and does not accord with the fulfillment of its obligations towards the general public" (HCJ 4383/91 **Shpeckman Hayyim et al. v. Municipality of Herzliya**, *Piskei Din* 46(1) 447, 455).

40. The petitioner relied on the fact that the respondent continued to view her throughout the years as a permanent resident of Israel. If the petitioner had any suspicion that the respondent was liable to revoke her status, it is possible that she would have planned her steps in a different way. It appears that as far as the respondent is concerned there are no logical reasons for a deviation from its commitments as stated in the "Sharansky Declaration". (For example: public and state security, rule of law, etc.) It is certainly correct to say that for a period of more than six years after the declaration was made, the respondent continued to view the petitioner as an Israeli resident. This is pursuant to the provisions of the Declaration itself.

41. What therefore has happened recently: did the respondent decide to reconsider its commitments within the framework of the "Sharansky Declaration"? As far as the petitioners know, the answer is in the negative. Did the petitioner cease to preserve her links with Jerusalem? As has been detailed above, this must also be answered in the negative.

Since logical reasons for such a radical change in the respondent's position vis-à-vis the petitioner – cannot be found, the petitioners suspect that in making the decision to revoke the petitioner's status alien considerations were taken into account, that are based upon demographic and perhaps even economic reasons.

Revoking status – in contravention of the provisions of the Regulations

42. Regulation 11(c) to the **Entry into Israel Regulations, 5734-1974,** determines the following:

> The validity of a permanent residence permit shall expire if the circumstances stated in paragraphs (4) or (5) of sub-regulation (a) present themselves, and also where the permit holder **has left Israel and has settled in a country outside Israel**. (Emphasis added)

Regulation 11A of the same Regulations:

> For the purposes of regulations 10 and 11, a person will be considered as if he has settled in a country outside of Israel if one of these conditions is present:
>
> 1. He has lived outside of Israel for a period of at least seven years and on a visa and a class 1A temporary residence permit for at least 3 years;
>
> 2. He received a permanent residence permit in that country;
>
> 3. He received citizenship from that country through naturalization.

43. According to the Entry into Israel Regulations it is therefore possible to revoke the residency of a person, if it has been determined that he left Israel and settled in a country outside of it. For this purpose Regulation 11A outlines three "settlement presumptions", which even if one of them is present, the person shall be considered to have settled in a country outside of Israel. Take note: these are presumptions that may be rebutted by the resident whose permit has been revoked (see in this regard: HCJ 7023/94 **Shqaqi et al. v. Ministry of Interior**, *Takdin Elyon* 90(2), 1614).

44. It is clear that the two presumptions that appear in regulation 11A (2 and 3) are not present in our case: the petitioner did not receive status in another place, including not receiving it from the Palestinian Authority. However what we are to make of the presumption that appears in Regulation 11A (1): is it possible to determine that the petitioner's status expired since she lived in a country outside of Israel for more than seven years?

We shall now deal with this question.

45. In a case dealing with the legality of issuing an order that assigns the place of residence of a person who lives in an occupied area, the HCJ determined that the West Bank and the Gaza Strip are regions that constitute one territorial unit, which are subject to a common belligerent occupation:

> It has been argued before us that the Gaza Strip Region – to which the army commander of the Judea and Samaria Region wishes to transfer the petitioners – is located outside the region.
>
> This argument is interesting. According to it, Judea and Samaria were conquered from Jordan that annexed them — contrary to international law — to the Hashemite Kingdom, and ruled them until the Six Day War. By contrast, the Gaza Strip was conquered from Egypt, which held it until the Six Day War without annexing the territory to Egypt. We therefore have two separate areas subject to separate belligerent occupations by two different military commanders in

such a way that neither can make an order with regard to the other territory. According to this argument, even though these two military commanders act on behalf of one occupying power, this does not make them into one territory.

This argument must be dismissed. **The two regions are part of Mandatory Palestine. They are held under belligerent occupation by the State of Israel. From a social and political viewpoint, the two areas are conceived by all concerned as one territorial unit**, and the legislation of the army commander in both of them is identical in content. Thus, for example, our attention was drawn by counsel for the respondent to the provisions of **article 11 of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip**, which says:

"The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which shall be preserved during the interim agreement."

This provision is also repeated in article 31(8) of the agreement, according to which the 'safe passage' mechanisms between the region of Judea and Samaria and the region of the Gaza Strip were determined. Similarly, although this agreement is not decisive in our case, it does indicate that the two regions are considered as one territory held by the State of Israel under belligerent occupation. Moreover, counsel for the Respondent pointed out to us that 'not only does the State of Israel administer the two regions in a coordinated fashion, but the Palestinian side also regards the two regions as one entity, and the leadership of these two areas is one and the same'. Indeed, the purpose underlying the provisions of article 78 of the Fourth Geneva Convention and which restricts the validity of assigned residence to one territory lies in the **societal, linguistic, cultural, social and political unity of the territory**, out of a desire to limit the harm caused by assigning residence to a foreign place. **In view of this purpose, the Judea and Samaria region and the Gaza Strip region should not be regarded as territories foreign to one another, but they should be regarded as one territory**. (HJC 7015/02 **Ajuri et al. v. Commander of the IDF Forces in the West Bank et al.**, *Takdin Elyon* 2002(3), 1021, 1029). (Emphasis added)

46. Eastern Jerusalem forms an inseparable part of the West Bank, which was conquered in 1967. Both of these in turn form an inseparable part of Mandatory Palestine. So too in the case of the Gaza Strip. We are dealing with a parcel of land that is characterized, in the words of the court by its "social, linguistic, cultural, societal and political" unity. Can one therefore say concerning a person who has moved from eastern Jerusalem to the Gaza Strip that he "left Israel and settled in a country outside of Israel"?

The geopolitical reality in the region and the attitude of Israel towards the inhabitants of the territories that were conquered by it in 1967 (including eastern Jerusalem) demonstrate that that question must be answered in the negative. We shall elaborate further upon this.

Eastern Jerusalem residents like the rest of the residents of the territories:

The open bridges policy, the link between Gaza, the West Bank and eastern Jerusalem and the "split families" procedure.

47. The State's conduct throughout the years allowed contact to be maintained between the various parts of the occupied territories, and recognized the extant connection between eastern Jerusalem, the West Bank and the Gaza Strip.

48. Over the course of a number of decades after the annexation of eastern Jerusalem Israel was scrupulous in applying the same arrangements to residents of eastern Jerusalem as those which applied to the rest of the residents of the occupied territories as regards to leaving the country, returning to Israel and the West Bank, and the status upon return. Underlying these arrangements was the **"open bridges policy"** which the State of Israel instituted as from 1967. "The open bridges policy" was designed to encourage the free passage of residents of eastern Jerusalem and residents of the territories via the Jordan bridges, subject to security considerations. This policy recognized the needs of the residents of eastern Jerusalem and the residents of the territories to live in Jordan and in other Arab countries, and not only for temporary needs and for short periods, such as visits and commerce, but also for needs that entailed extended periods of stay abroad, including for the purposes of study, work, and family ties.

49. The residents' departure was contingent on obtaining an exit permit. Every resident who upheld the conditions of the exit permit (an exit card which also served as a return visa) was allowed to return, and immediately upon his return his rights as a resident would be restored to him. When a resident returned to eastern Jerusalem (or to the territories, as the case may be) he was allowed to once again go abroad, equipped with a new exit card. The exit card was not a travel document like a passport or laissez-passer, and its whole purpose was to provide written proof that he could leave via the Jordanian bridges and was granted the possibility of returning via the same route so long as it was still valid. This was a unique document that served residents of the territories, which were conquered in 1967 (including eastern Jerusalem) within the framework of the open bridges policy.

50. This policy allowed thousands of Palestinians – residents of eastern Jerusalem and of the territories – who worked in the Gulf States and in Saudi Arabia, who studied in Arab countries and who conducted their family life there, to leave and to return without prejudicing their rights. The Israeli authorities recognized, as stated, the many constraints that caused the residents of eastern Jerusalem to seek a livelihood in the Arab countries, to complete their education there and even to conduct their family life over there.

In this regard, see for example the speech of the then Minister of Defense, Mr. Moshe Dayan to the Knesset (*Knesset Debates*, volume 12, 5730-1970, 697-699).

A copy of the speech is attached to this petition and is marked **p/9.**

51. The application of the open bridges policy to the residents of eastern Jerusalem, without distinguishing them from the residents of the other occupied territories, reflects an Israeli recognition of the dual nature of their status: on the one hand they were permanent residents of Israel, so that Israeli law applied to their place of residence, but on the other hand they were the protected persons of a territory in which sovereignty had been transferred to Israel after 1967 (more details about this matter will be furnished further on).

52. This policy did not only take into account the needs and affiliations of the residents. It also served Israeli interests, because it compensated for the lack of infrastructure in eastern Jerusalem and the limitations with respect to construction and family unification within the city. The respondents' policy which allowed residents to preserve their status in the city, if they lived in the territories and even if they went abroad, so long as they extended the validity of their exit card in their possession, made this trend easier and even encouraged it.

53. An inseparable part of this policy of removing barriers between the territories, in the various regions, and between Israel was the encouragement of forging ties between the Gaza Strip, the West Bank and eastern Jerusalem. Beginning from July 1967 residents of the Gaza Strip who so desired could travel from the Gaza Strip to eastern Jerusalem via Israel (see in this regard: the study by the then coordinator of activities, Shlomo Gazit, *The Stick and the Carrot – The Israeli Administration in Judea and Samaria* (1985) 210-217. The relevant ages are attached and marked **p/10.)**

54. This policy also operated in the opposite direction. At the end of the 1967 war, and at least until the beginning of the first Intifada residents of the West Bank and of eastern Jerusalem could move fairly freely between the two parts of the occupied territories via Israel, by virtue of the general permits that were issued by the army. Later on Israel began imposing restrictions on this passage, which became stricter and stricter until a "general curfew" was imposed upon the territories in 1993. Throughout those years, in which the residents of the West Bank and of eastern Jerusalem enjoyed unrestricted entry to the Gaza Strip, the residents of those regions were allowed to renew their family, social and commercial ties that had been severed in 1948, and of course to forge new ties. And it bears re-emphasizing: this involved a parcel of land which even

before then was characterized, in words of the Supreme Court in the **Ajuri** case, by its "social, linguistic, cultural, societal and political" unity.

55. The restrictions that Israel imposed upon entry to the Gaza Strip pierced the fabric of life that had come into being over the course of the years in which the Gaza Strip was open to those who entered and left it. Nonetheless, and as detailed above, Israel continued to provide special permits to families in which one of the spouses was Israeli (or an east Jerusalemite) and the other was Gazan (split families). These permits – permits to reside in Gaza – which the Israeli spouse receives pursuant to the **"split families" procedure** allows those families to continue their normal routine, within the framework of which the Israeli spouse is allowed to enter Gaza and leave it. This procedure expresses, on the one hand, the State's commitment to preserve the rights of those split families to maintain a family life, and on the other hand – the State's commitment to allow its citizens and residents to enter it.

56. The "split families" procedure also shows therefore that even according to the State's perception one cannot create an unsurpassable barrier between residents of the territories (in this case the Gaza Strip) and between residents of eastern Jerusalem. Eastern Jerusalem residents, who as a result of the annexation received Israeli status, continue to maintain ongoing contact with the territories. This contact, of a personal, social, cultural or commercial nature shows more than anything else that moving between one part of the occupied territories to the other cannot be regarded as going to a foreign country.

57. **From the aforesaid it is clear that one cannot say about the petitioner that she "left Israel and settled in a country outside of Israel" as stated in the Regulations. As we have seen we are dealing with a passageway between two regions that constitute, from many perspectives, one unit. We are also dealing with a passageway between territories that are both controlled by Israel: eastern Jerusalem, where according to domestic law Israeli sovereignty applies, and the Gaza Strip, which was held by Israel (certainly during the relevant period) under belligerent occupation.**

58. **One cannot therefore say about someone who moves from eastern Jerusalem to the Gaza Strip that he is in the same position as one who has left his country and has gone to settle in another country. Certainly one cannot still say this about the petitioner, who scrupulously maintained intimate contact with her home town, who scrupulously maintained her Israeli status and did not seek for herself any other status – permanent or temporary – in another place.**

The judgment in the Awad case and its consequences

59. The petitioner will argue that even if it is the position of the respondents that the petitioner "left Israel and settled in another country" and even if it is the position of the respondents that the provisions of the "Sharansky Declaration" should not be applied to the petitioner – the respondent's decision to revoke the status of the petitioner is unlawful

60. This argument of the petitioner is based on a crucial reexamination of the laws related to the citizenship status of residents of eastern Jerusalem, of the respondents' interpretation of these laws and of the court's ruling. Within the framework of this reexamination, we shall first review the Supreme Court's ruling in the **Awad** case including the special circumstances of the judgment. Further on we shall note the way in which the respondent interpreted the judgment, and the harsh ramifications of this interpretation upon eastern Jerusalem residents. After that we shall offer a way in which the ruling can be tailored to fit the current realities of life and the norms that apply to eastern Jerusalem so that the harsh consequences flowing from the respondents' interpretation may be avoided. At the end we shall suggest how to test the case of the petitioner in light of the **Awad** case.

We shall proceed to deal with these matters in order.

Judgment in the Awad case

61. The background to the petition and judgment in the Awad case was the decision of the Prime Minister and the Minister of the Interior in May 1988 to deport the petitioner, Mubarak Awad from Israel.

62. Awad was a resident of eastern Jerusalem. After the occupation of the West Bank and the annexation of eastern Jerusalem, Awad was counted in the population census and received an Israeli identity document. In 1970 he travelled to the USA. He studied in the USA, where he acquired citizenship. Awad returned to Israel on a number of occasions over the course of the years. Ever since acquiring American citizenship he entered Israel on his American passport. In 1987 when he applied to the Ministry of the Interior with an application to change his identity document that was in his possession he was informed that his residency had expired. His residential permit was not extended. In May 1988, and during the initial days of the first Intifada a deportation order was issued against him. The reason for the deportation order is detailed in the judgment, and it would therefore not be superfluous to cite from it:

> …During the petitioner's period of stay in Israel, and especially in the most recent period, in which, in the opinion of the Minister of the Interior, he resided unlawfully in Israel, the petitioner openly and intensively worked against Israeli rule over the regions of Judea and Samaria and the Gaza Strip… in 1983 the petitioner published a book in Arabic and in English titled *Non-Violent Resistance: A Strategy for the*

Occupied Territories. In January 1985 the petitioner established an institute in Jerusalem which he heads, and which is called the 'Center for the Study of Non-Violence'. There are differing reports as to the nature and outlook of this Center. The petitioner argues that he is opposed to Israeli rule in the occupied "territories" but that his calls for actions against it are only through nonviolent means. Inter alia the petitioner pointed to various nonviolent resistance methods, such as boycotting goods, refusal to work within Israeli frameworks, refusal to pay taxes or to fill in forms, however all the aforesaid measures of resistance should be done, according to the petitioner's outlook, on one condition: no physically violent action should be carried out. The petitioner supports the sovereign existence of the State of Israel alongside the existence of a sovereign Palestinian political entity. And these two states, according to his teachings and his opinions, are liable in the future to exist side by side in peace and harmony. The petitioner even went as far as to suggest on Israeli television (at the beginning of April) that "we should strive for full reconciliation including negotiations with the Palestinians with regard to granting compensation for their abandoned property and opening a new page in relations between the Jewish and Palestinian peoples."

The petitioner considers himself one of the most moderate thinkers among the Palestinian leadership. According to his principles "one must condemn the violent response – even the throwing of stones and Molotov cocktails – which is happening right now in the 'held territories', and even more so actions that are more violent than these. In contrast to these statements, it has been noted by 'Yossi' – who serves in the Israeli Security Agency in the Division for Countering Sabotage and Hostile Terror Activities in the Jerusalem and Judea and Samaria regions, and whose affidavit is attached to the respondent's reply – that the "apparently moderate image that the petitioner has attempted to project for himself is merely a ruse that is incompatible with his true goals". The petitioner's political aims, according to 'Yossi' are the "liberation of the territories from Israeli rule and after that the establishment of a bi-national Israeli-Palestinian State which is liable to bear Palestinian features". According to 'Yossi's account, the petitioner is advocating civilian rebellion, and is calling for and advocating, among other things, the boycotting of Israeli goods and services, refusal to pay taxes, organized desertion of Israeli workplaces, and the

> failure to carry an identity certificate, the excommunication of collaborators, and similar forms of action. At first the petitioner's activities failed to gain a following in the Arab street. But as soon as the uprising began in the territories, in December 1987, his ideas began to be given tangible expression in proclamations that were issued by the uprising's headquarters, and which resulted in practical activity, which was carried out on the ground by the residents of the territories. These activities included, amongst others, workers from the territories abstaining from going out to work in Israel, non-payment of taxes, resignations of policemen, injuring collaborators, calls to mayors to resign, etc. 'Yossi' points out that the "petitioner himself took part in the publishing of the proclamations which contained, among other things, a call to take up violent and hostile action against the State on the part of residents of the territories". In 'Yossi's opinion "the petitioner's activities at the height of that period are sufficient to cause real harm to security and public order, and his ideas and goals have immediate consequences for what is happening in the territories. The petitioner's continued residence in Israel constitutes real harm to security and public order". 'Yossi' s expert opinion was before the respondent, when it ordered the deportation of the petitioner from Israel (**Awad** case, 427-428).

63. We need to repeat this once more: this was back in the days of the first Intifada, a time that predated the Oslo accords and predated the establishment of the Palestinian Authority. This was a time when Israel had yet to recognize the right of the Palestinian People in the West Bank and the Gaza Strip to govern itself (as stated in Oslo Accords A and B). Against the background of this reality we shall examine the decision by the Minister of the Interior in the Awad case.

64. In its judgment the court dealt with three questions:

> First, does the Entry into Israel Law apply to the petitioner's permanent residence in Israel; secondly, is the Minister of the Interior authorized to deport the petitioner according to the Entry into Israel Law, if this Law is applicable; thirdly, was the authority to deport lawfully exercised (*ibid*. 429).

65. As to the first question the court responded that the annexation of eastern Jerusalem "created synchronization between the State's law, jurisdiction and administration and between East Jerusalem and those located in it". (*Ibid*. 429). In order to give "validity to this trend" and to anchor it "as much as possible" in the language of the Law (*Ibid*. 430), the court accepted the State's claim that eastern Jerusalem falls under the provisions of section 1(b) of the Entry into Israel that states:

> The residence of a person, other than an Israeli national or the holder of an *oleh* visa or of an *oleh* certificate, in Israel shall be by permit of residence, under this Law.

In this context the court held:

> This enshrinement does not arouse any difficulty, since one may view residents of east Jerusalem as those who have received a permanent residence permit. True, generally speaking a formal permit document is provided, but this is not essential. The permit may be given without any formal document, and the granting of a permit may be deuced from the circumstances of the case. Indeed by virtue of the recognition of East Jerusalem residents, who were counted in the population census that was carried out in 1967, as lawfully and permanently residing there, they were registered in the Population Registry, and they were provided with identity documents. (Ibid. 430)

66. The court dismissed the petitioner's claim that his status in Jerusalem was a "quasi citizenship", when it noted that:

> As is well known, for reasons related to the interests of east Jerusalem residents, Israeli citizenship was not granted to them without their consent, but each one of them was granted the opportunity of applying for and receiving Israeli citizenship, if he so desired. There were those who applied for and received Israeli citizenship. The petitioner, and many like him, did not do so. Since they declined to accept Israeli citizenship, it is difficult to accept their claim with respect to "quasi citizenship", which entails only rights, but no duties… In this respect counsel for the petitioner has claimed that applying the Entry into Israel Law to the permanent residence of east Jerusalem residents is unreasonable, since it implies that the Minister of the Interior can, by mere words, deport all of the east Jerusalem residents through the invalidation of their permanent residence permits. This claim has no merit. The authority to invalidate that is vested with the Minster of the Interior does not turn permanent residence into custodian residence. Permanent residence is provided under the law, and the minister may only exercise this authority for practical considerations. It goes without say that the exercise of this authority is in practice subject to judicial review. (Ibid. 430-431).

67. After declaring the above the court went on to determine whether the Minister of the Interior was authorized to deport Awad from Israel. The court ruled that

the minister was authorized to deport Awad because his permanent residence permit had expired:

> The Entry into Israel Law does not contain within it any explicit provision that says that a permanent residence permit shall expire if the permit holder leaves Israel and settles in a country outside of Israel. Provisions in this matter may be found in the Entry into Israel Regulations (hereinafter "Entry Regulations"), which were instituted by virtue of the Entry into Israel Law. Regulation 11(c) of the Entry Regulations states that "the validity of a permanent residence permit shall expire… if the permit holder leaves Israel and settles in a country outside of Israel".
>
> Regulation 11A determines:
>
> "… a person shall be considered as one who has left Israel and has settled in a country outside of Israel if one of the following pertains to him:
>
> (1)He resided outside of Israel for a period of at least seven years…;
>
> (2)He has received a permanent residence permit of that country;
>
> (3)He received citizenship of that country through naturalization".
>
> There can be no doubt that the appellant falls within the framework of regulation 11A of the Entry Regulations, since he has satisfied each one of the three prescribed conditions; each one of which on their own is sufficient to ensure the expropriation of his permanent residence permit…
>
> The Entry into Israel law explicitly authorizes the Minister of the Interior to "prescribe in the visa or in the residence permit conditions the fulfillment of which shall be the condition for the validity of the visa or of the residence permit" (section 6(2)). These "terminating" conditions may be of an individual nature, but may also be of a more general nature. Regulations 11(c) and 11A may be viewed as prescribing suspensive conditions of a general nature…
>
> In my opinion it is possible to arrive at this conclusion with respect to the expiry of the validity of the permanent residence permit even without the Regulations and by virtue of an interpretation of the

> Entry into Israel Law. As stated, the Entry into Israel Law authorizes the Minister of the Interior to grant a resident's permit. This permit may be valid for the period prescribed in it (up to a period of five days, three months, three years) and may be for permanent residence.
>
> Obviously, a permit for a fixed period contains its own expiry date upon reaching the period's termination, and there is no need for an external "cancellation". Can a permanent residence permit expire "of its own accord", without any act of annulment by the Minister of the Interior? In my opinion, the answer to this is in the affirmative. A permit for permanent residence, given [sic], is based on a reality of permanent residence. Once this reality no longer exists, the permit spontaneously expires. Indeed, a permanent residence permit – as distinguished from an act of naturalization – is a hybrid creature. On the one hand it has a constitutive element, which grants the right of permanent residence; on the other hand it has a declarative nature, which articulates the reality of permanent residence. When this reality disappears the permit has nothing to which to attach itself and is therefore *ipso facto* cancelled, without any necessity for any formal act of annulment (compare HCJ 81/62 **Golan v. The Minister of the Interior et al.**, *Piskei Din* 16, 1969). Indeed, "permanent residence", by its very nature implies a reality of life. However, when this reality disappears, the permit no longer has any meaning, and it is *ipso facto* annulled. (*Ibid.* 431-433).

68. How did Awad's residence permit expire? The court answers:

> A person who has left the country for a very long period of time (in our case since 1970) and has acquired for himself the status of permanent residence in another country… and has even, willingly, acquired for himself citizenship, undergoing all the steps that are required in the United States for receiving American citizenship – cannot be said to permanently reside in this country. This new reality shows that the petitioner has uprooted himself from the country and has replanted himself in the United States. The center of his life is no longer this country but is the United Sates. It goes without say that it is oftentimes difficult to point to the exact moment when a person ceases to permanently reside in a country, and there is certainly a period of time when the center of a person's life hovers between his previous abode and his new one. This is not the situation before

> us. Through his conduct the petitioner has demonstrated a willingness to sever his bond of permanent residence with the state and has a created a new and bold link – permanent residence at first, and then eventually citizenship – with the United States. It may very well be true that the motive for wanting this has to do with the gaining some or other relief from the United States. It is possible that deep in his heart he has always aspired to return to this country. But the decisive test is the reality of life, as it happens in practice. According to this test at some stage the petitioner relocated the center of his life to the United States, and one can no longer view him as someone who permanently resides in Israel (*Ibid*. 433).

69. On the basis of these findings the court ruled that the authority to deport was lawfully exercised:

> As we have seen, underlying the respondent's discretion was the recognition that the activities of the petitioner harms the security and public order, for indeed he acts openly and intensively against Israeli rule over Judea, Samaria and the Gaza Strip. We have no need to decide the factual dispute that sets the two sides apart in this case, for even according to the appellant's own version, he is acting against Israeli rule over Judea, Samaria and the Gaza Strip. We see no unlawfulness in the position of the Minister of the Interior, in terms of which anyone who is not an Israeli citizen and who is unlawfully found to be living in it, and is acting against a state interest – it is befitting that he be deported from Israel (Ibid. 434).

The Authorities' alienation of eastern Jerusalem Residents

70. The law that the respondents deduced from the **Awad** case resulted in consequences that are too harsh to bear. The implementation of the **Awad** case showed yet another facet of a transparent policy by the governments of Israel throughout the years, which primarily is concerned with attaining a Jewish majority in Jerusalem and pushing the Palestinian residents of the city outwards. In order to attain this goal, Israel has, over the years, adopted both in its policy of denying citizenship rights to residents of eastern Jerusalem (for example by imposing many restrictions on the family unification process and on registering the children, and also – as in the issue dealt with in this petition – denying the status of residency to residents of the city) and in its deliberate discriminatory policy in various areas. Thus, the residents of the eastern part of the city are discriminated against in anything related to building and planning policy, land expropriation policy, investment in physical infrastructure and in government and municipal services that are provided to

them. Before turning to the consequences of the implementation of the **Awad** rule, as the respondents interpret it, we request that we may preface our presentation by painting a picture of the reality in which these things take place – a reality that has turned the lives of eastern Jerusalem residents into an intolerable existence and has pushed them outside of Jerusalem.

71. According to the law in Israel, permanent residents are eligible to enjoy almost every right that is provided to citizens. The formal system of rights of permanent residents is similar to that of citizens, and their rights are only different in a limited number of fields. Thus, for example, permanent residents cannot elect or be elected to the Knesset (sections 5 and 6 of the **Basic Law: The Knesset**). And they are not eligible to receive an Israeli passport (section 2 of the **Passports law** 5712-1952). However**,** aside from this the formal rights system of these residents is similar to that of citizens. Resident permits that are given to Palestinian residents have formalized (at least by law) their eligibility to work in Israel, to receive emergency services and socio-economic resources. They have granted these residents identifying documents (section 24 of the **Population Registry Law,** 5725-1965), social rights (National Insurance pensions are paid according to the **National Insurance Law** [amended version] 5755-1995, to someone who is a resident of Israel. The **State Health Insurance Law,** 5754-1994 applies to anyone who is regarded a resident of Israel in accordance with the **National Insurance Law**), etc.

72. Despite the provisions of Israeli law, which in many spheres and for all practical purposes equates the system of rights of eastern Jerusalem residents with that of Israeli citizens, there is a gaping chasm between the Jewish neighborhoods and the Palestinian neighborhoods of eastern Jerusalem, and in practice government policy is biased against eastern Jerusalem and against its Palestinian residents using deliberate and systematic discrimination. This is the case when it comes to planning and construction; to the shameful standard of government services and of municipal services, to which they are entitled, and so too in the matter of the status of residents and the protection thereof.

73. It is no secret that eastern Jerusalem is one of the poorest and most neglected places, amongst the places in which Israeli law applies. Throughout the many years the State Authorities have avoided investing in, and developing eastern Jerusalem. As a result thereof, the population has suffered from poverty and dire need, from serious deficiencies in the provision of public services, from an inferiorly placed infrastructure and from harsh living conditions. The Jerusalem municipality has consistently avoided massive and serious investment in the infrastructure and services provided to the Palestinian neighborhoods in Jerusalem, including roads, pedestrian sidewalks, and water and sewage systems. Ever since the annexation of eastern Jerusalem, the municipality has built almost no new schools, public buildings or clinics, and most of the investment has been in the Jewish areas of the city. Below we shall cite a number of data, which demonstrate the gravity of the situation.

74. **The poverty rate in eastern Jerusalem** is at a rate of two and half times that of the poverty rate in the rest of Jerusalem. According to data published by the Central Bureau of Statistics in 2003, **64% of the Arab Palestinian families in Jerusalem lived below the poverty line,** as opposed to 24% of Jewish

families from Jerusalem. The incidence of poverty amongst the Arab population in Jerusalem is also noticeably higher than the incidence of poverty amongst the general Arab population in Israel, in which the poverty index stands at 48% of all families.

75. **Eastern Jerusalem experiences overcrowded and harsh living conditions.** Thus, for example in 2003 the population density in the Arab neighborhoods was almost double that of Jewish neighborhoods: 1.8 persons per room as opposed to one person per room amongst the Jewish population. 11.9 square meters per person in the Arab neighborhoods as opposed to 23.8 square meters per person in the Jewish neighborhoods. Ever since 1967, in the context of wide range construction and huge investment in Jewish neighborhoods, there has been a stifling of construction that was meant for the Arab population in Jerusalem. The Jerusalem municipality has refused for years to prepare future zoning plans for the Palestinian neighborhoods in East Jerusalem. Currently, despite the fact that most of these plans have been completed, few are in the stages of preparation and approval. Even amongst the plans that were approved up until the beginning of 2000, only 11% of the eastern Jerusalem area is in fact available for construction. Wide swathes of land have been designated as "open village landscape territory", where building is prohibited. On the other hand, the scope of house demolitions in eastern Jerusalem is unprecedented. According to data gathered by the "Israeli Committee against House Demolitions" (http://icahd.org/eng/) the total number of administrative and judicial house demolitions that were issued by the Jerusalem Municipality and the Ministry of the Interior in 2005, reached approximately 1,000. The consequences of these actions have been given expression to in the living conditions in the Palestinian neighborhoods.

76. The discrimination in **the field of welfare** is expressed, among other things in the human resources service standards that were drafted for handling residents of the eastern side of the city. Despite the fact that we are dealing with a third of the Jerusalem population, only 15% of all services are allocated to this population. In addition the number of offices in the eastern part of the city is half the number of offices in the other areas (3 as opposed to 6). This fact makes it even harder to have an adequate distribution of welfare services and reduces access to them, so that many of those who need the services are not at all eligible for them. As a result thereof, the burden imposed upon the social workers is unbearable. Currently, in eastern Jerusalem there is one social worker in charge of approximately 360 households, while the social workers in west Jerusalem handle on average only 165 households.

77. Another example is the discrimination and neglect in the **field of education.** Because of a serious shortage of classrooms, there are some schools in which teaching takes place in shifts. Other schools are run in overcrowded residential buildings. In some of the schools there are no computers, no library, no laboratories, no exercise hall, and even no teachers' staff room. Approximately ninety percent of the 15,000 children aged 3 and 4 are not integrated into kindergarten (in practice, only 55 children are integrated into the municipal kindergartens, about 1900 are integrated into private frameworks, and the remainder are not integrated into any framework).

According to the data released by the office of the Central Bureau of Statistics, 79,000 children in eastern Jerusalem are of school age. According to data released by the municipal education administration and the Ministry of Education only 64,536 of them are enrolled in a public or private educational institute. This means that more than 14,000 children, almost 20% of school age children are not studying. From data released by the Ministry of Education in 2006 it transpires that only 13.7% of Palestinian school pupils in eastern Jerusalem received a matriculation certificate, and they are placed at the lower end of the national list.

The **Compulsory Education Law 5709-1949** applies to every school age child who lives in Israel, without any regard to his status in the Populations registry of the Ministry of the Interior (Ministry of Education, **Circular of Director General 5760/10 (a): The Application of the Education Law on Children of Foreign Workers,** dated 1 June, 2000). In other words, the Law does not distinguish between the status of citizens and that of children with a permanent resident status or any other status, and states that compulsory free education applies to every child or youth aged 5-16. Despite this, and despite a HCJ ruling, that held that children of compulsory school age in eastern Jerusalem should be allowed to be registered for compulsory studies, as stated in the **Compulsory Education Law** (HCJ 3834/01 **Hamdan v. Jerusalem Municipality and HCJ 5185/01 Baria v. Jerusalem Municipality** (partial judgment dated 29 August, 2001)) the right of thousands of Palestinian children in eastern Jerusalem to education has currently been implemented only partially, and the education system in the eastern part of the city suffers from grave problems, which require immediate and special handling. At the center of the current problems in this field is the problem of a **serious shortage of classrooms.** In the 5766 academic year the shortage of classrooms in eastern Jerusalem stood at 1,354 and in 2010 it is anticipated that the shortage of classrooms will rise to 1,883 classrooms. Despite a ruling by the HCJ in 2001 that required the Ministry of Education and the Jerusalem Municipality to build within four years 245 new classrooms, as of today only about 40 new classrooms were built. The result has been that every year more and more children seeking to study in a school in eastern Jerusalem have been rejected and the **dropout rate in the eastern Jerusalem secondary education system stands at around 50% of all pupils.**

78. **Much of the infrastructure in eastern Jerusalem is in a very bad state and it suffers from many deficiencies** for example **the water and sewage infrastructure as well as the road infrastructure**. The eastern part of the city also suffers from **serious sanitation problems**. The **planning and building division** suffers from constant budgetary constraints, which has created a huge gap between the needs of the population and the solution provided therefore. In an inspection carried out by the *Btselem* organization it was found that in the 1999 Jerusalem Municipality's Development Budget less than 10% was earmarked for the Palestinian neighborhoods, despite the fact that the residents of those neighborhoods constitute approximately a third of the residents of the city. As a result of this lack of investment, the situation of the infrastructures in eastern Jerusalem is grave: entire Palestinian neighborhoods are not connected to the sewage system, and they contain no

paved roads or sidewalks. This callous discrimination cries out: almost 90% of the sewage pipes, roads and sidewalks in Jerusalem are found in the western part of the city, the west of the city contains 1,000 public parks whereas eastern Jerusalem contains only 45; in the western part of the city there are 34 swimming pools, whereas eastern Jerusalem has three swimming pools, in western Jerusalem there are 26 libraries, while eastern Jerusalem contains two; in the western part of the city there are 531 sporting facilities, eastern Jerusalem has 33 facilities.(for further data on this matter, see also the *Btselem* organization's website: http://www.btselem.org/english/jerusalem/index.asp)

79. There are also **serious deficiencies in the provision of a wide range of public services,** for example **employment services and postal services.** Thus, for example the 75,000 residents of the north eastern neighborhoods of Jerusalem is served by only one postal officer, and because of this many of them do not receive their mail.

80. The continued neglect and discrimination in budgets and services on the part of the authorities has brought about a situation of deep poverty and systemic problems in many fields. The ramifications of this situation may be seen both in the long **list of harsh social phenomena** which include: harm to the family system; a rise in the level of family violence; a decline in the functioning of the children in the family that has been given expression in the 50% dropout rate from high schools and their subsequent entry into the "black" market at a young age; a slide into criminality and drugs; health and nutritional problems, and more.

81. In all of these instances the state did not merely violate its basic commitments towards its residents. It marked the residents of Jerusalem as unwanted in their own country. Behind the establishment's neglect of east Jerusalem is an aspiration that the residents of the city will seek their future outside the city, which in turn will serve the official goal of maintaining demographic balance in the city. Indeed many found accommodation solutions in the outskirts of the city, instead of the overcrowded and crime-hit neighborhoods that are situated within the boundaries in which Israeli law applies, or have left to seek their livelihood and higher education abroad.

The alienation in the field of the Population Administration services

82. To all the above must be added the attitude that views residents of east Jerusalem as aliens, whose status may be routinely revoked. The State of Israel established a special office for the Population Administration to handle eastern Jerusalem residents. This is the only city in the country in which there are two population administration offices. "Eastern Jerusalem" includes neighborhoods that are in the northern parts of the city, the eastern parts as well as the southern parts. Jewish residents who live in the area that was annexed receive their services from the population administration office in central Jerusalem. Only Palestinian residents of eastern Jerusalem – from the north, east and south – are referred to the east Jerusalem office. This inaccessible office has become notorious for its inferior and insufferable service, that flouts the basic ideas of sound administration (see HCJ 278/03 **Jabra v. Minister of the Interior**, *Piskei Din* 58(2) 437; Adm. Pet.

(Jerusalem) 754/04 **Bedewi v. Director of the District Office of the Population Administration**, (Judgment dated 10 October, 2004)).

83. The workload at the eastern Jerusalem Population Administration Office is enormous, and handling applications takes many months and in many cases, many years. More than once, the residents have been forced to wait in a long queue (despite the office having been transferred to a new residence) and sometimes even those who are able to enter the office are sent home without receiving any service. For basic services such as arranging status for the children fees amounting to hundreds of shekels are collected, and the applicants are required to produce countless documentation. Many of those applying for service are forced to seek the assistance of an attorney, and many are involuntarily forced to turn to the courts in order to receive their requests.

84. The residents of eastern Jerusalem are forced to once more prove their residency in the city before the Ministry of the Interior and before the National Health Institute, who conduct investigations and inspections, whose whole purpose is to revoke their residency because they live outside the demarcated areas in which "the law, jurisdiction, and administration of the state" apply, and to take away their status. The revocation of status takes place, not infrequently, in an arbitrary fashion, without granting the right of a hearing, and only comes about *ex post facto*, through the filing of an application to receive services.

All of this is a direct result of the respondents' interpretation of the judgment in the **Awad** case. Below we will expand upon this issue.

The implementation of the Awad rule began in the middle 1990s; the wholesale revocation of residency.

85. As stated, in sections 47-52 above, over the course of a few decades, after the annexation of eastern Jerusalem, Israel allowed the permanent residents of eastern Jerusalem to go to other countries, at times even for extended periods, without their statuses being revoked. This remained the case provided that the residents were scrupulous in returning within the validity period stamped in their exit cards, and they were scrupulous in renewing the validity from time to time. However, from the beginning of the second half of the 1990s, the respondents began implementing a much more arduous policy, which meant sealing the entryways to residents of eastern Jerusalem wishing to return to the city, and deporting them from their homes, even if they managed to return to them in the interim. This policy is based on a broad interpretation of the **Awad** rule - an interpretation that takes the dicta that were held in the **Awad** to an absurd conclusion.

86. Beginning from the second half of the 1990s, many of the residents of eastern Jerusalem, who applied to the Ministry of the Interior with various requests were met with refusals to provide the requested service, and were handed a brief standard letter, informing them that their permanent residence licenses had expired, and this, so claimed Ministry of the Interior, was because they had relocated the center of their lives outside of Israel. This "expiry of residency" included, for the most part, the residency of the resident's children.

The notice ended by instructing the resident and his family members to return their identity document and to leave the country, generally speaking within 15 days.

87. This policy – which eventually became known as the "silent deportation" – was also used against those who during that period resided in Jerusalem, but who, the Ministry of the Interior determined had relocated the center of their life outside of Israel, as well those who at that time were residing abroad, but who were completely unaware that their residency had "expired". The West Bank and the Gaza Strip were also considered for this purpose to be "abroad", in contradistinction to the policy that was practiced beforehand, in terms of which someone who had moved to the territories in order to live there had not forfeited his status. It shall be noted that according to the previous policy so long as eastern Jerusalem residents, residing abroad, were scrupulous to come to Jerusalem and renew their exit permits before the period had expired, they were guaranteed that their residency would not be revoked. Moreover, those residents who lived abroad were able, according to this policy, to obtain an extension for their exit card through family relatives who were living in eastern Jerusalem.

88. Despite the fact that this involved a radical change in policy and a wide-ranging interference in a lifestyle that the residents had maintained for many years pursuant to the older familiar policy, the Ministry of the Interior did not consider it appropriate to publicize this new policy. Additionally, the policy applied retroactively, and this despite the fact that many of those who had lived abroad did so on the basis of the old policy, according to which their status would not be revoked as a result thereof. Retroactive application of this policy took on an especially radical guise, in light of the fact that the status was revoked also from those residents whose center of life during that period was in eastern Jerusalem. The Ministry of the Interior was well aware of the fact that the center of their life was in eastern Jerusalem – amongst other things by relying on determinations made by the National Health Institute – and nonetheless it revoked their residency.

89. The Ministry of the Interior argued that this policy is an extension of the **Awad** rule. According to the approach adopted by the Ministry of the Interior, the only logical conclusion to be drawn from the **Awad** rule is that the residency of all these persons expired *ipso facto*, and in fact the Ministry of the Interior has no discretion in the matter of expiries. According to this claim, the Ministry of the Interior has merely accepted upon itself the binding case law, and is acting accordingly. The residency expired "without any human interference" and the Ministry of the Interior had no alternative but to relate to that person as someone had no status in eastern Jerusalem. As a result thereof, the Ministry is obliged – barred as it is from exercising its own discretion – to confiscate that person's identity document and to remove him outside the borders of the state.

So for example in the State's reply to a petition by a resident of Jerusalem who lived with her husband in Jordan over the course of many years, and then returned to live in Jerusalem in 1995, it was stated:

> In accordance with the aforesaid and likewise in our case, the reality of life has taught that the petitioner's permanent residence in Israel for all practical purposes terminated at the end of the 1970s… and the residence permit that she had for Israel, and which relied on the reality of her being a permanent resident in Israel, had lost all meaning and as such had expired and had become nullified of its own accord (State's Reply in HCJ 9499/96 **Najuva Atarash v. Minister of the Interior**). The relevant pages from the State's Reply are attached and are marked **p/11**.)

90. Furthermore, according to the Ministry of the Interior's logic, if it is not obligated to exercise its discretion, but must conduct itself solely upon legal principles, that in its opinion were determined in the **Awad** case, there is no place for conducting a hearing for residents whose residency status "expired". In a parliamentary question that was filed in 1997 by then Member of Knesset Professor Amnon Rubenstein and addressed to the Minister of the Interior, the Minister was asked to reply to the question how could one be assured that "such an invalidation of an identity document was lawfully carried out after a hearing in which the principles of natural justice were maintained". The Minister of the Interior replied:

> As to the matter of a hearing, since the Law states and the HCJ has held that the residency has *ipso facto* been nullified, I do not think that from a legal perspective this is also the place to conduct a hearing…(Knesset Speeches, 21 Shvat, 5757 (29 January, 1997)).

91. A reading of the judgment in the **Awad** case as if it was some theoretical mathematical formula could indeed support this absurd line of thinking. However already during that period the respondent revised his position, apparently in light of an understanding that such a reading of the judgment does not conform with the general principles of justice, and therefore a judicial hearing was ordered (see in this matter, for example: The State's Reply in HCJ 3122/97 **Darwish v. Minister of the Interior**. The reply is attached and marked **p/12;** HCJ judgment 3120/97 **Maqari Oliver v. Minister of the Interior**, *Takdin Elyon* 97(2), 262). It should be noted that in reality there are many occasions when the respondent revokes a residence license without conducting a hearing.

92. In opposition to the "silent deportation" policy, petitioner 2, along with other human rights organizations and with eastern Jerusalem residents that were harmed by that policy, filed a petition to the HCJ in 1998 (HCJ 2227/98). Within the framework of this petition the then Minister of the Interior, Natan Sharansky made his declaration with the aim of rectifying, if only in a small way, the injustice that was caused to those residents who were harmed by the policy of a comprehensive revocation of residency. Pursuant to what is stated in the declaration, some of those whose residency was revoked would be able to reacquire their residency if they satisfied certain conditions. The Ministry of the Interior undertook not to revoke the status of those who maintained proper

contact with Israel in those years in which they resided outside of it (see in this connection – the case of our petitioner in paragraphs 31-35 above).

93. The "Sharansky Declaration" softens, then, the harsh consequences of the **Awad** rule. The absurd outcome in which residency was revoked from thousands of people who acted in accordance with the procedures laid out by the Ministry of the Interior and who maintained a connection with Israel was overturned by the fact that the Minister of the Interior now viewed them as persons who maintained their status.

94. The need to reverse this policy of revoking residency, and the way in which it was done by the Declaration issued by minister Sharansky, indicates a need to insert essential modifications to the **Awad** rule in order to avoid the absurd reading that underlay the "silent deportation' policy.

95. In the wake of the petition and in the wake of the "Sharansky Declaration", which was given within the framework of this hearing, there was a "relaxation" for a certain period of the mass revocation of residency. Nonetheless, the arrangement prescribed by the declaration did not solve the problem of those, whose residency was already revoked during that period. Only those whose residency was revoked after 1995 and visited Israel within the period of validity that was stamped on their exit card and who lived in Israel for at least two years benefited from the new arrangement. In other words, a person whose residency was revoked for even a few days before 1995 would not find relief in the provisions of the procedure. This is true likewise to a person whose residency was revoked prior to the publication of this declaration, while residing abroad, and the Ministry of the Interior does not allow his return to Israel. It should also be noted that this procedure applies only to those whose status was revoked because they had allegedly resided for a period of more than seven years outside of Israel. The possibility of regaining one's status, according to the procedure, would not apply to those who acquired permanent residence in another country or received foreign citizenship.

96. Moreover – the revocation of the status of residency of eastern Jerusalem residents has not ceased even for moment, even if a "certain" relaxation has taken place as from the year 2000. It appears that we are dealing with a temporary abatement only. According to data that originates from the Ministry of the Interior, but which was gathered and compiled by the *Btselem* organization, in 2006, the year in which the petitioner's status was revoked, the Ministry of the Interior revoked the residency of **1,363 persons,** in other words – almost three hundred more people than 1997, the harshest year of the "silent deportation".

Year	**Number of Palestinian Residents whose**

	residencies was revoked
1967	105
1968	395
1969	178
1970	327
1971	126
1972	93
1973	77
1974	45
1975	54
1976	42
1977	35
1978	36
1979	91
1980	158
1981	51
1982	74
1983	616
1984	161
1985	99
1986	84
1987	23
1988	2
1989	32
1990	36
1991	20
1992	41
1993	32
1994	45
1995	91
1996	739
1997	1,067

1998	788
1999	411
2000	207
2001	15
2002	No data
2003	272
2004	16
2005	222
2006	1,363
Total	**8,269**

See : http://www.btselem.org/english/jerusalem/revocation_statistics.asp

97. When the *Btselem* organization applied to the person in charge of freedom of information at the Ministry of the Interior in order to investigate the reason behind the extremely steep rise in the scope of residency revocations (6x the amount of 2005), it received the following answer:

> …the rise in the latest number of cancellations of residencies in the register, **flows from an improvement in the work and control procedures of the Ministry**, including Israel's border crossings. (Emphasis added)

A copy of the letter by the person in charge of freedom of information at the Ministry of the Interior dated 17 April, 2007 is attached and marked **p/13.**

98. If any further proof was necessary of the Ministry of the Interior' relating to the permanent residents of eastern Jerusalem as foreigners - the above quote is once again a prime example. In a government ministry that is charged with the provision of services to the citizens and residents of the country, an "improvement in the work and control procedures", or "streamlining" is normally directed at the welfare of the applicants and at providing better service. According to the Ministry of Interior's understanding, when the beneficiaries of the service are residents of eastern Jerusalem, "streamlining" means trapping as many people as possible and placing them within the network of its policy of residency revocation.

99. We shall note, that on 4 February, 2008 petitioner 2 applied to the respondents with a request to receive the data on residency revocation in 2007. The respondents' reply never came, and on 12 June, 2008 petitioner 2 filed a petition on this issue with the honorable court. (Adm. Pet. 8476/08 **HaMoked: The Center for the Defence of the Individual v. Minister of the Interior et al.**)

The application of the revocation of residency to the petitioner

100. The policy of revocation of residency, which was reintroduced in all its glory in 2006, succeeded in also trapping the petitioner into its lair. When the petitioner married a resident of the Gaza Strip, at the beginning of the 1990s, it was during a period in which free movement between the Gaza Strip and eastern Jerusalem was still possible. During that time the petitioner would go to Jerusalem a number of times during the year and would stay for a number of weeks with her family in the city. Even after she was required to arrange for her entry to and residence in the Gaza Strip through permits, which were issued pursuant to the "split families" procedure, the petitioner continued to return frequently to Jerusalem. The petitioner acted throughout the years in accordance with this procedure and was scrupulous in renewing her resident permits that were provided to her. This, as stated above, remained the case so long as she was not prevented from doing so by the army, for one or other reason.

101. Since the petitioner for her part was scrupulous in complying with the procedure, it never occurred to her that there was any possibility that her status would be revoked. Even from the procedure itself, there is no indication that latent within it is the possibility of revoking status in Israel. Neither is there any dispute that the petitioner continued, throughout the years, to maintain an intimate connection with her home in Jerusalem.

Summary up until this point and the Petitioner's Position

102. The judgment in the **Awad** case was handed down two decades ago. The judgment was given against the backdrop of the outbreak of the first intifada, and related to a decision of the Minister of the Interior to deport from Israel a resident of eastern Jerusalem, who over the course of the years lived in the USA where he acquired status, and where he organized political activities aimed at ending Israeli occupation of the territories. The court held that the annexation of eastern Jerusalem to Israel turned the residents of eastern Jerusalem into permanent residents of Israel. This residency, according to the judgment, expires upon the relocation of the center of one's life. Because of this, it was ruled that the Minister of the Interior was permitted to deport Awad, who was residing in Israel without a permit and was "acting against the interests of the state".

103. The respondent who, over the course of the years, allowed eastern Jerusalem residents to leave the city and to return to it, for the purposes of work, studies and family, changed its policies in the wake of the judgment and began its policy of massive confiscations of residence permits in eastern Jerusalem. This policy blends in with the State Authorities' deliberate alienation of eastern Jerusalem residents. The respondent expropriates the statuses of eastern Jerusalem residents as a matter of "efficiency".

104. Two decades after the judgment in the **Awad** case, there is a need to reexamine the judgment in the context of its consequences. It must also be examined against the backdrop of other norms in the world of law, especially the norms which apply to eastern Jerusalem.

105. The "synchronization" which the court has sought to create between the law that applies to Israel and that which applies to eastern Jerusalem has shut its eyes to the other normative standards which apply to eastern Jerusalem. Moreover, over the course of the past years since the judgment was given other standards were added, which we cannot continue to ignore. Eastern Jerusalem is no longer a region of Israel and its residents are not the same as all other residents in Israel.

106. The petitioners seek to redefine the dispute and to clarify their position with relation to the judgment in the **Awad** case and to the general status of eastern Jerusalem residents:

The petitioners are willing to assume that ever since the annexation of eastern Jerusalem, the status of the residents of eastern Jerusalem, according to Israeli law is that of a permanent resident who holds a permanent resident permit which was given to them according to a law that was duly legislated by the Knesset. Indeed, as was held in the **Awad** case their status is one that is grounded by law and not by grace. However, the status of eastern Jerusalem residents is a special status that includes by its very nature the condition that the permits never expire.

The petitioners concede that the tests with respect to the expiry of residency that were established in the **Awad** case, and the provisions of the Entry into Israel Regulations with regard to the expiry of residency could possibly apply to **immigrants** who entered Israel of their own free will and who acquired a permanent resident permit upon their request, and for these purposes: **upon anyone who acquired a permanent residence permit that was not through the annexation of their places of residence to Israel as a result of the military occupation.**

The application of identical rules with regard to the expropriation of residencies to immigrants who acquired their status of their own free will, and to eastern Jerusalem residents, who received their status as a result of the annexation of eastern Jerusalem after its occupation, unlawfully ignores the special status of eastern Jerusalem residents. It forces upon the residents of eastern Jerusalem the life of a ghetto from which one is forbidden to leave, in order that they do not lose their status, or alternately unlawfully pressurizes them to become naturalized Israeli citizens. There is good reason for eastern Jerusalem residents not becoming Israeli citizens whose status would be protected from arbitrary expropriation. The State of Israel is not permitted to force citizenship upon them, and is not permitted to accelerate their naturalization and to make them loyal to it.

We must read into the act of granting permanent residency to eastern Jerusalem residents the condition that residency does not expire upon the person leaving the country or upon him relocating the center of his life.

The aforesaid does not involve changing the **Awad** rule but rather its crucial development. The **Awad** rule itself recognized the possibility that Israeli residence permits shall include general conditions, and that these conditions like the permits themselves would not be explicitly written into the permits but

would be inferred from the general rules. The **Awad** rule itself sought to see to it that the attributes of an Israeli residence permit would correspond to the realities of life and would not clash with them.

107. We shall seek at this stage to relate to the legal norms which apply to the permanent residents of eastern Jerusalem and which lie at the foundations of the claims that have been enumerated above. Below we shall elaborate the norms of Israeli law which apply to these residents, as well as the norms of international humanitarian law, which apply to them in their capacity as protected persons. Further on, we will seek to relate to additional normative standards that apply to eastern Jerusalem, and which also contribute to the special status of the residents of this region. We shall discuss the norms of international human rights law, and we shall claim that every resident of eastern Jerusalem has the right to return to the city of his birth, and we shall end the discussion by dealing with the attitude of the State of Israel towards eastern Jerusalem residents in recent years, from the time of the Oslo Accords until today.

The special status of eastern Jerusalem residents and the prohibition against expropriating their status

108. International law, which is one of the strata of Israeli law, views eastern Jerusalem as occupied territory, which is held under belligerent occupation. From the point of view of this legal stratum, the Palestinian residents of eastern Jerusalem are protected persons who are entitled to protection by virtue of international humanitarian law. Alongside this legal stratum (and without denying its applicability) Israel unilaterally applied the "law, jurisdiction and administration of the State" to eastern Jerusalem, and established in its domestic law that that region is part of the city of Jerusalem. Palestinian residents were given Israeli permanent residence permits.

In this context the petitioners will argue that the application of Israeli law upon eastern Jerusalem is not sufficient to negate the special of rights its residents have in their capacity as protected persons. The petitioner, like all eastern Jerusalem residents, is also a "protected person". As such, among other things, she is entitled under international law not to be forcibly expelled from eastern Jerusalem.

Below we shall expand further on this issue

Background

109. In June 1967 the State of Israel conquered the West Bank. Immediately after the war the Government of Israel decided to annex to Israel about 70,500 dunam from the occupied territory north, east and south of Jerusalem ("**eastern Jerusalem**"). Pursuant to a Government Resolution passed in the Knesset on 27 June, 1967 an amendment was made to the **Law and Administration Arrangements Ordinance** and within its framework a new clause was added to section 11b that states: "The law, jurisdiction and administration of the State shall apply to all the area of the Land of Israel which the government has determined by Order." The next day on 28 June,

1967 the government instituted the **Law and Administration Arrangements Order (No. 1), 5767-1967,** which applies the "law, jurisdiction and administration of the State", to eastern Jerusalem. That day by proclamation made under the Municipalities Ordinance, the annexed territory was included in the boundaries of the Jerusalem Municipality.

110. The **Basic Law: Jerusalem, Capital of Israel,** which was enacted in 1980 added and established in section 1 thereof that "Jerusalem, complete and united, is the capital of Israel". In 2000 the Basic Law was amended so that a section 5 was added which stated that the "borders of Jerusalem include, for the purposes of this Basic Law, among other things, the entire territory described in the annexure to the Proclamation on the Expansion of the Jerusalem Municipal Area which was dated 20 Sivan 5727 (28 June, 1967) and which was enacted pursuant to the Municipalities Ordinance". In section 6 of the Basic Law it was established that "there shall not be transferred to any foreign agent, political or governmental, or to any other similar foreign agent, whether permanently or for a defined period, any authority that relates to the border of Jerusalem and which was lawfully granted to the State of Israel or to the Jerusalem Municipality." In section 7 of the Basic Law it states that "the provisions of sections 5 and 6 may only be amended by a Basic Law that is passed by a majority of the members of Knesset. (See also Amnon Rubenstein and Barak Medina, *The Constitutional Law of the State of Israel* (sixth edition, Schoken, 5765) 926-927, 932 -935 (hereinafter: **Rubenstein and Medina)).**

111. According to **Israeli domestic law**, therefore, Israeli law applies to the territory of eastern Jerusalem. As we will see later this does not negate the protection to which eastern Jerusalem residents are entitled, in light of the fact that Israeli rule is based on a military victory. Nonetheless, it bears mentioning that over and above what has been said, "the territory of a State, or its sovereign borders, are a matter to be decided by International Law", and not according to the domestic law of the state (Rubenstein and Medina, 924). According to international law sovereignty is acquired in two ways: through brokering an agreement with the bordering states, or through acquiring sovereignty over territory in which there is no political sovereignty of any kind (*Ibid.*). The unilateral application of the "law, jurisdiction, and administration" upon a territory that has been occupied is not recognized by international law as a way of applying sovereignty.

See in this regard:

Eyal Benvenisti, *The International Law of Occupation* (Princeton University Press, 1993), pp. 5-6; Orna Ben-Naftali, Aeyal M. Gross & Keren Michaeli, "Illegal Occupation: Framing the Occupied Palestinian Terrority". 23 *Berkeley Journal of International Law* 551, 574 (2005).

112. As is well known, according to international law, eastern Jerusalem is occupied territory in exactly the same way as the rest of the territories of the West Bank and the Gaza Strip. Indeed this was declared by a Resolution of the United Nations General Assembly and Security Council. This has also been declared by the International Court of Justice (ICJ) which adopted these resolutions (see Paragraph 78 of its opinion):

> The territories situated between the Green Line… and the former eastern boundary of Palestine under the Mandate was occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories… have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power. (**Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory**, Advisory Opinion (International Court of Justice, July 9, 2004), 43 IL M 1009 (2004)).

113. A longstanding rule before the honorable court has held that residents of the territories, which were occupied by Israel in 1967 have the status of being "protected" according to the Fourth Geneva Convention, and are entitled to protections that international law grants protected persons (see in this regard, for example: HCJ 1661/05 **The District Council of the Gaza Beach et al. v. The prime Minister - Ariel Sharon et al.**, *Piskei Din* 59(2), 481, 514-515; HCJ 606/78 **Iyyov v. Minister of Defense**, *Piskei Din* 33(2), 113, 119-120; HCJ 785/87 **Apu v. Commander of the IDF Forces**, *Piskei Din* 42 (2), 4, 77-78).

The powers of the military commander, whom the state appointed over the territories, even when those powers are enshrined in army legislation, are also subject to the rules of international law which enshrines the rights of protected persons (see: HCJ 393/82 **Jimayat Ascan Almalmon v. Commander of the IDF Forces**, *Piskei Din* 37 (4), 785, 790-791) (hereinafter the '**Almalmon case**').

114. And what is the law that pertains to eastern Jerusalem residents? The court has never examined the question of whether or not they enjoy the "protected" status alongside their status as Israeli residents. The answer to this question may be derived from the provisions of international humanitarian law.

115. International humanitarian law, which is concerned with protecting citizens during times of dispute, has adopted the pragmatic approach when it comes to implementing this basic principle, and holds that use of force cannot lead to, or cause any transfer or change in sovereignty. And this is the language employed in **Article 47 of the Fourth Geneva Convention:**

> Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, **nor by any**

> **annexation by the latter of the whole or part of the occupied territory**. (Emphasis added)

The Article does not delve into the question of whether or not the changes to the institutions of the occupied territory were legal, or whether the annexation was legal. The purpose of the article is the protection of those citizens, who, as a result of a war, find themselves under the rule of a foreign power, with whom they do not identify, and which in turn does not identify with them.

Since from a pragmatic perspective it is clear that any annexing country may claim the legality of the annexation, the drafters of the Convention wanted to ensure that even if such claim is made, it shall not be sufficient to deprive the protected persons of their rights as defined by international humanitarian law.

This is an approach which the petitioners humbly request that the honorable court adopt: the petitioners do not request that the court make a finding that Israeli law does not apply to east Jerusalem, but that the application of Israeli law does not deprive the residents of the eastern part of the city of their special rights as protected persons.

116. Obviously, the court is required to rule in accordance with Israeli law. This includes both Knesset legislation as well as customary international law, which has been automatically absorbed into domestic law. While the provisions of Israeli law hinge on the interpretation of Knesset legislation – and indeed the **Awad** rule is based entirely on legislative interpretation in the absence of special legislative provisions with respect to the status of eastern Jerusalem (**Awad** case, 429-430) – this interpretation should as much as is possible be consistent with the provisions of international law.

117. The position of international law is not given any mention in the **Awad** case, yet it should still have some impact today. The opinion of the International Court of Justice "**constitutes the interpretation of international law, made by the highest judicial body in international law**", and therefore, "**the interpretation that this court gives to international law should be accorded the maximum consideration that befits it**". (HCJ 7957/04 **Mara'abe v. The Prime Minister of Israel**) (judgment dated 15 September, 2005, paragraph 56 of the judgment by Chief Justice Barak, and see also paragraphs 73 and 74 of the judgment. (Emphasis added) (hereinafter the "**Mara'abe case**")). According proper consideration can only mean that the practical status of residents of an annexed territory must be taken into account.

Against this backdrop we shall now examine the special status of eastern Jerusalem residents.

The status of eastern Jerusalem residents: a synthesis of legal rules

118. **According to international law**, the law that applies to territory that was occupied and annexed to Jerusalem is that of belligerent occupation. The residents of the occupied region, according to international law, are protected persons. Since they are protected persons, the occupying power is saddled with the duty of protecting their rights both by virtue of the detailed

obligations that are enshrined in international humanitarian law (**The 1949 Fourth Geneva Convention and the Regulations appended to the Hague Convention Respecting the Laws of War on Land 1907**), and by virtue of the general obligation of the occupying power to preserve public life and order, which is enshrined in Regulation 43 of the Hague Regulations.

119. Case law has extended the positive obligation that is imposed on the Occupying Power to the point that it must be concerned with the rights and quality of life of residents of the occupied territory (see **Almalmon** case at 797-798; HCJ 202/81 **Tabib v. Minister of Defence**, *Piskei Din* 36(2) 622, 629; HCJ 3933/92 **Barakat v. Commanding Officer, Central Command**, *Piskei Din* 46(5) 1, 6; HCJ 69/81 **Abu Aita v. The Regional Commander of Judea and Samaria**, *Piskei Din* 37(2) 197, 309-310.)

120. In addition to the rules of international law the State as an Occupying Power, must also abide by the basic principles of Administrative Law (**Almalmon** case, at 810; HCJ 5627/02 **Sayef v. Government Press Office**, *Piskei Din* 58(5) 70, 75; HCJ 10536/02 **Hass v. Commander of the IDF Forces in the West Bank**, *Piskei Din* 58(3) 443, 455; **Mara'abe** case, paragraph 14 of the judgment). Likewise there are certain undertakings by the State to international human rights law which also apply (see **the ICJ opinion,** paragraphs 102-113).

121. International law perceptively recognizes the relations between the Occupying Power and the protected persons, who are under its rule, and establishes guidelines. Thus, among these is **Clause 45 of the Hague Regulations forbidding the Occupying Power to compel residents of the occupied territory to swear allegiance to it:**

> It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.

122. **Article 49 of the Geneva Convention prohibits the Occupying Power from carrying out any type of "forcible transfer" on the protected persons.** This prohibition is absolute, and is in force regardless of the motive that underlies the intention to carry out a forcible transfer. Paragraph 78 of the Geneva Convention recognizes, however, the authority of the Occupying Power to adopt the step of "special residences" with respect to protected persons within the borders of the occupied territory, but only as an exceptional and necessary step for security considerations. According to case law, it is not possible to adopt such a step, unless the security risk, which is foreseen to emanate from a person against whom it is adopted, may only be removed by means of adopting this step. In any event this step should not be adopted as a means of punishment but only as a deterrent (see **Ajouri** case).

123. The application of **Israeli law** to the eastern Jerusalem area and to its residents does not diminish those protections that international humanitarian law grants them. So long as the State of Israel seeks to view eastern Jerusalem and its residents as part of Israel, it is choosing to apply to eastern Jerusalem and its residents extra strata of normative protections, whose force is no lesser than that of international humanitarian law. Israeli law carries its own baggage of

constitutional protections, as well as Israel's undertakings in accordance with the provisions of international human rights law. Thus the application of Israeli law to eastern Jerusalem, provided that the State of Israel stands by this application to eastern Jerusalem and its residents, means that Israel by its own admission is thus applying the basic rights that are enshrined in Israeli law, as well as Israel's undertakings to International Human Rights Law.

124. The status that was given to Palestinian residents of eastern Jerusalem was given against their will. The ramification for refusing that status was the deprivation of a right to continue to live in their homes and the risk of being forcibly deported. Indeed, the residence permit first and foremost grants Palestinian residents of eastern Jerusalem the right to permanently reside in their homes and immunity from deportation. This is not merely an entry visa, like that given to immigrants who have recently arrived in Israel (**Awad** case 429-430) but is a permit that attests to the reality of life and gives it legal force (*Ibid.* at 433) Precisely because of this the **permit, in the words of the HCJ is given to Palestinian residents of eastern Jerusalem by law and not by grace** (*Ibid.* at 431). The dicta that the court articulated in the **Awad** case is consistent with the special status of eastern Jerusalem residents.

125. However the additional step that the court adopted in **Awad** – when it held that eastern Jerusalem residents are like all other residents, so that should they desire they may become naturalized citizens, but if they do not so they are at risk of losing their status – subverts that special status.

126. Although eastern Jerusalem residents may request to become naturalized citizens of Israel (provided they are able to overcome the bureaucratic hurdles) very few of them actually do so. Though the majority of them satisfy the conditions of naturalization that are laid out in section 5 of the **Citizenship Law 5712-1952** (excluding, perhaps some knowledge of the Hebrew language), they see themselves, and this is perfectly justified in terms of international law, as residents of occupied territory, whose status in Israel has been forced upon them. They feel connected to the West Bank, and therefore have no desire for Israeli citizenship. Moreover, the acquisition of Israeli citizenship through naturalization requires swearing allegiance to the State of Israel (section 5(c) of the Law), and very few are comfortable with this. **The State of Israel, as aforesaid is disallowed from forcing this upon them.** Israel's decision not to force Israeli citizenship upon eastern Jerusalem residents reflects, in and of itself, the Israeli recognition of the dual status of eastern Jerusalem residents. On the one hand they are residents of territory where Israeli law applies; on the other hand they are protected persons, upon whom international humanitarian law applies, including the prohibition against forcing an oath of allegiance to the Occupying State.

The right of every eastern Jerusalem resident to return to his homeland

127. Eastern Jerusalem – whether regarded as occupied territory or whether regarded as territory annexed by Israel – is covered by the norms of international human rights law. These norms shall be discussed below.

128. In the absence of an obligation to naturalize (see paragraphs 121 and 126 above), it is clear that the permit that is given to eastern Jerusalem residents cannot imprison them in eastern Jerusalem or in Israel, as a condition for the preservation of their status. Eastern Jerusalem residents – residents who have a special status – are entitled, like any other person, to leave their home and to return to it, without thereby being at risk that their travels abroad or their departure to the territories, and even their acquisition of status in another country, will lead to the deprivation of their rights to return to their homeland.

129. The reality of life often calls upon people to move to foreign countries and to live there, for various periods of time and for various motives. One may not derive from that that in all instances the connection with the country of origin has been severed (see in this regard: J. Page, S. Plaza, "Migration Remittances and Development: A Review of Global Evidence", *Journal of African Economies*, Volume 00, AERC Supplement 2, 245-336. And see also P. Gustafson, "International Migration and National Belonging in the Swedish Debate on Dual Citizenship", *Acta Sociologica* 2005; 48; 5). The provisions of international law in this case support the rights of persons to return to their country, even if they are not citizens of those countries.

130. Article 13(2) of the **Universal Declaration of Human Rights (1948)** states:

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

Article 12(4) of the **International Covenant on Civil and Political Rights (1966),** which was ratified by the Sate of Israel in 1991 *(Conventions* 1040) continues and states the following:

> No one shall be arbitrarily deprived of the right to enter his own country.

With respect to article 12(4) and to the concept of "arbitrarily deprived", the **United Nations Human Rights Committee General Comment** to the provisions of the Covenant stated:

> In no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. (The Human Rights Committee's General Comment 27, CCPR/C/21/Rev.1/Add.9 of 2 November1999, para.21). (Hereinafter: "**General Comment 27**").

131. In our context, the interpretation that was given to the words "his own country" is especially important as it will be noted, that it was not merely by chance that this term was chosen (that is to say, it was copied verbatim from the version that appeared in the Universal Declaration of Human Rights). Attempts made to limit the extent of this term, so that the right would only apply to those persons who were citizens of the country to which they wish to return, were dismissed. This, in order to avoid the possibility where those wishing to return to a country, whose domestic law did not recognize them as citizens, are barred from doing so. (See in this regard: H. Hannum, *The Right to Leave and Return in International law and Practice*, Dordrecht, Martinus Nijhof, 1987, p.56 (Hereinafter: "**Hannum**").

132. In this regard the learned **Bossuyt** adds that the decision to deliberately choose the term "his own country", and not the term "a country of which he is a national" was accepted in light of the desire of many countries to place before those who did not even bear the status of permanent residents, or of citizens the right of return to their country (M. J. Bossuyt, *Guide to the "Travaux Preparatoires" of the International Covenant on the Civil and Political Rights* (1987), 261). The choice of this broad term, i.e. "his own country" conforms with the general spirit of Article 2(1) of the **International Covenant on the Civil and Political Rights,** in terms of which each State Party to the present Covenant undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind.

133. Also the United Nations Human Rights Committee, the authorized interpreter of the Convention, held that the right to return to one's country per Article 12(4) to the Convention is not available exclusively to those who are citizens of that country. It most certainly also applies, so the Committee held, to those who because of their special ties to that country, cannot be considered a mere "alien". As an example, the Committee points out that this right shall also be available to residents of territories whose rule has been transferred to a foreign country of which they are not citizens:

> The wording of article 12, paragraph 4, does not distinguish between nationals and aliens ("no one"). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase "his own country". **The scope of "his own country" is broader than the concept "country of his nationality". It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated**

> **in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence**. Since other factors may in certain circumstances result in the establishment of close and enduring connections between a person and a country, States parties should include in their reports information on the rights of permanent residents to return to their country of residence. (General Comment 27, para. 20). (Emphasis added)

134. In order to remove any doubt it should be noted in this context, that the prevailing opinion among the scholars is that the right to return according to Article 12(4) of the Covenant, is a right that is available to individuals. We are not dealing with the rights of large groups of people, who were deported or immigrated to foreign countries as a result of wars or other conflicts. Jagerskiold points out in this context:

> There was no intention here to address the claims of masses of people who have been displaced as a by product of war or by political transfers of territory or population, such as the relocation of ethnic Germans from Eastern Europe during and after the Second World War, the flight of the Palestinians from what became Israel, or the movement of Jews from Arab countries… The covenant does not deal with those issues and cannot be invoked to support a right to 'return'. These claims will require international political solutions on a large scale. (S. A. F. Jagerskiold, **The Freedom of Movement, in L. Henkin (ed.) The International Bill of Rights**, New York, Colombia University Press, 1981, p. 180).

See also **Hannum**, 59.

The special status of eastern Jerusalem residents since the signing of the Oslo Accords

135. To complete the picture and to offer a comprehensive and complete assessment of the **Awad** rule, we also need to turn our attention to Israel's attitude to eastern Jerusalem residents over the recent years, from the Oslo Accords until today.

136. It is no secret that the State of Israel does not want the Palestinians in eastern Jerusalem to be residents, and even more so – its citizens. Israel thereby recognizes that the residents of eastern Jerusalem are no different than the residents of the West Bank, and even encourages the former's link to the

territories and to the Palestinian Authority. They in turn generally do not view themselves at all as Israelis, but Palestinians, who are connected to the territories. Despite the fact that eastern Jerusalem residents number a third of all the residents of Jerusalem, and despite the fact that they are entitled to participate in elections for the Jerusalem Municipal Council and for mayor (see Section 13 **Local Authorities (Elections) Law 5725-1965),** as a general rule they do not participate in elections. In the Jerusalem Municipal Council there is not even one Palestinian representative.

137. An example of the fact that the State of Israel relates to eastern Jerusalem residents like the residents of the rest of the occupied territories is Israel's decision to impose upon eastern Jerusalem residents the same arrangements that is imposed on the residents of the rest of the West Bank with respect to their departures abroad, and their return to Israel and the territories, as well as their status upon their return (The "open bridges policy" which we discussed). This policy recognized, as stated, the needs of the residents of eastern Jerusalem and of the territories to live in Jordan and in other Arab countries, and not only for temporary needs or for short periods, like visits or commerce, but also for those needs associated with continuous living abroad, including for study purposes, work, and family ties. Since 1967 until today one may only leave abroad and return back via an exit card which also constitutes a return visa. This applies equally to eastern Jerusalem residents as it does to the residents of the territories. Both leave and return in the same manner.

138. The State of Israel's shunning of the Palestinian residents of eastern Jerusalem and the encouragement of their forging links with the Territories was given concrete expression in the Oslo Accords, in the legislation for its implementation and in prescribing the manner for practically implementing them. Within the framework of the Oslo accords which were signed between the State of Israel and the PLO, Israel thereby explicitly recognized that eastern Jerusalem lies at the core of the dispute, and that there is a complete affiliation between the Palestinian residents of eastern Jerusalem and the rest of the Palestinian residents in the territories of the West Bank and the Gaza Strip.

139. In the **Oslo Accords A**, dated 13 September, 1993 Israel undertook to discuss the status of eastern Jerusalem within the framework of negotiations for a final settlement, and it agreed that the "Palestinians from Jerusalem who live there shall have the right to participate in the election process" to the Palestinian Council, and all this "pursuant to the Agreement between the two sides". In **Oslo Accords B** dated 28 September, 1995 general rules for organizing elections to the Palestinian Legislative Council and its Executive Chairman were agreed upon. It was agreed that "Palestinians from Jerusalem who live there shall be permitted to participate in the election process" (to elect and to be elected), provided that they are not citizens of Israel. In Appendix II to the Agreement arrangements for voting in eastern Jerusalem were established. After signing these agreements two laws were enacted for their implementation: The **Implementation of the Interim Agreement with Respect to the West Bank and the Gaza Strip (Restriction of Activities) Law 5755-1994,** and the **Implementation of the Interim Agreement with**

Respect to the West Bank and the Gaza Strip (Jurisdictional Authority and other provisions) (Legislative Regulations) Law, 5756-1996. Israel's undertaking to hold elections in eastern Jerusalem and to enable the participation of eastern Jerusalem residents in the elections was enshrined in legislation. The legislation establishes that these provisions would be implemented according to the government's discretion, with its consent and notwithstanding anything stated in any other law.

140. Since the first Implementation Law, elections in the Palestinian Authority have taken place three times: in 1996, 2005 and 2006. Each of these elections was witness to the participation of eastern Jerusalem residents with the consent of the Government of Israel and with its support. The Government of Israel defended its decision to allow the participation of eastern Jerusalem residents before the HCJ, which ruled that this participation in the elections was lawful (HCJ 298/96 **Peleg v. The Government of Israel** (judgment dated 14 January 1996): HCJ 550/06 **Ze'evi v. The Government of Israel** (judgment dated 23 January, 2006 with reasons for judgment dated 9 February, 2006).

141. As stated, even the most recent elections, that took place at the beginning of 2006, saw the participation of eastern Jerusalem residents. On 17 January the then Acting Prime Minister, Ehud Olmert clarified the decision to allow eastern Jerusalem residents to participate in the elections. Below is a verbatim transcript of his words, as they were published on the Internet website of the Office of the Prime Minister:

> I want to remind you that in both 1996 and 2005, elections were held in Jerusalem. The responsible approach that I supported both in 1996 and in 2005 said that while we do not concede our authority and sovereignty over all parts of Jerusalem, we certainly have an interest in maintaining eastern Jerusalem residents' link to a Palestinian state and not to the State of Israel. We never thought that the State of Israel's interest is that all eastern Jerusalem Arabs will participate in the elections in it. It is impossible to deny them the right to vote in Palestinian Authority elections. Since we are not interested in having them vote in Israeli elections, we certainly need them to agree to participate in the Palestinian Authority elections and therefore the decision was correct then and it is still correct today […]. I assume that most Israelis prefer that eastern Jerusalem Arabs not participate in Israel's elections but in the elections of the state with which they identify, i.e. the Palestinian state." http://www.pmo.gov.il/PMOEng/Archive/Current+Events/2006/01/eventpre170106.htm

142. The Implementation of the Oslo Accords Laws – whose practical implementation was approved, as stated, by the HCJ – introduced into the law

the distinction between the status of eastern Jerusalem residents and the status of other residents of Israel.

How is it possible that in the current situation, where Israel views eastern Jerusalem residents as kinsmen of the Palestinian People and encourages their links with an independent Palestinian Administration – an independent Palestinian Administration, which apparently was something which even Mubarak Awad had striven to establish in 1988 - the **Awad** rule, as interpreted by the respondents, still remains intact. Is it possible that one may still speak of a "synchronization" of eastern Jerusalem and its residents with Israel, as interpreted by the court on the basis of legislation from 1988? Clearly, the changes made to the law and to the current situation cannot sanction the same attitude towards the status of eastern Jerusalem residents which regards them as having been "swallowed" by the laws of status in Israel, viewing them as immigrants like all other immigrants.

Instead of a Summary: the Development of the Awad Rule in Light of the Reality of Life

143. We have seen that we need to expand the **Awad** rule so that it may be reconciled with other norms of Israeli law, which imbibes the principles of human rights and international humanitarian law. The expansion of the **Awad** rule is also required within the framework of drawing lessons from its implementation until today and within the framework of tailoring it to the lifestyles of the modern world.

144. In the **Awad** case the court assumed a reality in which a person relocates the center of his life from one country to the next. For a certain interim period the center of his life "sort of hovered between his old place of abode and his new one", however by the end of this interim period the disconnection was complete. This assumption does not always pass the reality test.

145. In a modern world where humans interact in a global village, an extended stay abroad is a frequent phenomenon. It does not cancel out the constant and deep connection between man and the country of his birth. In a wide range of circumstances of man's life (for instance when he must deal with a crisis, or at the opposite end of the spectrum, when he establishes a family or reaches the age of pension) the urge to "come home" is reawakened in him in full force.

146. In the years that have passed since the **Awad** judgment it has become clear that an analytical implementation of the **Awad** rule does not lead to the exclusive removal from east Jerusalem of those people who have no real link to it, or those who came to the city as political agents. Those who paid the price of the technical application of the **Awad** rule were those people for whom Jerusalem was their home to return to, as in the case of the petitioner.

Ironically it is precisely her and those like her that are harmed by a technical implementation of the **Awad** rule. It is precisely her, who in contradistinction to Mubarak Awad did not travel abroad, did not stay in a foreign country for many years, and did not acquire status in another country.

Alas, all that the petitioner did was to change her residential address from eastern Jerusalem to the Gaza Strip – two regions that constitute, from many perspectives, one unit, regions that are both governed by Israel. All that the petitioner did was to move between two regions, where the State of Israel itself encouraged there to be a link between them and related to them in a like manner. Throughout the years the petitioner entered the Gaza Strip on permits that were issued by Israel, and which were given to her because she was a resident of Israel. In contradistinction to Mubarak Awad, the petitioner did not enter the State's borders with a foreign passport, but as an Israeli for all intents and purposes.

147. Continuing with the literal implementation of the **Awad** rule places eastern Jerusalem resident between a rock and a hard place: their rights to self realization, to education, to a livelihood and to participation in the life of modern society clashes with their rights to a home and to a homeland. The **Awad** rule turns it into a quasi judicial cave that seals off the possibility of eastern Jerusalem residents from being mobile like everyone else, and which confines them to the narrow and deserted space in which they born.

148. In light of the harsh results that flow from the **Awad** rule, and in order to tailor it to the legal rules that apply to eastern Jerusalem residents, it needs to be expanded.

There is no need to amend the ruling that eastern Jerusalem residents live in Israel by virtue of their permanent residence permits that were granted to them as a whole, in accordance with the Entry into Israel law.

There is no need to amend the ruling that Israeli permanent residence permits, in the event that they are granted to an immigrant from a foreign country, include a general stipulation that the validity of the permit is dependent upon the reality of being a permanent resident.

However so long as we are dealing with eastern Jerusalem residents, for whom this piece of earth is their first home, and who enjoy the status of protected persons according to international humanitarian law, it must be established that their residence permits in Israel include a general stipulation that the permit does not expire even in the wake of continuous living abroad or the acquisition of status in another country.

149. The petitioner is a resident of eastern Jerusalem. Her status was granted to her in the wake of the annexation of eastern Jerusalem. Because of this her status was a special status. Latent within it is immunity from forced deportation. The State of Israel is not allowed to demand from the petitioner – or any other eastern Jerusalem resident for that matter – to become its citizen, and to swear allegiance to it, in order not to be deported, and is not allowed to force her – or any other resident of eastern Jerusalem – to remain in eastern Jerusalem in order not to lose her status. The petitioner is entitled to leave the country, to leave eastern Jerusalem and also to return to her homeland without any fear that her status will expire and she will be deported.

This petition is supported by an affidavit that was signed before an attorney in the Gaza Strip and which was sent to the undersigned by fax, after coordinating matters over the telephone. The honorable court is requested to accept this affidavit, and the power of attorney, which was also given by fax, considering the objective difficulties of a meeting between the petitioner and her counsel.

In light of the aforesaid, the honorable court is requested to instruct the respondent as requested at the beginning of the petition.

The honorable court likewise is requested to order the respondent to pay the petitioners' costs and attorney fees.

Jerusalem 15 June, 2008, **Adv. Yotam ben Hillel**

Counsel for the petitioners

[T.S. 56164]